

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No.15 /JPR/2023  
निर्धारणवर्ष / Assessment Years :2018-19

Income Tax Officer, Kota.	बनाम Vs.	Zila Parishad Sawaimadhopur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: JDHZ00055G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकरअपील सं./ITA No.16 /JPR/2023  
निर्धारणवर्ष / Assessment Years : 2019-20

Income Tax Officer(TDS), Kota.	बनाम Vs.	Zila Parishad Sawaimadhopur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: JDHZ00055G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओरसे / Revenue by: Sh. Jadish (JCIT)  
निर्धारिती की ओरसे / Assesseeby : Sh. Neeraj Jain (C.A.)

सुनवाई की तारीख / Date of Hearing : 16/02/2023  
उदघोषणा की तारीख / Date of Pronouncement: 20/02/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are two appeals filed by the revenue aggrieved from the order of the National Faceless Appeal Centre, Delhi (herein after referred as Id. "NFAC/ Id. CIT(A)") for the assessment years 2018-19& 2019-20 dated 23.11.2022, which

in turn arises from the order passed by the Income Tax Officer(TDS), Kota passed under Section 201(1)/201(1A)r.w.s 194C & 194A of the Income tax Act, 1961 (in short 'the Act') both dated 15.07.2019.

2. Since the issues involved in both the appeal of the revenue are almost identical, are common and these both the appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter pertaining to Zila Parishad in ITA No. 15/JPR/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are exactly identical except the difference in the amount of **levy of tax / penalty in** other assessment year. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 15/JPR/2023 is taken as a lead case.

4. Based on the above arguments we have also seen that for all two appeals grounds are similar, facts are similar and arguments were similar and therefore, were heard together and are disposed by taking lead case facts, grounds and arguments from the folder in ITA No. 15/JPR/2023.

5. Before moving towards the facts of the case we would like to mention that the revenue has assailed the appeal in ITA No. 15/JPR/2023 before us on the following grounds;

“1. The appellant craves its rights to add amend or alter any of the grounds on or before the hearing.

2. Whether on the facts and in the circumstances of case, the Ld. CIT(A), NFAC, Delhi has erred in not allowing the Assessing Officer to examine the additional evidence admitted by him as per provisions under rule 46A(3) of the Income Tax Rules 1962 and t order passed by the CIT (A), NFAC Delhi on this issue is in violation of the rule 46A of the Income Tax Rules, 1962.

3. Whether on the facts and in the circumstances of case, the Ld. CIT(A), NFAC, Delhi has erred in deleting the demand raised in respect of HUDCO for the FY 2017-18 relevant to AY 2018-19 u 201(1) of the IT Act 1961, whereas as per the provisions of section 194A of the IT Act 1961 the assessee was required to deduct TDS @10% on the interest payment of Rs.52,21,592/- to HUDCO whic the assessee failed to do so.

4. Whether on the facts and in the circumstances of case, the Ld. CIT(A), NFAC, Delhi has erred in accepting the additional evidence in Form 26A (a certificate from an Accountant as required under the 1st proviso of section u/s 201(1) of the IT Act 1961) which had not stood the test of enquires in assessment proceedings u/s 201(1) and 201(IA) of the Income Tax Act 1961.”

6. The facts as culled out from the records is that the assessee is a State Government Agency. The AO conducted spot verification at the office premises of Additional Chief Engineer, Zila Parishad, Sawaimadhopur on 12.06.2019. During the verification, the AO noticed that the appellant paid interest of Rs. 5,22,15,920/- during the financial year 2017-18 relevant to assessment year 2018-19 and had not deducted the TDS on the above interest paid to HUDCO. The AO computed short deduction u/s 201(1) and interest u/s 201(1A) amounting to Rs. 52,21,592/- and Rs. 11,80,483/- respectively totaling to Rs. 64,02,075/-.

7. Being aggrieved, from the order of the ITO, TDS the assessee carried the matter in appeal before the Id CIT(A) and Id. CIT(A) after hearing the parties given his relevant findings on the issue, which reads are as under:-

“52. The order of the Assessing Officer and the submissions of the appellant have been perused. It is seen that the appellant deductor failed to deduct tax at source on the interest payment made to M/s.

HUDCO. It can be seen from the submissions that the recipient i.e. HUDCO, pursuant to Disinvestment in May, 2017 ceased to be a 100% government owned company and the change of company was intimated by the recipient company on 18.06.2019 to the appellant deductor. By that time the interest payment to HUDCO was paid without deducting tax at source by the appellant deductor. Due to which the appellant deductor could not deduct tax at source on the interest payment made to HUDCO. It can be clearly stated that the non-deduction of tax at source was not intentional by the appellant deductor and had sufficient cause for non-deduction of tax at source. Further, the appellant deductor also filed certificate of accountant under first proviso to sub-section (1) of section 201 of the Income-tax Act, 1961 certifying the details of return of income, payment of tax etc., by the recipient/payee. On verification of the details submitted during the course of appeal proceedings, the HUDCO has filed its income tax return reflecting the amount received by it towards interest and paid the taxes. As such, the appellant though failed to deduct tax at source on the payments u/s.194A, but as per provisions of Section 201(1), the appellant shall not be deemed to be an assessee in default in respect of such tax if such payee (i) has furnished his return of income under section 139; (ii) has taken into account such sum for computing income in such return of income; and (iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed. In the instant case, the recipient/payee paid the taxes on the interest payment received from the appellant deductor. As such, the appellant has fulfilled the conditions laid down u/s.201(1). However, the appellant is liable to pay simple interest u/s.201(1A) for failure to deduct tax at source from the date on which such tax was deductible to the date of furnishing of return of income by such payee.

5.3 Considering the facts and circumstances of the case, the AO is directed to delete the demand raised in respect of HUDCO for the FY 2017-18 u/s.201(1) and charge interest u/s.201(1A) for the default, as per the provisions of Section 201(1A), Hence, the Ground No. 1 is partly allowed.

6. Ground No.2 relate to raising demand of Rs.1,492 for non-deduction of tax at source u/s.194C and Rs.298 charging of interest u/s.201(1A). The appellant deductor failed to deduct tax at source u/s.194C on the payment of Rs.74,593/- made to Rajasthan Patrika Pvt Ltd. The AO treated the appellant deductor as assessee in default for non-deduction of tax at source on the payment made to

the above entity and raised the demand u/s.201(1) Rs.1,492/- and u/s.201(1A) Rs.298. The appellant submitted that in connection with demand raised under section 156, it had paid the demand on 09.08.2019 within the designated 30 days. Since the demand raised by the AO was paid after passing the order u/s.201(1)/201(1A), the demand cannot be deleted but the AO can reduce the demand to that effect as tax paid in compliance to demand notice u/s. 156. Hence the Ground No.2 is dismissed.”

8. Revenue aggrieved from the order of the Id. NFAC has carried the matter before us on the grounds as raised in para 5 above. To support the grounds taken by the revenue the Id. DR objected of an action of the Id. CIT(A) in accepting the additional evidence without giving an equal opportunity of being heard to the assessing officer. Not only that the additional evidence submitted by the assessee were not mentioned as additional evidence in the order of the Id. CIT(A). The Id. CIT(A) has accepted these evidence without calling for the reasons as to why the same were not submitted before the assessing officer. Thus the order of the Id. CIT(A) is having the infirmity to that extent and the order of the Id. CIT(A) is bad in law as well as on facts and required to be quashed.

9. Per contra, the Id. AR of the assessee has submitted their written to counter the grounds of appeal raised by the revenue and the submission are reiterated here in below:-

"That a spot verification was conducted at the office premises of Additional Chief Engineer, Zila Parishad, Sawai Madhopur on dated 12.06.2019 by the Income Tax Officer (TDS), Kota. During the verification, the learned AO has verified the records of the F.Y. 2017-18 and on the basis of verification, issued a notice u/s 201(1A) of the Income Tax Act, on dated 13.06.2019. In compliance to the notice, the appellant has filed the detailed reply on dated 19.06.2019 clarifying that the appellant has written a letter to the HUDCO Jaipur and HUDCO has clarified in writing vide their letter dated 18.06.2019 that upto May 2017 HUDCO was 100 percent subsidiary of Govt of India. Being 100 percent shares were hold by the President of India, therefore there was no requirement to deduct TDS u/s 194A of the Income-tax Act. Even after May 2017 HUDCO has clarified that they have paid due income-tax by considering entire interest income received from borrowers and therefore under the provisions of Income-tax Act, the borrowers would not be considered as assessee in default. HUDCO has also applied for an exemption u/s 194A of the Income-tax Act for certificate for no deduction of tax by the borrowers. The same was granted on dated 20.03.2019. The assessee in writing has also clarified that they need some time to file a certificate in Form 26A but without providing a reasonable time for submission of required certificate, the learned AO has passed the order on dated 15.07.2019 by levying TDS liability u/s 194A of s. 52,21,592 and interest thereon Rs. 11,80,483 total Rs.64,02,075 and u/s 194C of Rs. 1,492 interest thereon 298 total Rs. 1,790. Thus, the total demand of Rs. 6403865 was raised while passing the order u/s 201(1)201(1A) on dated 15.07.2019.

Ground No.1

"That under the facts and circumstances of the case, the learned Assessing Officer has erred in raising the TDS liabilities on Interest payment to Housing and Urban Development Corporation Ltd. Jaipur (HUDCO) during the F.Y. 2017-18 of Rs.52,21,592 and further erred in charging the interest thereon of Rs. 11,80,483 total Rs.64,02,075 while passing the order u/s 201(1) and 201(1A) of the Income Tax Act."

The appellant Zila Parishad is a government department and regular in compliance requirements under the Income-tax Act, 1961. The appellant has paid the interest of Rs. 5,22,15,920 during the financial year 2017-18. The appellant has not deducted the TDS on the above interest as the payment was made to HUDCO as it was the Public Sector Undertaking and 100% shares were held by the President of India through the then Ministry of Housing & Urban Poverty Alleviation, which was exempt from TDS on Interest other than interest on securities u/s 194A of the Income-tax Act, 1961.

However, vide letter No. 220 dated 18.06.2019 (enclosed as Annexure-1 for your ready reference) I received from the HUDCO authorities has informed that:

"Pursuant to Disinvestment in May 2017, HUDCO ceased to be a 100% government owned company and thereby came under the purview of TDS us 194A of the Income-tax Act, 1961. Borrowing agencies/Banks/FIs had to deduct TDS on the interest payment made to HUDCO, However, wherever the borrowers failed to deduct the tax as source, HUDCO has paid due Advance Tax as per Income Tax Act, 1961 considering the interest income from borrowers."

The above-mentioned para clearly states that the appellant was still under the impression that HUDCO was a Public Sector Undertaking and was exempt from the purview of TDS. The appellant was inform in the year 2019 and accordingly, the appellant inadvertently did not deduct the TDS on the interest payment made during the year 2017-18. The non-deduction of TDS was unintentional and without any mala-fied intention.

Further as per the proviso to sub-section 1 to section 201 of the Income-tax Act, 1961 states that:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a (payee or on the sum credited to the account of payee) shall not be deemed to be an assessee in default in respect of such tax if such [payee-

- (i) has furnished his return of income under;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Therefore, the first proviso to sub-section (1) of section 201 specifies that the deductor shall not be deemed to be an assessee in default if he fails to deduct tax on a payment made to a resident, if such resident has furnished his return of income under section 139 disclosed such payment for computing his income in his return of income, paid the tax due on the income declared by him in his return of income and furnished an accountant's certificate to this effect. Also, Form 26A as per Rule 31 ACB of the Income- Act Rules 1962 furnishing accountant certificate under the first proviso to sub-section (1) of section 201 of the Income-tax Act, 1961 wherein it has been certified that HUDCO has already paid the tax on the interest income received for the financial year 2017-18 (enclosed as Annexure-2).

Further, it shall be noted HUDCO being the recipient of the interest income has already paid the tax due on the income. The appellant did not raise any dispute about it being the assessee in default however, tax due has been recovered from it by the department and therefore, no further tax could have been collected from the appellant. The contention was that since the tax to be recovered by the department on the income has already been paid by the HUDCO, no further tax should be recovered from the appellant on the same

income. The recovery could not once again be made from the tax deductor where the payee included the income on which tax was alleged to have been short deducted in its taxable income and paid taxes thereon.

Furthermore, as per the Circular No. 275/201/95- IT(B) dated 29.1.1997 issued by the Central Board of Direct Taxes, in our considered opinion, should put end to the controversy. The circular declares "no demand visualized under Section 201 (1) of the Income-tax Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been paid for the deductee- assessee."

The above-view point has been sustained by the pronouncement of Supreme Court in case of Hindustan Coca Cola Beverages P. Ltd vs CTTI20071 293 ITR 226 (SC) wherein it was held "that where tax has been paid by the deductee in respect of amount liable for deduction of tax at source, no recovery can be made from the deductor,"

Therefore, we are of the opinion that the learned Assessing Officer has erred in raising the demand on account of TDS liabilities on Interest payment to Housing and Urban Development Corporation Ltd. Jaipur (HUDCO) during the F.Y. 2017-18 of Rs.52,21,592 and further interest thereon of Rs. 11,20,483 total Rs.64,02,075 while passing the order u/s 201(1) and 201(1A) of the Income Tax Act and the demand generated is not recoverable.

Ground No.2

"That under the facts and circumstances of the case, the learned Assessing Officer has erred in raising the TDS liabilities on payment to Rajasthan Patrika Pvt. Ltd. During the F.Y. 2017-18 of Rs 1,492 and further erred in charging the interest of Rs.298 total Rs.1,790 while passing the order w/s 201(1) and 201(1A) of the Income-tax Act."

The appellant has paid made a payment of Rs. 74,593 to Rajasthan Patrika Pvt. Ltd. in January 2018 on which there was liability to deduct TDS under section 194C on such amount and in reference to it the learned Assessing Officer has issued a demand notice u/s 156 of the Act.

In compliance to the above-mentioned notice, appellant has paid the demand of Rs. 1,790 (tax amount of Rs.1,492 and interest of Rs. 298) on 9 August 2019 vide challan no. 022024 Copy enclosed as Annexure-3)

Therefore, we are of the opinion since the appellant has paid the demand raised under section 156 of the Act within the designated period of 30 days, the demand shall be deleted.

In view of the above, the appellant request your honour to accede to the above request and delete the demand raised under order u/s 201(1)201(1A) of the Income-tax Act, 1961. Further, the penalty proceeding initiated under section 271C of the Act shall also be dropped.

In case you require any further clarification, we shall be glad to provide the same.

We request you to accede the above submission and oblige.”

9.1 In addition to the above submission the Id. AR of the assessee submitted that the required form 26A being the certificate of chartered accountant as per sub-section 1 of section 201 of the Act, could not be submitted before the assessing officer because the order has been passed before the relevant due date of filling the ITR and the assessee has requested the assessing officer to keep the proceeding pending till the HUDCO file the ITR and give the relevant certificate in form no. 26A, from where in the relevant details required in the form can be filed up but the since the order has been passed without giving the time to the assessee as requested, assessee has no option but to file the said form no 26A before the Id. CIT(A) and the same was not filed before the Id. AO. The Id. AR of the assessee relied upon the order of Hon'ble Supreme Court in case of Hindustan Coca-cola Beverages Pvt. Ltd 293 ITR 226 contending that when the tax due has already been paid by the receipt the same cannot be recovered by the assessee. Based on that arguments the appeal of the assessee has rightly been allowed by the NFAC and therefore, the appeal of the revenue merely the form was not filed with the Id. AO is not maintainable.

10. After hearing both the parties and perusing the materials available on record, the Bench has noted that there is no dispute by both the parties that from a certificate of the chartered accountant in Form no. 26A under the 1<sup>st</sup> Proviso to sub-section 1 of section 201 of the Act has been submitted by the assessee before the Id. CIT(A) and based on that certificate the liability cannot be fastened upon the assessee. The main grievance of the revenue as it is arising from the ground no. 2 & 4 raised before us that the required forms were not submitted before the assessing officer and in the proceeding before the Id. CIT(A) the same was not considered as additional evidence and the Id. AO has not been equal chance to have his comments on the said form 26A filed in the proceeding before the Id. CIT(A). The Ground no. 1 is general in nature and ground no. 3 is on account of the TDS liability which is on account of these certificate of chartered accountant not required to be fastened upon the assessee the same is not adjudicated. Apropos ground no. 2 & 4 the grievance of the revenue that the assessee has not filed form in the proceeding before the assessing officer and Id. CIT(A) has not considered this as additional evidence and without giving opportunity to the assessing officer accepted this additional evidence in the form of form no. 26A. When there was no dispute about such a declaration being filed in a

prescribed format and there was no dispute about the genuineness of such declaration, mere the form is not filed with the office of the assessing officer and that too the order was passed before the due date of filling the return of income and therefore, the assessee was prevented from sufficient cause and the same were filed before the Id. CIT(A) is sufficient compliance and the said declaration filed would not defeat the very claim. The similar view is taken by the Honourable Gujarat High in the case of Commissioner of Income-tax (TDS) v. Siyaram Metal Udyog (P.) Ltd. The relevant relied upon finding of the Gujarat High Court is reiterated here in below:

8. Thus, in terms of the explanation clause (aa) any person who purchases the goods in retail sale for personal consumption would not be included within the definition of term 'buyer'. It is therefore, that under sub section (1A) of section 206C, calculation of tax under sub-section 1 would not be made, if the buyer furnishes to the person responsible for the tax a declaration in writing in prescribed form declaring that the goods in question are to be utilized for the purposes of manufacturing process or producing articles or things or for the purpose of generation of power and not for trading purposes. The declaration to be made in sub-section (1A) of section 206C thus would enable the Revenue authorities to, as and when the need so arises make proper verifications. This sub-section itself does not provide for any time limit within which, such declaration is to be made. The time limit, of course, would be found in Rule 37C of Income Tax Rules, 1962. The main thrust of sub-section 1A of section 206C thus is to make a declaration as prescribed, upon which, the liability to collect tax at source under sub-section (1) would not apply. **When there was no dispute about such a declaration being filed in a prescribed format and there was no dispute about the genuineness of such declaration, mere minor delay in filing the said declaration would not defeat the very claim.** The Tribunal therefore, viewed such delay liberally and in essence held that there was substantial compliance with the requirement of filing the declaration.

9. No question of law arises. Tax Appeals are dismissed.

11. In terms of these observation, we see no merits in the ground no. 2 & 4 of the revenue and therefore, the same are dismissed.

In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 20 /02/2023.

(डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

(राठोडकमलेशजयन्तभाई)  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/02/2023

\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- ITO, Kota.  
ITO(TDS), Kota.
2. प्रत्यर्थी / The Respondent- Zila Parishad, Sawaimadhopur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No. 15&16/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar