

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITAs No.3444 to 3447/Del/2018
Assessment Year: 2016-17

Universal Conveyor Beltings Ltd.,
47-48, Pragati House,
402-403, Nehru Place,
New Delhi.

Vs. ACIT,
CPC-TDS,
Vaishali,
Ghaziabad.

PAN: AAACU1499C

(Appellant)

(Respondent)

Assessee by	:	Shri Rajesh Dua, CA
Revenue by	:	Ms Kirti Sankratyayan, Sr. DR
Date of Hearing	:	20.12.2022
Date of Pronouncement	:	23.02.2023

ORDER

PER C.M. GARG, JM:

These appeals filed by the assessee are directed against the consolidated order dated 28.03.2018 of the CIT(A)-41, New Delhi, relating to Assessment Year 2016-17.

2. The sole issue in these appeals pertains to the challenge of the assessee to the charging of fee u/s 234E of the Income-tax Act, 1961 (for short, 'the Act') in the intimation issued by the AO u/s 200A of the Act. The Id. Assessee's representative (AR), placing reliance on the various judgements of the Hon'ble High Court including the judgement of the jurisdictional High Court in the case of *Rampur Engineering Company Ltd. vs. CIT, reported as (2011) 15 taxmann.com 261 (Del)* and order of the ITAT Mumbai Bench in the case of *ITO (TDS) 3(4), Mumbai vs. Baroda Rayon Corpn.*

Ltd. (2016) 65 taxmann.com 157 (Mumbai-Trib), submitted that the assessee submitted all the details pertaining to his sole ground before the Id.CIT(A), but, he dismissed the same by merely observing that the AO, in the present case, was after the period started from 01.06.2015, is as per law under the scope of adjustment provided u/s 200A of the Act. The Id. AR vehemently pointed out that the Id.CIT(A) has ignored a very relevant fact that being a sick industrial company, as per section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA 1985), no suit or proceedings for recovery lies or be proceeded with further except with the consent of Board or any other competent authority. The Id. AR submitted that keeping in view the overriding effect of section 32 of SICA, 1985 over the Income-tax Act, 1961, the sick assessee company inadvertently deposited the interest while filing TDS return under the Income-tax Act, but, as per the reading of section 234E of the Act it is clear that the amount of late filing of TDS return shall be paid before delivering TDS statement/return. He further submitted that there is no provision that it can be demanded from the assessee at later stage, i.e., after filing of TDS return. The Id. AR submitted that in view of the facts and circumstances, no interest and penalty has to be imposed or paid by the assessee, hence, the payment of interest and interest should be waived and deposited amount on this count may kindly be refunded to the assessee. The Id. CIT-DR has not controverted the above facts and a very relevant fact that Board of Industrial and Financial Reconstruction in assessee's own case No.43/95 order dated 14.08.1995 has declared the assessee as sick industrial company held under the Act.

3. Replying to the above, the Id. Sr. DR supported the orders of the authorities below. However, he did not controvert that the assessee company is a sick unit and comes within the purview of section 22 of Sick Industrial Companies (Special Provisions) Act, 1985.

4. In view of this and keeping in view the proposition rendered by the Hon'ble jurisdictional High Court in the case of Rampur Engg. Co. Ltd. (supra), the orders of the authorities below charging fee u/s 234E of the Act under the scope of adjustment provided u/s 200A of the Act is set aside and the AO is directed to take necessary step for refund of deposited amount, if any, by the assessee. Since the facts and circumstances of all four appeals are identical and similar, therefore, our conclusion drawn for ITA No.3444/Del/2018 would apply, *mutatis mutandis*, to other three appeals, i.e., ITA No.3445 to 3447/Del/2018.

5. In the result, all the four appeals filed by the assessee are allowed.

Order pronounced in the open court on 23.02.2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated:23rd February, 2023.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi