

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH, AGRA**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

ITA No. 745/Agr./2018 : Asstt. Year: 2011-12

The Finance Officer/Principal Officer, Aligarh Muslim University, Aligarh Finance & Accounts Department, Administrative Block, Civil Lines, Aligarh-202001	Vs	Commissioner of Income Tax, Aaykar Bhawan, Marris Road, Aligarh-202001
(APPELLANT)		(RESPONDENT)
PAN No. AAAJF0086H		

**Assessee by : Sh. Narendra Singh, Adv.
Revenue by : Sh. Shailener Shrivastava, Sr. DR**

Date of Hearing: 03.02.2025	Date of Pronouncement: 03.02.2025
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ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for Assessment Year 2011-12, arises against the CIT(A), Aligarh's in case No. 18/2018-19/Aligarh/347 dated 30.08.2018, in proceedings u/s 201(1)/201(1A) of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties at length. Case file perused.
3. It emerges during the course of hearing that both the learned lower authorities' respective detailed discussion(s) have held the assessee/deductor as the "assessee-in-default" for

short deduction of TDS involving demand of Rs.7,80,540/- u/s 201(1) along with the consequential interest component u/s 201(1A) of the Act amounting to Rs.7,49,307/-, in the Assessing Officer's order dated 26.03.2018, as confirmed in the lower appellate discussion.

We now advert to basic relevant facts.

4. The appellant before us i.e. Finance/Principal Officer of the Aligarh Muslim University is admittedly the "deductor" for the purpose of compliance to Chapter-XVII of the Act. The university herein has got its professors, teachers in the department of civil engineering on regular rolls who are permitted to carry out consultancy works for outside organizations/agencies. The said works are stated to be carried out jointly by a team of the above teaching staff and regulated by the concerned departments of the university. And that the university thereafter receives the corresponding charges from the payees concerned which are deposited in the bank account and reimbursed to the teaching staff after deducting the expenses relevant thereto. It is in this factual backdrop that both the learned lower authorities hold the assessee/deductor

to have defaulted in non-deduction of it's TDS u/s 192 of the Act.

5. Both the parties reiterate their respective stands against and in support of the impugned section 201(1) demand under challenge. The Revenue specifically invites our attention to the lower appellate discussion in para 5.6 of the learned CIT(A)'s order quoting section 192(2B) of the Act in support of the impugned demand.

6. We are of the considered view that there is hardly any valid reason for us to concur with the learned lower authorities impugned action. We make it clear first of all that section 192 of the Act forming part of Chapter-XVII admittedly prescribes TDS deduction *qua* payments made under "salary" head. The legislature has thereafter inserted sub-section (2B) thereto vide the Finance Act, 1987 w.e.f. 01.06.1987 enabling such a deductor; alike the appellant, to deduct TDS in case of it's payees, *qua* other heads as well. The Revenue's case accordingly is that once the assessee herein has not deducted TDS on the above consultancy charges, it's case would stand covered u/s 192(2B) of the Act.

7. We next note with the able assistance coming from both the parties that true to it's ethos, the CBDT had issued it's circular No. 495 way back on 20.02.1987 making it clear in para 37.5 thereof; w.e.f. 01.06.1987, that the recipient concerned would indeed be entitled to furnish particulars of his other income as well to his employer followed by the latter's TDS deduction in very terms. We find in this factual backdrop that till the time, the employee concerned does not furnish such particulars of other income to his employer/deductor, there is no authority vested with the appellant to deduct TDS deduction on any other head of income than salaries, even if it itself happens to be the payer thereof. We further make it clear that there is admittedly no provision in section 192(2B) vesting an inherent authority in the employer's hands to *suo moto* deduct TDS in absence of the employee's furnishing the necessary certificate. That being the case, we adopt stricter interpretation herein as per Commissioner Vs. Dilip Kumar (2018) 9 SCC 1 (SC) (FB) and reverse the learned authorities' action holding the assessee to be the assessee in default u/s 201(1) of the Act in very terms. Ordered accordingly.

8. All other rival pleadings between the parties stands rendered academic therefore.

9. This assessee's appeal is allowed.

Order Pronounced in the Open Court on 03/02/2025.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Dated: 03/02/2025

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR