

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
DELHI**

**BEFORE: SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.9501/Del/2019
(Assessment Year:2010-11)**

Dy. Commissioner of Income Tax, TDS, Gurgaon	Vs.	M/s Apollo Tyres Ltd., Plot No. 7, Apollo House Industrial Area, Sec-32, Gurgaon
PAN/GIR No. AAACA 6990 Q		
(Appellant)	..	(Respondent)

Revenue by	Shri Kanv Bali, Sr. DR
Assessee by	Shri. Gaurav Singhal, Adv.
Date of Hearing	13/04/2023
Date of Pronouncement	18/04 /2023

ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.9501/Del/2019 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-1, Gurgaon in appeal No.43/18-19 dated 19.09.2019 (hereinafter referred to as Id. CIT(A) in short) against the order of assessment passed u/s.201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26.04.2018 by the Id. Joint Commissioner of Income Tax, (OSD) TDS Circle, Gurgaon (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the demand raised on account of non-deduction of TDS on provision made for certain expenses without deduction tax at source u/s. 201(1)/201(1A) of the Act.

3. We have heard rival submissions and perused the materials available on record. A TDS survey was conducted at the premises of assessee, wherein it was found that assessee was not deducting TDS on certain provision made for expenses. When confronted, the assessee submitted that the provision is made for certain expenses wherein the payees are not identifiable at the time of making provision. Hence deduction of tax at source could not be made on the same. However, as and when the payments are made, the assessee on knowing the payees, had duly deducted tax at source. The Id. AO however did not agree to this proposition and proceeded to treat as an assessee in default and raised a demand u/s. 201(1) of the Act and also charged interest u/s. 201(1A) of the Act.

4. The expenses involved in this regard are provision made for miscellaneous and conference expenses to the tune of Rs. 4 crores and the business development conference expenses to the tune of Rs. 5 crores. We find that the Id. CIT(A) had deleted the demand and granted relief to the assessee on the ground that the payees had duly offered the receipt in their respective Income Tax returns. Since there was no loss to the exchequer, the demand raised u/s. 201(1) of the Act was deleted by the Id. CIT(A) by observing as under:-

3.10 I have carefully considered the facts of the case and the submissions of the appellant. I have also perused the documents filed by the appellant. The provisions pertaining to which the demand u/s 201(1)

& 201(1A) has been created are on account of the following expenses:-

I. Misc. and conference expenses Rs. 4 crores

II. Business development conference expenses Rs. 5 crores

3.11 It is seen from the documents filed by the appellant that the conference with regard to which the provision of Rs. 4 crores had been created was held on 07/04/2010 to 13/04/2010 and the invoice for the same was raised on 14/05/2010 for a total amount of Rs. 7,65,56,374/-. The payment for this expenditure was also made on 14/05/2010. Further, as regards the business development conference for which a provision of Rs. 5 crores has been created was held from 9 to 14 October, 2010 and the invoice for the same was raised from 16/11/2010. The total invoice raised was Rs. 8,32,12,323/-. In these circumstances, the fact whether the amount payable at the time of creation of provisions was ascertainable or not is debatable issue. The appellant has contended that in any case, the deductee had filed the return of income for the Ay in which the invoices were raised in the AY immediately succeeding the year in which the provisions were created and had included the amounts received on account of these expenses including the amount of provisions created by the appellant in the total income for the year under consideration and also paid taxes thereon. A copy of the certificate of the Accountant under first proviso to sub section 1 of section 201 filed by the appellant in this regard is enclosed as Annexure-1 to this order. The appellant has contended that in view of the decision of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage (P.) Ltd. (Supra) and in view of the CBDT Circular No. 2758201/95-IT/B dated 29/01/1997, the demand raised w/s 201(1) may be deleted. I agree with this contention of the appellant. It is a fact on record that the amounts of provisions created by the appellant on which TDS was not deducted had been duly included by the deductee in the return of income filed for the year in which the amounts were actually received by the deductee and in which the invoices were raised. As such no demand us 201(1) is justified in view of the decision of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage (P.) Ltd. and CBDT Circular No. 2758201/95-IT/B. The demand raised us 201(1) is accordingly deleted.

5. However, since the Department was deprived of the TDS amount in time, that is till the date of filing the return of income by the payee, the interest u/s. 201 (1A) of the Act would be eligible to be paid by the assessee. This was confirmed by the Id. CIT(A). In our considered opinion, the Id. CIT(A) had duly considered the decision of Hon'ble

Supreme Court in the case of ***Hindustan Coca Cola Beverage (P.) Ltd. reported in 293 ITR 226*** while granted the relief to the assessee. Hence we do not find any infirmity in the order of the Id. CIT(A) granting the relief to the assessee in respect of demand raised u/s 201(1) of the Act and confirming the action of levy of interest u/s. 201(1A) of the Act.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 18/04/2023.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Delhi; Dated 18/04/2023

NV, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Delhi.
4. CIT
5. DR, ITAT, Delhi
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Delhi