

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.4351/Mum/2024
Assessment Year: 2020-21**

Simba Toys India Private Limited B1-002, Ground Floor, Boomerang Building, Chandivali Farm Road, Andheri (East), Mumbai-400072. PAN: AAMCS 9773 M (Appellant)	Vs.	ACIT (TDS), OSD TDS Circle-2(2), Mumbai (Respondent)
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Present for:

Assessee by : Shri Joy Dharod
Revenue by : Shri Bhangapatil Pushkaraj Ramesh, Sr. DR

Date of Hearing : 10.10.2024
Date of Pronouncement : 12.12.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

This appeal of the assessee for the assessment year 2020-21 is directed against the order dated 31.07.2024 passed by the Id. Commissioner of Income-tax (Appeal), Addl/JCIT(A)-2, Chandigarh. The assessee has raised the following grounds of appeal:

"1.1 On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of Ld. Assessing Officer (AO) of holding the appellant company as assessee in default u/s 201(1) of the Act of Rs. 1,09,458/- and erred in levying interest u/s 201(1A) of the Act of Rs.

47,067/- and the reasons assigned for doing so are wrong and contrary to facts and circumstances of the case, provisions of the Act and Rules made thereunder.

1.2 On the facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the action of Ld. AO of holding the appellant company as assessee in default for non deduction of tax at source on provision for royalty of Rs. 10,94,581/- by relying on the Tax Audit Report in Form 3CD without appreciating the fact that the liability of said amount was crystallized in next FY 2020-21 and accordingly, Tax was deducted at source (TDS) in next FY 2020-21.

2.0 Without prejudice to above grounds of appeal, the Ld. CIT(A) erred in confirming the action of Ld. AO of levying interest on TDS u/s 201(1A) of the Act till the date of assessment order of Rs. 47,067/- and not till the date of deduction of TDS of Rs. 3,837/-.”

2. Fact in brief is that assessee company had e-filed the return of income on 11.02.2021 declaring total income as Nil under the normal provisions of the Income Tax Act, 1961. The proceedings u/s 201(1) / 201(1A) were initiated on 18.12.2023 and order u/s 201(1) and 201(1A) was passed holding the assessee company committed default u/s 201(1) for not deducting tax u/s 194JB of the Act in respect of payment of Royalty of Rs. 10,94,581/-. Therefore, levied interest u/s 201(1A) of the Act of Rs. 47,067/- with regard to not deducting TDS on the provisions made for the Royalty of Rs. 10,94,581/- during the financial year. The assessee has suo moto disallowed the amount of Rs. 3,28,375/- i.e. (30% of Rs. 10,94,581/-) u/s 40(a)(ia) of the Act and claimed 70% of the said expenses and debited from the total income during the year under consideration. The assessee has deducted the TDS on the said amount of Rs. 10,94,581/- in the next financial year when the

liability was crystalized in the financial year 2020-21. The AO determined TDS default of Rs. 109458/- and levied interest u/s 201(1A) of Rs. 47,066/-.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal.

4. Heard both the sides and perused the material on record. As per provision of section 194J the tax is required to be deducted at the time of credit of amount to the payees account or payment whichever is earlier. The ACIT ODS TDS Circle 2(2), Mumbai vide order u/s 201(1) of the Act dated 18.12.2023 assessed the TDS default on Royalty payment @ 10% for not deducting tax on the Royalty payment of Rs. 10,94,581/- at Rs. 109458/- and also levied interest u/s 201(1A) @ 1% of Rs. 47066/- for not deducting tax. It is undisputed fact that assessee itself disallowed 30% of the amount of Royalty Payment as required u/s 40(a)(ia) of the Act which demonstrate that tax was deductible on this amount during the year under consideration. The assessee has also explained that it had deducted the tax on the remaining payment in the A.Y. 2020-21 when the payment was crystalized. We have perused the column 34(a) of the Form 3CD of the Audit Report u/s 44AB of the Act specifying tax deduction and collection account number for the payment of fees for professional or technical services of Rs. 1,43,09,502/- subject to provision of section 194J for deducing tax, however, the tax was deducted only on the amount of Rs. 1,32,14,921/- and on balance amount of Rs. 10,94,581/-

(1,43,09,502 – 1,32,14,921) tax was not deducted for the payment payable to M/s. UTV Software Communication inspite of the fact that payee was identified with certainly to make payment before claiming the deduction of these expenses out of the income of the assessee. However, the assessee claimed that it had deducted the tax on this payment of Royalty in the subsequent year pertaining to the year under consideration, therefore, we direct the AO to provide the credit of the TDS deducted after verification of the relevant supporting evidences to be furnished by the assessee. Accordingly, ground no. 1 of appeal is partly allowed.

5. Further, we find merit in the alternative ground no. 2 of the assessee for levying of interest u/s 201(1A) till the date of deduction of TDS. Therefore, we direct the AO to levy interest till the date of deducting tax as prescribed in the provisions of section 201(1A) of the Act. Therefore, ground no. 2 of appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 12.12.2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 12.12.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai