

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 5775/Mum/2024
(Assessment Year: 2022-23)**

Servier India Private Ltd., 1703, 17 th Floor, Parinee Crescenzo, B Wing, Plot No.C-38, 39 G Block, Bandra (East), Mumbai-400051 PAN: MUMSO7892D	Vs.	ACIT, OSD, TDS Circle-2(2), 311, 3 rd Floor, MTNI Building, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai- 400026.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri M. P Lihia, AR
Revenue / Respondent by : Shri Surendra Meena, Sr. DR
Date of Hearing : 28.01.2025
Date of Pronouncement : 04.02.2025

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata [for short 'the CIT(A)] dated 09.09.2024 for the AY 2022-23. The assessee raised the following grounds of appeal:-

“Each of the grounds of appeal here under are without prejudice to and independent of one another.

On the facts and the circumstances of the case and in law. Ld. CIT(A) pursuant to order of learned AO:

1. erred in holding that the appellant is an "Assessee-in-default" within the meaning of section 201 of the Act for non-deduction of tax or short deduction

of tax on certain year end provisions reported in tax audit report for AY 2022-23;

2. erred in confirming a demand of Rs 1,39,69,593 towards non-deduction of tax under section 201(1) of the Act on certain year end provisions reported in tax audit report for AY 2022-23.

3. erred in ignoring the fact that the appellant has deducted and deposited tax as and when invoices received in subsequent year against the year end provisions for AY 2022-23 thereby not granting the credit for taxes deposited against the said year end provisions:

4. erred in holding that the appellant has failed to make any TDS from the year end provisions of Rs 21,16,10,235 reported in tax audit report for the year ended 31 March 2022.

5. erred in holding that the appellant has claimed expenditure allowable as business expenses under section 37 of the Act, without appreciating that the appellant has disallowed the said expenditure as per the provisions of section 40(a)(ia) of the Act.

6. erred in holding that the appellant claimed before the learned AO as well as learned CIT(A) that the tax auditor was not correct in reporting at clause 21 (b)(ii) of tax audit report in Form 3CD.

7. erred in confirming the action of learned AO in charging interest of Rs 50,29,053 under section 201(1A) of the Act.”

2. The assessee is a private limited company engaged in the business of secondary manufacturing of finished drugs formulations through Loan Licensing & Marketing of the same based on Active Pharmaceuticals ingredients which are imported from its Associated Enterprises (AE). The assessee filed the return of income for AY 2022-23 on 29.11.2022 declaring a total income of Rs. 61,51,33,290/-. The AO issued a notice under section 133(6) of the Income Tax Act, 1961 (the Act) calling for various details pertaining to the TDS compliance of the assessee for the Financial Year (FY) 2021-22. On perusal of Form-3CD filed by the assessee, the AO noticed that the assessee has made a provision towards

various expenses to the tune of Rs. 21,16,10,235/- and has not deducted tax on the same. The AO issued a notice under section 201(1) / 201(1A) of the Act to the assessee in this regard. The assessee submitted before the AO that these provisions are made as per the mercantile system of accounting regularly followed by the assessee and since the invoices were not raised by the vendors the provisions are not credited to the ledger of the vendors. The assessee further submitted that the provisions thus made on 31st March get reversed on 1st of April and when the vendors raise invoice against the provision made for the year end taxes are deducted at source while making payment of the invoice. It is also submitted by the assessee that this method of accounting has been consistently followed by the assessee. The assessee also submitted that 30% of the provision for expenses is already disallowed by the assessee under section 40(a)(ia) of the Act while computing the total income of the assessee. The AO however did not accept the submissions of the assessee and held the assessee to be an assessee in default for the reason that the assessee has not furnished the reasons for non-deduction of tax at source. Accordingly, the AO levied a sum of Rs. 1,89,98,646/- towards TDS default and interest under section 201(1A).

3. Aggrieved the assessee filed further appeal before the CIT(A). The assessee furnished additional evidences before the CIT(A) to substantiate the claim that tax on the impugned provision for expenses is deducted subsequently at the time of payments of invoices are raised by the vendors. The CIT(A) dismissed the appeal of the assessee while holding that –

“F] Findings & Decision:-

The Appeal is pending in this office under e-Appeal Scheme dated 29/05/2023 duly notified in the Gazette of India vide CBDT's Notification No. 33/2023/F. No. 370142/10/2023-TPL.

Grounds No. 1 to 3:- The Three Grounds are related to the treating the Assessee in Default for not making the TDS on payment of i] Payment to Contractors, ii] Commission, iii] Rent, iv] Professional Fees and v] TCS on purchase u/s 206C and not making the payment of such TDS within the stipulated time. As the three grounds are related to a single issue as above and raising a demand of Rs 1,39,69,593/- u/s 201 (apart from the interest charged u/s 201(1A) of Rs 50,29,053/-), the three grounds are adjudicated together.

The submission of the appellant, the reply against the notice u/s 250(4) has been carefully perused. As mentioned in Para B above, the Appellant has failed to make any TDS from the following amounts debited in the P & L account:-

<i>Sl No.</i>	<i>Date of payment</i>	<i>Amount of Payment on which TDS Not deducted</i>	<i>Nature of payment</i>
<i>1</i>	<i>31.03.2022</i>	<i>7918270</i>	<i>Contractors</i>
<i>2</i>	<i>31.03.2022</i>	<i>126330730</i>	<i>Commission</i>
<i>3</i>	<i>31.03.2022</i>	<i>5444818</i>	<i>Rent</i>
<i>4</i>	<i>31.03.2022</i>	<i>2438710</i>	<i>Purchases</i>
<i>5</i>	<i>31.03.2022</i>	<i>69477707</i>	<i>Professional fees</i>
		<i>211610235</i>	

The Tax Auditor has duly mentioned it in the Tax Audit Report. The Assessing Officer has added 30% of the same in the Assessment u/s 40(a)(ia). In the Notice u/s 250(4), the Appellant was asked to furnish as under:-

"5. If the Appellant claims that the Tax Auditor has wrongly reported it in the Tax Audit Report, attention is drawn to Rule 6G(3) of the Income Tax Rules, 1962. The Appellant may please upload a Revised Tax Audit Report in Form No 3CB and 3CD, after necessary correction, if any, in the e-filing Portal and a copy of the same with Acknowledgement in the ITBA Appeal Proceedings.

6. The Appellant may also furnish as to what action has been taken against the Tax Auditor, if it is claimed that the Tax Audit Report was not correct with copies of correspondences with the Tax Auditor."

The Appellant has failed to furnish any reply to the above. No revised Tax Audit Report has been furnished. So, it is apparent that the Appellant has admitted that the Tax Audit Report was correct. But before the Ld AO TDS and also before the First Appellate Authority, the Appellant claimed that the Tax Auditor was not correct. In view of the above, it is apparent that the Appellant has failed to prove that the Tax Auditor was not correct in

mentioning the fact of not making the TDS on such deductions claimed in the ITR, in the P & L account. The Appellant has claimed that the names of the deductees were not available. It can't be admitted as in that case the amounts were required to have been made as provision for expenses on a lump sum basis. Here, the Tax Auditor has mentioned specific heads of expenses as debited in the accounts.

The Appellant has mentioned a few decisions, but the details as to how the decisions are applicable in this case have not been furnished. I find in none of the cases the fact that the appellant has failed to furnish the revised Tax Audit Report on specific direction etc is there. Hence, the decisions are not applicable in this case.

*In view of the above, the Grounds No 1, 2 & 3 are **DISMISSED**.*

Ground No. 4:- *Here, the appellant agitated over the charging of Interest u/s 201(1A) of Rs 50,29,053/-. I find that in Section 201(1A), it is written as the assessee **SHALL** be liable to pay simple interest..." Hence, the charging of Interest is mandatory and there is no scope of not charging the same. The Appellant has not mentioned anything as to whether there is any mistake in calculation of the Interest or not. The Appellant can file petition before the Chief Commissioner of Income Tax for waiver for interest. This Ground is consequential in nature. The Ld AO is not required to give any opportunity of hearing in this regard. Hence, this ground is **DISMISSED**.*

Residual Ground: *Here the appellant has prayed its right to add, alter, vary, omit, substitute, or amend any or all grounds of appeal. The Appellant has not amended or altered any Ground of Appeal. Hence, this Ground is not required to be adjudicated and as such **NOT ADJUDICATED**.*

In the result, the Appeal is DISMISSED."

4. The main contention of the ld. AR is that the CIT(A) while upholding the order of the AO has not given any specific finding with regard to the additional evidences filed by the assessee but has proceeded on the incorrect understanding of the fact that the assessee has failed to file revised Tax Audit Report (TAR). The ld AR took the bench through the additional evidences filed before the CIT(A) submitted before us as part of paper book. On merits, the ld. AR submitted that the assessee has been consistently following the method of accounting of making year

end provisions on estimate basis for the year 31st March which gets subsequently reversed on 01st April and that tax is duly deducted on payment of invoices that are raised by the vendors towards the provision. Therefore, the ld. AR argued that the assessee cannot be treated as assessee in default as per section 201(1) of the Act. The ld. AR also drew our attention to the computation of income (page 1 & 2 of PB) to submit that the assessee has already disallowed 30% of the provision made towards expenses under section 40(a)(ia) of the Act and the observations of the CIT(A) in this regard are factually incorrect. The ld. AR in this regard relied on various judicial pronouncements the copies of which are submitted in the legal paper book.

5. The ld. DR on the other hand vehemently supported the order of the lower authorities to submit that as per the provisions of the Act tax has to be deducted at source at the time of payment or credit whichever is earlier. The ld. DR further submitted that the assessee failed to deduct tax at source at the time of making the provision for expenses and therefore, the assessee is liable for tax and interest under section 201(1) and 201(1A) of the Act.

6. We heard the parties and perused the material on record. The assessee for the year ended 31.03.2022 has made a provision for expenses to the tune of Rs. 21,16,10,235/-. The AO held the assessee to be an assessee in default under section 201(1) and levied interest under section 201(1A) for the reason that the assessee failed to deduct tax at source on the provision created towards various expenses as of 31.03.2022. The CIT(A) upheld the order of the AO stating that the assessee has not furnished revised TAR and that the assessee ought to have deducted tax at source while crediting the provision against specific heads of expenses. From the perusal of records we notice that the assessee furnished additional evidences under Rule 46A of the Income Tax Rules, 1962 (the Rules) before the CIT(A) on

09.09.2024 (page 191 to 323 of PB) furnishing details of invoices received against the year end provision made on 31.03.2022 along with details of tax deducted and deposited, TDS return for FY 2022-23 and income tax return for FY 2022-23. However, from the above extracted findings of the CIT(A), we notice that the CIT(A) has not recorded any specific observations with regard to the various additional evidences filed by the assessee. We further notice that the CIT(A) has upheld the order of the AO on a different ground that the assessee failed to file the revised TAR. From these facts it is clear that the CIT(A) has not examined the case on merits based on the documentary evidences filed by the assessee. Further in our considered view the contention of the assessee that it cannot be treated as assessee in default on the ground that the tax has subsequently been deducted at source on the year end provisions needs factual verification. Since the CIT(A) has adjudicated without verifying the documentary evidences, we are inclined to remit the appeal back to the CIT(A) with a direction to examine the additional evidences filed before him. The CIT(A) is also directed to keep in mind the various judicial pronouncements rendered in the context of liability under section 201(1) for non-deduction of tax at source on year end provisions and decide the case in accordance with law. Needless to say that the assessee be given a proper opportunity of being heard.

7. In result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 04-02-2025.

Sd/-
(NARENDER KUMAR CHOUDHRY)
Judicial Member
**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai