IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER
I.T.A. No. 17 & 18/Ran/2022
(Assessment Year-2015-16 & 2016-17)
(Virtual Hearing)

I.T.O. TDS Ward, Ranchi.	Vs.	M/s Maa Chhinamastika Cement & Ispat (P) Ltd., Hehal, Barkakana, Ramgarh-829103 (Jharkhand). **PAN No. AADCM 9547 Q**
Appellant/ Assessee		Respondent/ Revenue

Department represented by	Shri Khubchand T. Pandya, Sr.DR
Assessee represented by	Shri Devesh Poddar, Adv.
Date of hearing	30/04/2025
Date of pronouncement	27/05/2025

O R D E R

PER: BENCH

1. These appeals by the revenue are directed against the two separate orders of the learned Commissioner of Income Tax (Appeals), Patna-3, Patna [in short, the ld. CIT(A)] both dated 28/02/2022 and for the Assessment Year (AY) 2015-16 and 2016-17 respectively. These appeals of the revenue are having common facts and grounds except variation in the amounts of addition deleted by the ld. CIT(A), therefore, with the consent of parties, both these appeals are clubbed and heard together and being decided by this consolidated order. For appreciation of facts, we take ITA No. 17/Ran/2022 for A.Y. 2015-16 as a lead case. In this appeal, the revenue has raised following grounds of appeal:

> *"1. Ld. CIT(A) has erred in allowing the appeal of the petitioner assessee when no complete books of accounts with supporting evidences i.e, bills, vouchers, payment receipt, gate pass (inward) receipt etc. were produced during the course of the assessment proceedings to justify as to why TDS deduction was not made on payment of Freight Charges amounting to Rs. 2,86,48,884/-.*

2. *Ld. CIT(A) has erred in ignoring the fact that during the course of the survey at the office premise of the assessee petitioner which has lone office at Hehal, Barkakana, Ramgarh, no details of payments made to each transporter towards transporting charges were found. It could not be produced as well.*
3. *Ld. CIT(A) has erred in ignoring the fact that during the course of survey proceedings u/s 133(2A) of the Income-tax Act, 1961 on 29.01.2019, the statement of Shri Dinesh Kumar Choudhary, the Accountant of the petitioner assessee categorically admitted that while making payments to various transporters, no TDS was deducted barring a few entities and no PAN details and declaration from the transporters having less than 10 vehicles/ carriers were collected. He also admitted that this non-deduction of IDS was not reported in Form 26Q as statutorily required. Subsequently, when these facts were confronted to the petitioner assessee vide the show-cause dated 04.02.2019 issued by the Assessing Officer, no reply was submitted on this point by the assessee. Ld. CIT(A) also failed to appreciate this issue which was quite crucial in deciding the TDS liability in this case.*
4. *Ld. CIT(A) has erred in accepting the submission of the petitioner assessee in its entirely during the appeal proceedings without making any cross verification of the facts of the case as stated supra and without giving any further opportunity to the Assessing Officer/ Revenue to rebut the claim of the assessee."*

2. The facts of the case, in brief, are that, the deductor assessee is a company based in Ramgarh district of Jharkhand, engaged in manufacturing of sponge iron. In this case, a survey/spot verification under Section 133A(2A) of the Income Tax Act, 1961 (in short, the Act) was conducted in the factory-cum-office premises at Hehal, Barkakana, Ramgarh on 29/01/2019. During the course of survey, Shri Dinesh Kumar Choudhary, Accountant and authorised signatory of assessee was present and was asked to produce the books of account and other relevant documents regarding the payments made by the company during the Financial Year (F.Y.) 2014-15 to 2017-18. Statement of Shri Dinesh Kumar Choudhary was also recorded during the course of survey. Shri Dinesh Kumar Choudhary could not produce any books of account and other supporting vouchers except the audit report for the F.Y. 2014-15 to 2017-18.

3. On perusal of said audit report, it was observed that during the F.Y. 2014-15 relevant to A.Y. 2015-16, the assessee company has paid amount of ₹ 7,89,22,334/- towards transportation charges. When Shri Dinesh Kumar Choudhary was asked to explain why no TDS was deducted on the payment of transportation charges, he explained that out of the total transportation charges shown in the audit report, some of the payments were made to railway as freight charges and demurrage charges and rest of the amount have been paid to other transporters. Shri Dinesh Kumar Choudhary also furnished details of payments made to the railway and other transporters as under:

F.Y.	Transporting charges paid	Payments made to railway	Payments made to transporters.
2012-13	3,26,26,484.88	2,06,32,931.00	1,19,93,553.00
2013-14	9,54,37,653.00	7,55,55,870.00	1,98,81,783.00
2014-15	7,89,22,334.00	5,13,02,422.00	2,76,19,912.00
2015-16	16,65,16,961.00	11,73,87,499.00	4,91,29,462.00
2016-17	29,71,64,279.00	23,13,95,671.00	6,57,68,608.00
2017-18	6,84,08,367.00	4,24,21,613.00	2,59,86,754.00

Shri Dinesh Kumar Choudhary stated that while making payments to various transporters, no TDS has been deducted barring a few entity as these transporters were having less than ten vehicles/carriers, however, Shri Dinesh Kumar Choudhary could not produce any documents evidence/proof like bills, vouchers, debit note made to various transporters for carrying inward goods like coal, dolomite to the factory.

4. Further, a summon under Section 131(1A) of the Act was also issued to Shri Alok Rungta, Managing Director of the company on 29/01/2019 and was asked to furnish the books of account from the f.Y. 2013-14 to till the date of survey with supporting documents evidences. He was also asked to furnish details of payments made to the railway on account of freight and other charges and also

payments made to other transporters alongwith details of payments made through banking channels and the details of written agreements with the parties. According to the Assessing Officer, though, some details regarding the truck number, were given, other details to prove the genuineness of payments made to the transporters, were not given before the Assessing Officer. The Assessing Officer, therefore, held that since no supporting documents were produced by the assessee, hence, the assessee was found to be defaulter under Section 194C of the Act for not deducting TDS on the payments made to the transporters. The Assessing Officer finally concluded that during the assessment year under consideration, the assessee deductor has not deducted TDS on the payments made to the truck owners amounting to ₹ 2,86, 48,885/- and taxed at the maximum marginal rate under Section 206AA(1) of the Act and worked out a sum of ₹ 84,80,070/- under Section 201(1)/201(1A) of the Act on account of short deducting of tax at source.

5. Aggrieved by the order of the Assessing Officer, the assessee company filed appeal before the learned. The CIT(A). vide the impugned order, deleted the additions made by the Assessing Officer under Section 201(1)/201(1A) of the Act by holding that

> *"Admittedly, in this case despite making contrary observation, the ITO/TDS has accepted the transportation payment as genuine that is why he has computed the TDS liability on those payments u/s 201(1) and interest u/s 201(1A). Therefore, it is not in dispute that the transportation payments has been made. It is also corroborated by the finding of the AO in his orders passed u/s 143(3) as well as u/s 143(3) r.w.s. 147 wherein he has not doubted the genuineness of transportation payment and has not given any finding that there is any violation u/s 1940 which is clear from the very fact that no disallowance has been made u/s 40(a)(ia) of the Act. Considering Circular no. 715, decision of ITAT, Mumbai in case of City Transportation*

Corporation (supra) and United Rice Land Ltd. (supra), it is held that the appellant was not required to deduct TDS on the transportation payment shown at column no. 4 in the above table in the overall factual background of the case. Accordingly, the demand raised u/s 201(1)/(1A) is hereby deleted."

6. Aggrieved by the order of ld. CIT(A), the revenue has filed this appeal before this Tribunal.

7. During the appellate proceedings before us, the revenue has given a written submissions, the contents of which are as under:

"1) That, the TDS Range, Ranchi has conducted survey / spot verification u/s. 133A(2A) of the IT Act, 1961 in the factory cum office premises of the assessee M/s. Maa Chhinmastika Cement & Ispat P Ltd at Hehal, Barkakana, Ramgadh on 29.01.2019. Considering the Audit Reports and other material available during the survey proceedings the ITO, TDS, Ward, Ranchi has passed order u/s. 201(1)/201(1A) of the IT Act, 1961 on 20.03.2019 for the AYs 2015-16 and 2016-17 and raised the demand as under:-

A.Y.	*Amount on TDS Deductible*	*TDS u/s 194C/206AA(1)*	*Interest @ 1%*	*Total amount payable*
2015-16	*Rs.2,86,48,884/-*	*Rs. 57,29,777/-*	*Rs. 27,50,293/-*	*Rs. 84,80,070/-*
2016-17	*Rs. 2,75,58,433/-*	*Rs. 55,11,687/-*	*Rs. 19,84,207/-*	*Rs. 74,95,894/-*

2. That, the assessee has filed appeal before the CIT(A), against the order passed u/s. 201(1)/201(1A) of the IT Act, 1961, dated 20.03.2019 for the AYs 2015-16 and 2016-17 and the Ld. CIT(A) vide order dated 28/02/2022, (Appeal No. 10016 & 10021) allowed the appeal of the assessee and deleted the demand raised u/s 201(1)/201(1A) of the Income-tax Act, 1961 (the Act), 1961.

3. That, the Revenue preferred second appeal before the Hon'ble ITAT, Ranchi Bench and raised following grounds of appeal:

A. Y. 2015-16

(1) Ld.CIT(A) has erred in allowing the appeal of the petitioner assessee when no complete books of accounts with supporting evidences i.e. bills vouchers, payments receipts, gate pass (Inward) receipts etc.

were produced during the course of assessment proceedings to justify as to why TDS deduction was not made on payments of Freight Charges amounting torn Rs. 2,86,48,884/-

(2) Ld.CIT(A) has erred in ignoring the fact that during the course of survey at office premises of the assessee petitioner which has lone office at Hehal, Barkakana, Ramgadh, no details of payments made to each transporter towards transporting charges were found. It could not be produced as well.

(3) Ld.CIT(A) has erred in ignoring the fact that during the course of survey proceedings u/s. 133(2A) of the IT Act, on 29.01.2019, the statement of shri Dinesh Kumar Choudhry, the accountant of the petitioner assessee categorically admitted that while making payments to various transporters, no TDS was deducted barring a few entities and no PAN details and declaration from the transporters having less then 10 vehicles / carriers were collected. He also admitted that this non-deduction of TDS was not reported in Form No. 26Q as statutory required. Subsequently, when these facts were confronted to the petitioner assessee vide shoe-cause dated 04.02.2019 issued by the Assessing Officer, no reply was submitted on this point by the assessee. Ld CIT(A) also failed to appreciate this issue which was quite crucial in deciding the TDS liability in this case.

(4) Ld.CIT(A) has erred in accepting the submission of the petitioner assessee in its entirely during the appeal proceedings without making any cross verification of the facts of the case as stated supra and without giving any further opportunity to the Assessing Officer /Revenue to rebut the claim of the assessee.

A.Y. 2016-17

(1) Ld.CIT(A) has erred in allowing the appeal of the petitioner assessee when no complete books of accounts with supporting evidences i.e. bills vouchers, payments receipts, gate pass (Inward) receipts etc. were produced during the course of assessment proceedings to

justify as to why TDS deduction was not made on payments of Freight Charges amounting torn Rs. 2,75,58,433/-.

(2) Ld.CIT(A) has erred in ignoring the fact that during the course of survey at office premises of the assessee petitioner which has lone office at Hehal, Barkakana, Ramgadh, no details of payments made to each transporter towards transporting charges were found. It could not be produced as well.

(3) Ld.CIT(A) has erred in ignoring the fact that during the course of survey proceedings u/s. 133(2A) of the IT Act, on 29.01.2019, the statement of shri Dinesh Kumar Choudhry, the accountant of the petitioner assessee categorically admitted that while making payments to various transporters, no TDS was deducted barring a few entities and no PAN details and declaration from the transporters having less than 10 vehicles / carriers were collected. He also admitted that this non-deduction of TDS was not reported in Form No. 26Q as statutory required. Subsequently, when these facts were confronted to the petitioner assessee vide shoe-cause dated 04.02.2019 issued by the Assessing Officer, no reply was submitted on this point by the assessee. Ld CIT(A) also failed to appreciate this issue which was quite crucial in deciding the TDS liability in this case.

(4) Ld.CIT(A) has erred in accepting the submission of the petitioner assessee in its entirely during the appeal proceedings without making any cross verification of the facts of the case as stated supra and without giving any further opportunity to the Assessing Officer /Revenue to rebut the claim of the assessee.

4. That, in pursuance to the ongoing hearing proceedings before the Hon'ble ITAT, Ranchi Bench in this case, the Hon'ble members of the ITAT has directed to called for written submission / comments on the findings given by the Ld. CIT (A) in the order passed and also furnish supporting evidences with respect to grounds of appeal raised by the department.

5. *That, the ITO, TDS, Ward, Ranchi has submitted his written submission / comments in support of the grounds raised and with dissatisfaction of CIT(A)'s order is enclosed herewith for your kind honour's consideration as Annex-A.*

In view of the above facts and circumstances of the case it is humbly requested that order of the Ld. CIT(A) may be set a-side and also requested to upheld the demand raised by the ITO, TDS u/s. 201(1)/201(IA) of the IT Act, 1961 on 20.03.2019 for the AYs 2015-16 and 2016-17."

8. The learned Authorised Representative (ld. AR) of the assessee has also submitted a written synopsis as under:

"1. That these 2 appeals have been filed by the revenue against the order two separate orders of CIT(A) dated 28/02/2022 vide which the CIT(A) has deleted the tax imposed U/s 194C/201(1) and interest thereon U/s 201(1A) for non deduction of TDS on payment made towards transportation charges.

2. That the revenue in its appeals have only contested the tax liability for non deduction of TDS as per section 194C/201 (1). The revenue has not disputed the interest liability U/s 201(1A) which is an independent provision and can stand alone/autonomously since the section starts with "Without prejudice to the provisions of sub-section (1)...". As such, revenue ought to have contended the issue of interest separately and since no ground/ dispute has been raised with respect to the relief on account of interest U/s 201(1A), the appeals of the revenue is below the tax effect and thus is fit to be dismissed as per the circular no. 09/2024 dated 17th September'2024. The TDS interest provisions U/s 201(1A) are not the same as that of Income Tax wherein the interest is consequential to the tax demand.

3. That in an alternate view, we submit the tax effect for these appeals as below:-

Particulars	*A.Y. 2015-16*	*A.Y. 2016-17*
Tax liability U/s 194C	*57,29,777/-*	*55,11,687/-*
Interest Charged U/s 201(1A)	*27,50,293/-*	*19,84,207/-*
Total	*84,80,070/-*	*74,95,894/-*

4. That we would like to contend that the interest which has been charged U/s 201(1A) was not chargeable in the hands of the assessee to the extent that as per the

provisions relevant in that year, interest U/s 201(1A) was to be charged 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. The fact is that in case of the assessee, such TDS was never deducted and as such, the date for deduction is not known and thus no interest could be computed.

5. *That the AO has wrongly calculated the interest @ 1% till the date of passing of the impugned order U/s 201(1)/201(1A). That the said amendment has been bought in with effect from 01/04/2022 and is thus not applicable for the years under consideration for which the order has already been passed in March 2019.*
6. *That reliance on this issue is placed upon the decision of Coordinate Bench of ITAT Chandigarh in the case of Munak Investment (P.) Ltd. Vs Income-Tax Officer —55 TTJ 33, wherein it has been held as follows:-*

Whether, where because of date of payment of TDS being unknown, interest was incapable of calculations, it could be said that interest under section 201(1A) was not leviable - Held, yes -

13. We also find substantial merit in the second submission of the learned counsel for the assessee, namely, that interest under section 201(1A) was not leviable because the date of payment of tax deducted at source being not known, the interest was incapable of calculation. In this regard, we find that the language used in section 201(]A) is different from the language used in section 220(2) and section 221 of the Act. Under section 220(2), interest is chargeable from the date immediately following the end of the period mentioned in section 220(1) and ending with the date on which the amount is paid. This shows that the concept of continuing default is in-built in the section. Similarly, in section 221(1) there is in terms a reference to a continuing default and the section empowers the Assessing Officer to levy penalty from time to time, so, however, that the total amount of penalty does not exceed the amount of tax in arrears. Section 201(1A), however, is not couched in similar terms as the other two sections referred to above and even if there is discrimination in favour of the companies for paying the tax deducted at source, such discrimination could not be helped. In fact such lacunae in laws abound. We have, therefore, to interpret the law as it is and not to add to or subtract therefrom. Following the ratio of the Supreme Court decision in the case of CIT v. B. C. Srinivasa Setty 119811 128 ITR 294, it is held that where the computation provisions which constitute an integral

code with the charging section, fail, interest is not chargeable under section 201(1A) of the Act. The decision of the Tribunal in the case of Ess Kay Construction Co. (supra) also supports the case of the assessee.

14. The learned D.R. has relied on the Madras High Court decision in the case of Southern Brick Works Ltd. (supra). The facts of that case were, however, different because in that case there was no such controversy as has been projected before us. Actually in that case, the assessee had deducted the tax due on the amount of interest and actually paid the same in the Government Treasury. Similarly the facts in the case of Martin & Harris (P.) Ltd. (supra) are also distinguishable. In that case, the question to be decided was whether interest paid by the company under section 201 ()A) for belated payment of tax deducted at source from the employees salary was allowable as a deduction in computation of its total income. The controversy which has been projected before us was not there in that case either.

15 In view of the foregoing discussion, we uphold the second submission of the learned Counsel for the assessee also and hold that for the failure of the computational process, no interest could be charged under section 201 (1A) of the Act.

7. That we would like to submit that the interest levied upon the assessee U/s 201(1 A) is considered as invalid, then the appeal of the revenue would fall below the tax effect limit as per the circular no. 09/2024 dated 17th September 2024.

8. That further on the issue of non deduction of TDS, we would like to submit that no default has been done by the assessee since we were not liable to deduct TDS on each transportation charges paid against separate OR/ bill which was below the prescribed limit for which bills, vouchers etc was submitted before the Ld AO and no specific adverse comment has been made. We rely upon the decision of Ld CIT(A) which is based on correct facts and judicial decisions.

As such, we submit that the appeal of the revenue is not maintainable and that the order passed by Id CIT(A) should be upheld. "

9. We have considered the rival submissions and it is found that the Coordinate Bench of ITAT Mumbai in the case of City Transport Corporation Vs ITO 13 SOT 479 (Mum Trib) and the Hon'ble Punjab & Haryana High Court in the case of CIT Vs United Rice Land Ltd. 322 ITR 594 (P&H) have already held that as

per provisions of Section 194C of the Act, any person responsible for paying any sum to any resident for carrying out any work in pursuance of a contract shall at the time of credit of such sum or at the time of payment thereof in cash or by cheque deduct a tax thereon at a prescribed rate. However, no such deduction at source is required to be made, if the sum paid or credited do not exceed Rs. 20,000/-. In the case at our hand, it is found that ITO(TDS) has not brought out any evidence on record that the assessee company has failed to deduct tax in the payments exceeding ₹ 20,000/- in each case. In absence of such evidence, the addition made by the ITO (TDS), cannot be sustained as has been held by the Coordinate Bench of Tribunal and duly confirmed by the Hon'ble High Court as stated above. In view of the above facts and circumstances of the case, we do not find any infirmity in the order passed by the ld. CIT(A) and we uphold the same.

10. On the issue of charging of interest under Section 201(1)/201(1A) of the Act, the ld. AR of the assessee has placed reliance on the decision of Coordinate bench of Chandigarh Tribunal in the case of Munak Investment (P) Ltd. Vs ITO 55 TTJ 33, no interest could be charged in absence of any deduction made at source under Section 194C of the Act. Since we have already held that the assessee was not liable to deduct TDS under this Section, since the payment made to the truck owners in each case is below ₹ 20,000/-, the charging of interest under Section 201(1)/(1A) of the Act has no basis. Accordingly, we uphold the order passed by the ld. CIT(A). In the result, the grounds of appeal raised by the revenue are dismissed.

11. Similarly in ITA No.18/Ran/2022 for the A.Y. 2016-17, we find that in this appeal, the revenue has raised similar grounds of appeal except variation of additions/disallowances made by the Assessing Officer. We also find that the facts of the case and the grounds of appeal as raised by the revenue in this appeal are similar to the facts and grounds of appeal as raised in ITA No. 17/Ran/2022 for the A.Y. 2015-16, where we have dismissed the appeal of revenue by upholding the order of ld. CIT(A). Therefore, keeping in view the principle of consistency on similar set of facts, this appeal of revenue is also dismissed with similar direction. In the result, grounds of revenue's appeal in A.Y. 2016-17 are also dismissed.

12. In the result, both these appeals of revenue are dismissed.

Order pronounced in open court on 27th May, 2025.

Sd/-	Sd/-
(GEORGE MATHAN)	(RATNESH NANDAN SAHAY)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ranchi, Dated: 27/05/2025
**Ranjan*
Copy to:
1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi