

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

आ.अ.सं./ITA No.276/SRT/2023 (AY 2016-17)

(Hearing in Physical Court)

Akshar Infra R.S.No.347, Old N.H.S. Nr. Samrajya School, Andada, Ankleshwar, Bharuch-393001 PAN No. ABBFA 5016 E	Vs	Income Tax Officer (TDS), Bharuch, Hari Kunj, Station Road, Bharuch- 356069
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Mandar Vaidya, & Shri Darshan D Jain, AR's
राजस्व की ओर से /Revenue by	Ms. Jayshree Thakur, Sr-DR
अपील पंजीकरण/Appeal instituted on	20.04.2023
सुनवाई की तारीख/Date of hearing	20.07.2023
उद्घोषणा की तारीख/Date of pronouncement	20.07.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld. CIT(A)”] dated 21.02.2023 for the assessment year 2016-17, which in turn arises out of assessment order passed by Income Tax Officer (TDS), Bharuch / Assessing Officer passed under section 201(1) / 201(1A) of the Income Tax Act, 1961 (‘the Act’) on 28.07.2021. The assessee has raised the following grounds of appeal:

“1. The Ld. CIT(A) erred in holding that there was a delay in filing the appeal. It is submitted that the suo motu order of the Hon'ble Apex Court in MA No.665 of 2021 in SMW(C) No.306 of 2020 would squarely apply, under which the time period between 24th March 2020 to 28th Feb' 2022 stands excluded from the computation of limitation period.

2. The Ld. CIT(A) fell in error of law in holding that the Appellant/assessee was liable to deduct tax u/s 194IA. The Ld. CIT(A)'s order runs contrary to principle laid down by this Hon'ble Tribunal in Vinod Soni 174 ITD 598 (Del.) and Rajesh Kumar Nahar ITA/245/Jodh./2019.

2. Without prejudice to the above, it is submitted that the Ld. CIT(A) failed to consider the effect & applicability of the first proviso to section 201, despite of the fact of the transferor/recipients having filed their returns, was brought to his notice.

3. The Ld. CIT(A) misdirected himself in not considering the ratio of Hindustan Coca Cola Beverages P. Ltd. vs. CIT 293 ITR 226 (SC) which was specifically brought to his notice.

4. The Ld. CIT(A) fell in error of law in holding that section 201(1A) is not applicable to the assessee without considering how and why the appellant's case is not covered by the first proviso to section 201.

*5. The Ld. CIT(A) failed to make note of the Hon'ble Apex Court's decision in EliLilly 312 ITR 225 (SC) wherein it was held that the payment by the deductee would be treated as **“date on which tax is actually paid.”***

6. The appellant craves leave to add, alter, amend, modify any grounds of appeal.”

2. Brief facts are that assessee is a partnership firm. The assessee purchased immovable property for a consideration of Rs.1.47 crores at Moje Andada vide sale deed dated

13.05.2015 from four persons/ co-owners namely R.C. Padshala, P.N. Vaghasia, M.A Vaghasia and C.N. Patel. The assessee was liable to deduct tax at source (TDS) as per the provision of Section 194IA @1% of consideration paid to seller. No such TDS was made by the assessee on such payment of sale consideration. Thus, the assessing officer was of the view that the assessee committed default for non-deducting such TDS. The Assessing Officer issued show cause notice dated 13.07.2021 requiring the assessee to show cause as to why it should not be treated as assessee is in default for not deducting TDS and an order under section 201(1) r.w.s 201(1A) of the Act should not be passed. The assessee filed its reply dated 23.07.2021. The contents of assessee's reply was recorded by Assessing Officer in para-4 of the assessment order. The assessee in its reply submitted that assessee purchased the land worth of Rs.1.47 crores from four sellers / co-owners each individual had shown the sale consideration in their individual Income Tax Return (ITR) and payment made to each individual was less than Rs.50 lakh being 1/4th undivided equal share of Rs.36.75 lakh. The assessee has explained that as per Section 194IA, the

provision of said section is not applicable where the consideration for transfer of immovable property is less than Rs.50.00 lakh. In this case, there were four transferees and the sale consideration for each of the transferee was less than Rs.50.00 lakh. Thus, the provision of law has to be applied with regard to amount related to each transferee.

3. The explanation in the reply of the assessee was not accepted by the Assessing Officer and Assessing Officer was of the view that total consideration value for the transfer of the said immovable property is to be taken into consideration and not the individual's share, the total sale consideration of said immovable property will fall within the liability of tax deducting at sources. The assessee has entered into transaction of individual of four sellers / co-owners for a consideration of Rs.1.47 crores and was required to be deducted tax at sources. The assessee has entered into transaction of individual of four sellers / co-owners for a consideration of Rs.1.47 crores and was required to be deducted tax at sources. The Assessing Officer treated the assessee in default for non-deduction of TDS and passed order under section 201(1)/201(1A) on 28.07.2021 and also held liable to pay interest from the date on which Tax at Sources (TDS) was liable to be deducted. The Assessing Officer worked out @ 1% on total sale consideration at

Rs.1,47,000/- and also calculated interest from 13.05.2015 to till July, 2021 i.e., for seventy-five months @ 1% thereby worked interest of Rs.1,10,250/- and directed to pay tax liability and interest aggregating of Rs.2,57,250/- (1,47,000 + 1,10,000) vide order dated 28.07.2021.

4. Aggrieved by the order of Assessing Officer assessee filed appeal before Ld. CIT(A) on 22.02.2022. Before Ld. CIT(A) assessee filed its detailed statement of fact. The assessee in its statement of fact submitted that assessee is a partnership firm and during the year under consideration purchased immovable property being an agricultural land for aggregate consideration of Rs.1.47 crores from four co-owners / sellers. All four co-owners were having equal right, title and interest in the property and share of each of owner was Rs.36.75 lakhs. The consideration paid to individual owner / seller was less than Rs.50.00 lakhs, hence, the assessee did not deduct TDS under section 194-IA of the Act. The assessee further submitted that all the four co-owners filed their respective ITR in the following manner:

Sr.No.	Seller	PAN	Return filed on
1	C.N.Patel	AARPP5332R	13 th July 2016
2	P.N.Vaghasiya	ABAPV3969L	20 th Sep. 2016
3	M.A.Vaghasia	AAQPV9317F	20 th Sep. 2016
4	R.C.Padshala	ABUPP0575E	10 th Oct. 2016

5. The Assessing Officer treated the assessee as assessee in default. The Assessing Officer failed to take into account the operation of first proviso to Section 201(1) and proviso to Section 201(1A). The assessee submitted that proviso to Section 201(1A) is applicable to the fact of assessee where the assessee is not deducted TDS but assessee is not to be treated as “in default” by virtue of the First proviso to Section 201(1) where the recipients of consideration has taken into their account all the consideration and included the same in computation of income and filed their ITR. To support such submission, assessee relied upon the decision of Hon'ble Apex Court in the case of Hindustan Coca Cola Beverages (P) Limited Vs CIT [2007] 293 ITR 226 (SC).
6. The ld CIT(A) while deciding the appeal of assessee recorded that various notices were issued to the assessee through ITBA portal and no compliance to such notices were made by assessee, therefore the appeal of assessee was decided on the basis of materials available on record. The Ld. CIT(A) noted that impugned assessment order was passed on 28.07.2021, however, the appeal was filed on 22.02.2022 thus there was

a delay of 166 days in filing the appeal and no affidavit for seeking condonation is filed by assessee. The Ld. CIT(A) by referring certain decisions of superior courts held that appeal of assessee is time barred and not maintainable/ not admitted for adjudication.

7. However, Ld. CIT(A) also considered the merit of the case on the basis of statement of facts available on record. The Ld. CIT(A) concurred with the findings of Assessing Officer by holding that the assessee is defaulter within the meaning of section 201(1) and also liable to pay interest @ 1% for every month or part of month on the amount of such tax from the date the TDS was to be made. The contention of assessee that they are liable for interest liability only for 14 months commencing from May 2015 till end of September 2016, was also rejected by taking view that such plea was applicable when they were not deemed to be assessee in default. Further aggrieved assessee has filed present appeal before the Tribunal.
8. We have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and

have gone through the orders of lower authorities carefully. The Ld. AR for the assessee submits that he has raised a specific grounds of appeal against the order of ld. CIT(A) in not admitting the appeal by taking view that appeal was delayed by 166 days from the period of limitation. The Ld. AR for the assessee submits that before passing the order, the Ld. CIT(A) has not given any show cause notice on the issue of limitation. The Ld. AR for the assessee submits that the period of limitation was covered by the decision of Hon'ble Apex Court in *Suo Motu* Writ Petition (C) No.3 of 2020, wherein the time limit for filing various appeals under general law as well as under special law were extended till 28.02.2022 and further 90 days' grace period was allowed with effect from 01.03.2022. Thus, the appeal filed by assessee before ld CIT(A) was within the extended period of limitation as allowed by Hon'ble Apex Court to file appeal/appeals before various judicial forum / authorities. The ld AR for the assessee submits that entire alleged period of delay was covered by the decision of Hon'ble Apex Court and Ld. CIT(A) ought to have considered such law declared by Hon'ble Apex Court. The Ld. AR for the assessee further reiterated that no show cause

notice issued before passing such order to assessee and as such the finding of ld CIT(A) is liable to be set aside.

9. On merit, the Ld. AR for the assessee submits that all the sellers / co-owners have included the sale consideration in their total income while filing their respective ITR for the relevant assessment year. Therefore, the assessee cannot be treated as assessee “in default”. The Ld. AR for the assessee submits that he is filing copy of ITR along with the computation of income. The Ld. AR for the assessee submits that for verification facts, the matter may be restored back to the file of Assessing Officer to verify the fact that all the sellers / co-owners have included the consideration in their total income while filing in their respective ITR and he undertakes to file certificate of Chartered Accountant under Form-26A in Rule 31ACB for compliance of first proviso to Section 201(1). The ld AR for the assessee submits that at the most, the assessee can only be held liable for interest for deleted period till the filing of ITR by the sellers / co-owners.
10. On the other hand, Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that

aggregate value of consideration of the immovable property was admittedly more than Rs.50.00 lakh, the assessee has paid a total sale consideration of Rs.1.47 crores to the sellers / co-owners and was under obligation to deduct TDS as per the provision of Section 194-IA of the Act. The explanation of assessee was that consideration of each co-owner was less than Rs.50.00 lakh cannot be considered when the aggregate value of sale consideration was more than threshold limit of Rs.50.00 lakh. On the plea of Ld. AR for the assessee that matter may be restored back for verification of ITR of sellers that they have included the consideration in their total income and offered the said consideration, in their respective return of income, the Ld. Sr-DR for the Revenue submits that Bench may take decision as per law, however, she supports the order of lower authorities.

11. On the observation of Ld. CIT(A) about the delay in filing, the Ld. Sr-DR for the Revenue submits that at least assessee was required to explain such fact, in its statement of fact about the unavoidable circumstances.
12. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities

carefully. We have also deliberated on case law relied by Ld. AR for the assessee. We find that there is no dispute that assessee purchased a piece of agricultural land more than threshold limit of payment of TDS as per Section 194-IA of the Act. The plea of Ld. AR for the assessee is that the payment made to individual seller was less than threshold limit of Rs.50.00 lakh and all the sellers have included the total sale consideration in their respective ITR while filing ITR for relevant assessment year. To support his plea, Ld. AR for the assessee filed copy of ITR along with computation of total income of all the four co-owners. The Ld. AR for the assessee also undertake to furnish necessary CA certificate as required under First proviso to Section 201(1) of the Act. Therefore, we deem it fit and proper to restore the issue back to the file of Assessing Officer to verify the fact if the sellers / co-owners have included their sale consideration / receipt in their respective ITR for the relevant assessment year for the purpose of tax and pass order in accordance with law. The assessee is also directed to file certificate of accountant in Form26AS (Rule 31ACB) and all other evidence if called for by Assessing Officer. The assessee is further allowed to make

further submission to substantiate its plea. In the result, the ground Nos. 2 to 4 are allowed for statistical purposes.

13. So far as finding of Ld. CIT(A) that assessee has filed appeal belatedly/ beyond 166 days' period of limitation, we find that the impugned period of limitation is covered by the decision of Hon'ble Apex Court, in Suo Moto Writ Petition (supra), *wherein* the time limit for filing various appeals under general law as well as in special laws were extended till 28.02.2022 and further 90 days' grace period was allowed with effect from 01.03.2022. Therefore, order of Ld. CIT(A) on the issue of limitation is not justified and the same is set aside/ quashed.
14. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20/07/2023 at the time of hearing.

Sd/-

(Dr ARJUN LAL SAINI)

[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]

Surat, Dated: 20/07/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

Sd/-

(PAWAN SINGH)

By Order

// True Copy //

Sr. Private Secretary /Private Secretary
/Assistant Registrar, ITAT, Surat