

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

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

आयकर अपील सं./ITA. No. 105/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2021-22

M/s Ready Roti India Pvt. Ltd. F-28, RIICO Industrial Area, Sare Khurd, Alwar.	बनाम Vs.	CPC-TDS/ACIT/DCIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACCT 7134 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing 12/04/2023  
उदघोषणा की तारीख / Date of Pronouncement : 30/06/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the ld. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred as "NFAC"] dated 20-01-2023 for the assessment year 2021-22 wherein the solitary ground of the assessee that the ld.CIT(A) has erred on facts and in law in upholding the action of AO in levying interest on late payment of TDS for 6 months instead of 5 months, thereby creating demand of Rs. 2,47,843/-.

2.1 Brief facts of the case are that the assessee company is engaged in business of trading and manufacturing of Bakery items. It filed its return on 12.03.2022 declaring total income of Rs. 14,22,15,640/-. During the year under consideration, assessee has made payment of Rs. 15,22,68,970/- on 16.02.2021 to M/s Everfoods Asia Pvt. Ltd. on which TDS of Rs. 1,66,27,770/- was deducted but deposited on 01.07.2021. Accordingly, assessee paid interest @ 1.5% P.M. for delay of 5 months in deposition of TDS of Rs. 12,47,085/- ( $1,66,27,770 * 1.5% * 5$ ).

2.2 In course of assessment proceedings, the ld. AO, TDS(CPC) in intimation dated 16.09.2021 calculated the interest for 6 months and thus worked out liability of interest at Rs. 14,96,493/- ( $1,66,27,770 * 1.5% * 6$ ) and raised demand of Rs. 2,47,843/- ( $2,18,843 + 29,000$ ).

2.3 Aggrieved by the order of the AO, the assessee carried the matter before the ld CIT(A) with the submission that the month for the purpose of calculation of interest is to be calculated by taking the period of 30 days in a month and not the British calendar month as defined under sec. 3(35) of the General Clauses Act. However, the Ld. CIT(A) upheld the action of AO by holding that interest payable for delay in deposit of TDS is governed by the provisions of section 201(1A)(ii) of the 1961 Act read with Rule 119A(b) of the Income-tax Rules, 1962. The governing section,

i.e, section 201(1A) of the Act is explicit that interest on late deposit of TDS is to be calculated from the date of deduction to the date of deposit at the rate of 1.5 percent per month or part of the month while rule 119A is absolutely clear that a part of the month, however small, it is always treated as a full month while calculating interest payable by the revenue or by the assessee. In the instant case, interest for late deposit of TDS will be calculated for the months of February, 2021 to July 2021 since it was due for across both these part months. Even though the actual delay is only 12 days in February and just 1 day in July, the appellant would be liable to pay interest for two full months, viz. for February and July, 2021 apart from other 4 months in between. Both the parts of the months involved will be reckoned and included as full months since “part of a month” is also considered as a full month as per the clear stipulation of section 201(1A) r/w rule 119A. When the said section itself mandates that any fraction of a month is to be deemed a full month, then there is little scope for reading it down or importing interpretational issues based on extraneous considerations such as equity or comparisons with other sections of the statute. The verbatim findings of the Id. CIT(A) is elucidated as under:-

“4.2 In the Statement of Facts, it was stated that TDS aggregating Rs. 15,27,44,780 in respect of some payees was

deducted on various dates. The amounts so deducted was deposited in the government account on 01.07.2021 and 07.07.2021 as against the due date of 16.02.2021 for doing so. It was stated that since the tax deducted was deposited after the due date, the appellant suo moto paid interest of Rs.12,77,085 for the delayed period in terms of section 201(1A) of the Act. However, the appellant received an additional demand of Rs. 2,18,843 as interest for late payment of TDS. To put it differently, the total interest on late deposit of tax deducted, was determined by CPC-TDS at Rs. 14,96,493 as against Rs. 12,77,650 computed by the appellant. It was stated that as per the relevant details submitted and verified, the aforesaid difference had arisen by charging of interest for delay in deposit of TDS for 6 months as against 5 months as computed by the assessee. The appellant protested that the period of delay was incorrect since the CPC-TDS had taken the date of deduction of tax in a month as one complete calendar month and the date of deposit of tax in the subsequent month as one more complete calendar month even though the appellant remitted the amount on the first week of the month.

4.3 The computation of interest payable for delay in deposit of TDS is governed by the provisions of Section 201(1A)(ii) of the 1961 Act read with Rule 119A(b) of the Income-tax Rules, 1962. As per Section 201(1A) of the Act, Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,-  
(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted and (ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200. As per Rule 119A, In calculating the interest payable by the assessee or the interest payable by the Central Government

to the assessee under any provision of the Act, (a) where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month or months and for this purpose any fraction of a month shall be ignored, and the period so rounded off shall be deemed to be the period in respect of which the interest is to be calculated; (b) where the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month and the interest shall be so calculated; The governing section, i.e. section 201(1A) of the Act is explicit that interest on late deposit of TDS is to be calculated from the date of deduction to the date of deposit at the rate of 1.5 percent per month or part of the month while rule 119A is absolutely clear that a part of the month, however small, it is always treated as a full month while calculating interest payable by the revenue or by the assessee.

4.4 In the instant case, interest for late deposit of TDS will be calculated for the months of February, 2021 to July 2021 since it was due for across both these part months. Even though the actual delay is only 12 days in February and just 1/7 days in July, the appellant would be liable to pay interest for two full months, viz. for February and July, 2021 apart from other 4 months in between. Both the parts of the months involved will be reckoned and included as full months since "part of a month" is also considered as a full month as per the clear stipulation of section 201(1A) rw rule 119A. When the said section itself mandates that any fraction of a month is to be deemed a full month, then there is little scope for reading it down or importing interpretational issues based on extraneous considerations such as equity or comparisons with other sections of the statute. Consequently, the ground of appeal fails and is, therefore, dismissed."

2.4 During the course of hearing, the ld. AR prayed that the ld. CIT(A) has erred in confirming the action of the AO in levying

interest on late payment of TDS for 6 months instead of 5 months, thereby creating demand of Rs.2,47,842 for which the Id. AR has filed the detailed written submission alongwith case laws as under:-

“1. The demand of Rs.2,47,843/- raised u/s 201(1A) arises on account of charging of interest for delay in deposit of TDS for 6 months as against 5 months computed by the assessee. The comparative detail of interest calculated by AO(CPC) and assessee is as under:-

Particulars	As per assessee	As per AO
Date of deduction of TDS	16.02.2021	16.02.2021
Date of deposit	01.07.2021	01.07.2021
Amount of TDS	Rs.1,66,27,770/-	Rs.1,66,27,770/-
No of days	135	135
No of months as calculated by taking period of 30 days in month	4 months 15 days	-
No of months for calculation of interest	Taken as 5 months by considering part of the month as full month	Taken as 6 months by considering the period from February to July
Interest @ 1.5 %	Rs.12,47,083/-	Rs.14,96,499/-

Thus the only dispute is for how many months the interest should be calculated in the above situation.

2. It may be noted that the definition of month is not defined anywhere in Income tax Act. The definition of the term month is to be taken from section 3(35) of the General Clause Act which prescribes that the calculation of the month is to be taken as calendar wise. However it is held in various cases that if the month for the purpose of calculation of interest is taken as calendar wise then it would lead to anomalous situation as even the delay by single day would lead to charging interest for the whole month. Hence interest is to be calculated by taking a period of 30 days in a month. For this purpose reliance is placed on the following cases:-

1. CIT Vs. Arvind Mills Ltd. (2012) 204 Taxman 38 (Guj.) (HC)

The relevant findings at Para 37, 38 & 41 is as under:-

*37. To our mind the words appearing in sub-section (1) of s. 244A "comprised in a period" are significant. In cl. (b) of s. 244A(1) it is provided that the interest shall be calculated at the prescribed rate for every month or of part of a month comprised in the period from the date the tax is paid to the date on which refund is granted. Similarly, in r. 119(A) of the Rules, in cl. (b) thereof, it is provided that every month or part of a month comprised in a period, fraction of a month shall be deemed to be a full month. Therefore, in order to ascertain for how many months assessee would be entitled to receive interest, the number of months comprised in the period shall have to be found out. In this context, the term 'month' in our opinion, must be given the ordinary sense of the term i.e. 30th days of period and not the British calender month as defined under s. 3(35) of the General Clauses Act.*

*38.0 We are of the opinion that the definition contained in s. 3(35) of the General Clauses Act defining the term 'month' cannot be adopted for the purpose of sub-section (1) of s. 244A of the Act. Such importation of the definition would lead to anomalous situation. For example, the assessee who pays tax on 1st January of a particular year and is granted refund on 28th of February of the same year, would be entitled to receive interest for two months. If the contention of the assessee in the present case is accepted, in a case where the assessee pays tax on 31st January and is granted refund on 1st February of the same year, shall also be entitled to interest for two full months. This would be so because the assessee contends that for the purpose of sub-section (1) of s. 244A the term 'month' should be understood as British Calender month and since r. 119(A) of the Rules provides for ignoring a fraction of month and granting interest for the full month instead, the assessee in the second example given above should receive interest for month of January as well as for the month of February. To our mind such interpretation would only lead to anomalous situation and should therefore be avoided.*

*41. In the result we are of the opinion that Tribunal committed error in holding that the assessee would be entitled to interest for both the months in entirety irrespective of dates when the tax was paid and refunded/adjusted. We answer the question in favour of the Revenue and against assessee. The judgment of the Tribunal is set aside.*

2. Rajasthan State Industrial Development & Investment Corporation Ltd. Vs. ACIT (2018) 52 CCH 0079 (Jaipur) (Trib.)

For computing the number of months, the term 'month' has to be given the ordinary sense of the term i.e., 30 days period and not the British calendar month as defined under s. 3(35) of the General Clauses Act.

3. UTI Mutual Fund Vs. DCIT (2019) 56 CCH 0209 (Mum.) (Trib.)

For purpose of computation of interest payable u/s. 201(1A)(ii) r/w Rule 119A(b) of the 1962 Rules, 'month' is to be interpreted as period of 30 days and not British Calendar Month.

4. Oil & Natural Gas Commission Vs. ACIT (2016) 129 DTR 28/ 155 ITD 603 (Ahd.)  
(Trib.)

Interest u/s 201(1A) was required to be computed in case of assessee for a period of 16.11.2010 to 14.12.2012. AO computed it for a period of 26 months on basis that there were 24 calendar months in this period and this period included a part of calendar month November 2010 as also a part of calendar month December 2012. It was held that expression 'month' is not defined for purpose of section 201(1A) and section 3(35) of General Clause Act defines 'month' as a month reckoned according to British calendar. A month as per British calendar and a month reckoned as per British calendar are not same and cannot be used interchangeably as former refers to a calendar month by itself while latter refers to a period of time which qualifies to be treated as a 'month'. Levy of interest u/s 201(1A) is compensatory in nature and thus gap of time between point of time when tax ought to have been deducted at source vis-à-vis point of time when tax was actually deducted are to be seen and it is in this context that connotation of expression 'month' is to be examined. Therefore, going by provisions of General Clause Act, period of time between 16.11.2010 to 14.12.2012 which had elapsed was 24 months and 28 days which was less than 25 months and accordingly, interest u/s 201(1A) could not have been levied for a period of more than 25 months.

5. NavayugaQuazigund Expressway Pvt. Ltd. Vs. DCIT (2016) 156 ITD 141 (Hyd.)  
(Trib.)

For purpose of calculating interest u/s 201(1A), term 'month' must be given ordinary meaning of term of 30 days period and not British calendar month.

In view of above, AO, TDS(CPC) be directed to re-compute the interest u/s 201(1A) for period of 5 months instead of 6 months and thereby the demand raised be deleted.”

2.5 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.6 We have heard the rival contention and perused the material available on record. The factual matrix of the case of the assessee is that during the year under consideration the assessee had made payment of Rs.15,22,68,970/- on 16-02-2021 to M/s. Everfoods

Asia Pvt. Ltd. on which TDS of Rs.1,66,27,770/- was deducted but the amount was deposited on 01-07-2021. Accordingly, the assessee paid interest @ 1.5% p.m. for delay of 05 months in deposition of TDS of Rs.12,47,085 i.e. (Rs.1,66,27,770\*1.5%\*5). However, the AO TDS calculated the interest for 06 months and thus worked out the liability at Rs.14,96,493/- i.e. (Rs.1,66,27,770\*1.5%\*6) and raised demand of Rs.2,47,843/- (Rs.2,18,843+29,000 interest). The ld. CIT(A) dismissed the appeal of the assessee concurring the order of the AO. The Bench draws hereunder the comparative details of interest calculated by the AO (CPC) and assessee.

Particulars	As per assessee	As per AO
Date of deduction of TDS	16.02.2021	16.02.2021
Date of deposit	01.07.2021	01.07.2021
Amount of TDS	Rs.1,66,27,770/-	Rs.1,66,27,770/-
No of days	135	135
No of months as calculated by taking period of 30 days in month	4 months 15 days	-
No of months for calculation of interest	Taken as 5 months by considering part of the month as full month	Taken as 6 months by considering the period from February to July
Interest @ 1.5 %	Rs.12,47,083/-	Rs.14,96,499/-

The Bench noted the view point of both the parties as to the issue of calculation of interest for late deposit of TDS by the assessee. From the above table, the fraction of 4 months 15 days should be taken as 05 months instead of 06 months as calculated by the Id. AO which is not in consonance with the judicial precedence decided by the Gujarat High Court in the case of CIT Vs. Arvind Mills Ltd. (2012) 204 Taxman 38 (Guj.) (HC). Respectfully following the said decision where in it has been categorically explained that as to why the term month not be considered as per the British Calendar month. In the light of these observation, we direct the Id. AO to considered as default of the assessee for a period of 5 month and not as 6 month. According the Id. AO CPC is directed to revise the levy of interest.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 30/06/2023.

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 30/06/2023.  
**\*Santosh**

Sd/-

( डॉ.एस.सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Ready Roti India Pvt. Ltd., Alwar.
2. प्रत्यर्थी / The Respondent- CPC-TDS/ACIT/DCIT, Circle-6, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 105/JPR/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar