

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस. बालकृष्णन, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI BALAKRISHNAN. S, HON'BLE ACCOUNTANT MEMBER,

आयकर अपीलसं./I.T.A.No.203/Viz/2025
(निर्धारण वर्ष/ Assessment Year: 2016-17)

Kushalava Spinners & Ginners Private Limited, Guntur. PAN : AAFCK5460Q	Vs.	The Income Tax Officer, (TDS) Ward – 1, Guntur.
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Smt. Hema Latha. K, C.A.
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr. Aparna Villuri, Sr.DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	21.07.2025
घोषणा की तारीख/ Date of Pronouncement	:	08.08.2025

ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The present appeal filed by the assessee company is directed against the order passed by the Addl/JCIT (Appeals) – 2, Pune, dated 18.10.2024, which in turn arises from the order passed by the Assessing Officer (for short “A.O.”) under Section 201(1) and 201(1A) of

the Income Tax Act, 1961 (for short, “the Act”) dated 28.10.2021 for A.Y. 2016-17. The assessee company has assailed the impugned order on the following grounds of appeal before us:

“1. That under the facts and circumstances of the case, the orders passed by the Commissioner of Income-tax (Appeals) (in short 'CIT(A)') u/s. 250 of IT Act dated 28-10-2024, confirming the order passed by Assessing Officer, TDS Ward ('AO') u/s. 201(1A) of the IT Act dt. 28-10-2021, is not in accordance with the fact and provisions of law.

2. The Learned CIT(A) ought not have dismissed the appeal filed by the appellant, ex-parte, in view of the provisions of section 250(6) of the IT Act.

Without prejudice to the above grounds,

3. Ld.CIT(A) erred in confirming the order passed by Ld.AO u/s 201(1)/(1A) of the IT Act, holding assessee as 'assessee in default within the meaning of section 201(1)/(1A), when in reality no TDS is deductible on the transaction of impugned purchase.

4. The Learned CIT(A) ought to have considered the fact that the subject immovable property, which was purchased by Assessee, consist of land with extent of 56005.5 Sq yards situated at Unnava Gram Panchayat of Marripalem village near Guntur Municipality, as stated by Ld.AO in his order passed u/s 201(1)/(1A), which is an agricultural land within the meaning of provisions of section 2(14) of the IT Act, which is outside the purview of income-tax, hence no TDS is deductible.

5. The Learned CIT(A) ought to have considered the fact that a portion of the sale consideration is attributable to the machinery which is being purchased as mentioned in the sale deed, on which TDS provisions is not applicable.

6. Without prejudice to the above grounds, assessee undertakes to obtain and submit a certificate in Form 26A from the payee as stipulated under the first proviso to section 201(1) of the IT Act, if the Hon'ble Tribunal is pleased to grant one more opportunity by remitting the issue back to the file of Assessing officer.

7. For these and such other grounds, that may be urged at the time of hearing of subject appeal, the appellant prays before the Hon'ble ITAT that the issue may kindly be remitted back to the file of Ld Assessing Officer or Ld.CIT(Appeals) providing one last opportunity to the Assessee to prove its case, or provide such other relief as the Hon'ble Tribunal may deem fit.”

2. Succinctly stated, the Income Tax Officer (TDS), Ward – 1, Guntur, was in receipt of information that the assessee company had purchased property admeasuring 56005.5 square yards situated at Unnava Gram Panchayat Area of Marrisipalem Village, vide document no.5667/2015, dated 25.11.2015 registered with the Joint Sub Registrar, Prathipadu for a total consideration of Rs.9,90,95,000/- from, viz. (1). Sri Chinnaya Gounder Subramaniam (ALTPS6284Q) (2). Shri. R. Duraisamy (ACAPD5364Q) considered as "VENDORS OF FIRST PART" and (3). M/s. Mehala Carona Ginners & Spinners (AAQFM2215H) considered as "VENDORS OF SECOND PART". As per the information shared with the A.O, amounts of Rs. 6,64,21,980/- and Rs. 3,26,73,070/- were paid by the assessee to the "VENDORS OF FIRST PART" and "VENDORS OF SECOND PART", respectively. However, the A.O. observed that the assessee company while making the payments to the sellers had failed to deduct tax at source as required per the provisions of Section 194IA of the Act. @ 1% i.e amounting to Rs.9,90,950/-.

3. Although the A.O. had called upon the assessee company to put forth an explanation regarding its failure to deduct tax at source on the aforesaid purchase consideration, but the latter failed to furnish any such explanation. Accordingly, the A.O. treating the assessee company

as being in default for failing to deduct tax at source, held it liable for an amount of Rs. 17,04,430/- u/ss. 201(1) & 201(1A) of Act, as under:

S. No	Name of the Seller	PAN	Sale consideration	TDS not made	Delay in months	Int. u/s. 201(1A)	Total Rs.
1	Sri Chinnaya Gounder Subramaniam	ALTPS6284Q	6,64,21,980 (TDS 6,64,220)	3,32,110 (1/2 share)	72	2,39,120	5,71,230
2	Sri R. Duraisamy	ACAPD5364Q	6,64,21,980 (TDS 6,64,220)	3,32,110 (1/2 share)	72	2,39,120	5,71,230
3	M/s. Mehala Carona Ginners & Spinners	AAQFS2215H	3,26,73,070 (TDS 3,26,731)	3,26,730	72	2,35,240	5,61,970
			TOTAL	9,90,950		7,13,480	17,04,430

4. Aggrieved the assessee company carried the matter in appeal before the CIT(A). As the assessee company despite sufficient opportunity failed to participate in the proceedings before the CIT(A), therefore, the latter disposed of the appeal vide an *ex parte* order. The CIT(A) after deliberating on the facts involved in the case before him upheld the order passed by him u/s 201(1)/201(1A) of the Act, dated 28.10.2021, observing as under :

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7. DECISION ON FACTS AND MERITS:

7.1 In view of the facts and legal position discussed above, it is presumed that Appellant-company-deductor is not interested in pursuing its own appeal and not having any documents, explanation and evidence in support of grounds of appeal raised and thus, has not discharged the onus to prove as to how action of the AO-TDS is wrong. This appeal is pending for almost three years' time. It is seen that no compliance whatsoever has been made by the Appellant-company-deductor till date in response to notice(s) issued by the undersigned. In view of the lack of prosecution by the Appellant, I proceed to decide the appeal on the basis of facts.

7.2 I have carefully gone through the order dated 28.10.2021 passed by the AO-TDS under section 201(1)/201(1A) of the Act for A.Y. 2016-17, Grounds of appeal as well as the relevant provisions of law.

7.3 During the appellate proceedings, the Appellant-company-deductor has not filed any written submission in response to notices issued by the undersigned. In absence of any sort of compliance by way of making written submission or any documentary evidence by the Appellant, it remained to be unexplained as to how the order of AO-TDS is erroneous. If the Appellant-company-deductor claims that it is eligible for any claim, it should have furnished supporting documents. Making claim in the grounds of appeal that the action in raising demand by the AO in the case for failure to make TDS compliance was bad-in-law, does not make the order passed by the AO-TDS invalid unless the Appellant-company-deductor proves so, with supporting evidence. The Appellant-company-deductor has failed to do so in spite of having issued several notices/communications to it. Therefore, in absence of evidence, the claim made by the Appellant cannot be accepted on its face value. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO-TDS. However, the Appellant failed to avail the same by non-complying. During the appellate proceedings, the Appellant-company-deductor has not availed of the opportunities given to it. Therefore, it is assumed that the Appellant is not interested in pursuing the present appeal. Moreover, the Appellant failed to bring on records any facts or documents which can establish that the order passed by the AO-TDS under

section 201(1)/201(1A) of the Act, is erroneous. But it is noted that the Appellant-company-deductor chose not to comply on the issue involved in the present appeal till the date, for the reason best known to it.

7.4 Mere claiming that the AO-TDS erred in raising demand does not give an edge to the Appellant. Further, during appellate proceedings, no response/submission whatsoever has been received from the Appellant-company-deductor to substantiate its claim in support of grounds of appeal though adequate opportunities of being heard were given to it.

7.5 In the case of Anil Goel Vs CIT, [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under:

"4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorised representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. vs. ITAT [2001] 248 ITR 577, has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisional authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisional authority."

7.6 Further, during appellate proceedings, no response whatsoever has been received from the Appellant-company-deductor to substantiate its claim in support of grounds of appeal though various opportunities of being heard were given to it, as tabulated in Para 6.1 above. It would not be out of context to mention here that the Appellant has never shown the intention to prosecute the present appeal in proper/effective manner by making participation during the appellate proceedings being conducted before the appellate authority. Opportunity of being heard is central to any adjudication process but that does not absolve the Appellant-company-deductor from non-submission of evidences in support of ground of appeal despite

repeated and several notices/communications sent and duly served upon it. From non-compliance on the part of the Appellant to various statutory notices issued from time-to-time; it is evident that Appellant is persistently intransigent in not complying. The Appellant-company-deductor has failed to display any action that can lead to believe that it would co-operate in the proceedings. An adjudication proceeding cannot be held in abeyance indefinitely on account of non-compliance of the Appellant.

7.7 The facts of the case as emanating from the order passed by the AO-TDS are being taken into consideration in absence of any submissions made by the Appellant-company-deductor during the course of present appellate proceedings. It is found that the order dated 28.10.2021 under appeal has been passed by the AO-TDS, almost in the ex-parte manner for want of proper compliance on the part of Appellant-company-deductor during the course of TDS proceedings. It is noted that in the course of TDS proceedings, based on the credible information available on records; the AO-TDS had found that the appellant-company was liable to deduct tax at source u/s 194IA of the Act, against the payment made for purchase of a property during the F.Y. 2015-16 relevant to A.Y. 2016-17. However, no tax had found to have been deducted on such payment. Thus, the appellant-company had violated the TDS provisions. In this regard, ample opportunities were accorded by the AO-TDS to the appellant to explain the reasons for such failure, by way of issuing show-cause notice/letter. However, the Appellant-company-deductor failed to offer any information/explanation on this issue. Under such circumstances, an order under section 201(1) & 201(1A) of the Act was passed by the AO-TDS on 28.10.2021, after taking into consideration all the facts and reliable information available with him during the course of TDS proceedings. Now in the appellate proceedings, the appellant has raised contention that the provisions of section 194IA of the Act was not applicable towards payment made against purchase of alleged immovable property, as the same was in the nature of agricultural land. Further, in the statement of facts, the appellant-company has contended that the entire purchase consideration was comprised of cost of land, cost of building and cost of machinery. However, no documentary evidence/information could be provided by the Appellant-company-deductor in the course of appellate proceedings too, despite of sufficient/reasonable opportunities granted to it.

7.8 Keeping in view of all the aforesaid facts & detailed discussions held herein before and in the absence of any corroborative evidence or material/submission made by the Appellant during the course of present appellate proceedings, I do not find any reason to interfere in the order dated 28.10.2021 passed by the AO-TDS under section 201(1)/201(1A) of the Act. Therefore, the demand raised by the AO-TDS for A.Y. 2016-17 amounting to Rs. 17,04,430/- is hereby confirmed.

5. The assessee company, being aggrieved with the order of CIT(A) has carried the matter in appeal before us.

6. Smt. Hema Latha K, Chartered Accountant, the learned Authorized Representative (for short "Ld.AR") for the assessee company, at the threshold of hearing of the appeal, submitted that the same involves a delay of 92 days (wrongly mentioned in the petition as 61 days). Elaborating on the reasons leading to the delay, the Ld. AR submitted that the same had crept in because of the negligence on the part of the counsel of the assessee company, who, due to old age and health issues, had failed to participate in the proceedings before the CIT(A). The Ld. AR submitted that the counsel of the assessee company due to his ill-health had neither participated in the proceedings before the CIT(A) nor informed the assessee company about the dismissal of the appeal vide latter's order dated 28.10.2024. The Ld. AR submitted that the assessee company had remained unaware of the fact that its appeal had been disposed of by the first appellate authority. The Ld. AR submitted that it was only when the assessee company, in the third week of March 2025, received a call from the Department, wherein it was directed to deposit the tax demand pertaining to the impugned proceedings, that it had, based on the verifications gathered about the dismissal of its

appeal by the CIT(A), vide his order dated 28.10.2024. Apart from that, the Ld. AR submitted that the failure on the part of the assessee company to participate in the assessment proceedings was for the reason that, at the relevant point of time, its Managing Director and also the other family members were deeply affected with COVID and the operations of the assessee company had come to standstill. The Ld. AR, to buttress her aforesaid claim, had taken us through the petition filed by the assessee company seeking condonation of the delay and the supporting affidavit of Shri. M. Srivasavai, the Managing Director of the assessee company, as well as the “affidavit” of Shri K. Madhava Rao, Income Tax Practitioner, who had deposed that because of his ill-health, he had failed to follow up the proceedings in the case of the assessee company before the CIT(A). Shri K. Madhava Rao (supra) has deposed in the “affidavit” that his non-appearance before the CIT(A), and also the failure to communicate the latter’s order to the assessee company was purely due to the failure/lapse on his part.

7. Per contra, Dr. Aparna Villuri, the learned Senior Departmental Representative (for short “Ld. DR”) objected to the seeking of the condonation of the delay by the assessee company.

8. We have thoughtfully considered the reasons leading to the delay in filing of the present appeal by the assessee company. Admittedly, it is a matter of fact discernible from the record that the delay in filing of the present appeal had crept in because of the lapse/failure on the part of Shri K. Madhava Rao, the counsel of the assessee company, to participate in the proceedings before the CIT(A) and communicate the latter's order to the assessee company. As the delay in filing of the present appeal is not because of any intentional lapse of the assessee company, therefore, we have no hesitation in condoning the same.

9. The Ld. AR further submitted that the assessee company that had, for bona fide reasons, failed to participate in the proceedings before the authorities below, has filed a petition seeking admission of certain documentary evidence as additional evidence as per Rule 29 of the Income Tax Appellate Tribunal Rules, 1963. The Ld. AR took us through the application dated 21.07.2025, wherein the assessee company has sought for admission of certain documents in the course of the present proceedings, viz., (i). Land Sale Deed (Document No. 5667/2015 dated 25.11.2015), (Pages 16–19 of the APB); (ii). Tripartite Agreement, (Pages 78–82 of the APB); and (iii). Original Purchase Document (Document No. 2361/2008, dated 21.08.2008) (Pages 83–98 of the APB). The Ld.

AR submitted that, as the aforesaid documents have a strong bearing for adjudicating the issues involved in the present appeal and the same could not be filed before the authorities below for bonafide reasons, therefore, per Rule 29 of the Income Tax Appellate Tribunal Rules, 1963, the said documents, in all fairness, be admitted.

10. Per contra, the Ld. DR objected to the admission of the additional documents filed by the assessee company.

11. We have thoughtfully considered the contentions advanced by the learned Authorized Representatives of both parties as well as the reasons due to which the assessee company had failed to furnish the aforementioned documents in the course of the proceedings before the lower authorities. We are of the view that as the aforesaid documents will have a bearing on the adjudication of the issues involved in the present appeal, and there were justifiable reasons for not filing the same before the authorities, therefore, the same merits admission.

12. The Ld. AR, at the threshold of hearing of the appeal, submitted that both the lower authorities had grossly erred in law and on facts of the case in treating the assessee company as being in default u/ss. 201(1)/201(1A) of the Act. Elaborating on her contention, the Ld. AR submitted that as the subject land purchased by the assessee company

i.e. 56005.5 sq. yards situated at Unnava Gram Panchayat area, Village Mairipalem was a rural agricultural land, which neither fell within the limits of a municipality or cantonment area; nor within the notified area limits as specified u/s 2(14) of the Act, therefore, no obligation was cast upon the assessee company to withhold tax at source at the stage of making payment of the purchase consideration of the said land u/s 194IA of the Act.

13. The Ld. AR, to buttress her claim that the assessee company was not obligated to deduct tax at source (TDS) on the consideration paid for purchase of agricultural land, has taken us through the provisions of Section 194IA of the Act. The Ld. AR submitted that the ITO(TDS) had grossly erred in treating the assessee as being in default for not having deducted tax at source on the purchase consideration of Rs. 6,64,21,980/-, that was paid towards purchase of rural agricultural land by the assessee from Shri Chinnaya Gounder Subramaniam and Shri R. Duraisamy.

14. Elaborating further on her contention, the Ld. AR submitted that Section 194IA of the Act only obligated an assessee for withholding /deducting tax at source on the payments made for transfer of certain immovable property, therefore, no obligation under the said statutory

provision was cast upon the assessee company to deduct tax at source on the purchase consideration of Rs.99 lacs that was paid to M/s. Mehala Carona Ginners and Spinners for purchase of machinery installed on the subject land.

15. The Ld. AR further submitted that, as per instructions, she does not seek to press the challenge thrown by the assessee company, as being treated in default under Sections 201(1)/201(1A) of the Act, for its failure to deduct tax at source on the amount of Rs. 2,27,73,070/- paid fore of the building constructed on the aforesaid land.

16. Per contra, the Ld. DR relied upon the orders of the lower authorities.

17. We have thoughtfully considered the contentions advanced by the learned authorised representatives of both parties in the backdrop of the orders of the lower authorities and the material available on record.

18. Apropos the Ld. AR's claim that no obligation is cast upon an assessee to deduct/withhold the tax at source on any consideration paid for purchase of agricultural land, we principally concur with the same. However, on a perusal of the sale deed, dated 06.11.2015, vide which the assessee company has purchased the subject property, i.e.,

the land admeasuring Acre 11-56 cents situated in Guntur District, Prathipadu Sub-District, within the limits of Unnvava Gram Panchayat area, Village Marrisipalem, we are afraid that the same nowhere reveals that the subject land purchased by the assessee was an agricultural land. Rather, we find that as per the "Schedule" annexed with the Tripartite Agreement, dated 06.10.2015 the land in question is stated to be factory land. (Page No.81 of PB). For the sake of clarity, we cull out the relevant extract as under:

"Factory land at S.No.82/8, 82/6, 82/5, 83, 84/2, 84/3, 82/9, 80/13, 84/1, 82/10, 22/11 of Marrisipalem Village, Unnava Gram Panchayat, Prathipadu Mandal, Guntur Dist. In the name of Shri Subramanian and Shri Doraisamy."

19. We thus, in terms of the fact that the assessee company had not purchased any agricultural land, but in fact, had purchased factory land, therefore, the exception carved out in Section 194IA of the Act, i.e., no obligation is cast upon an assessee to deduct/withhold tax at source from the consideration for purchase of agricultural land will not assist the case of the assessee company before us.

20. Apropos the Ld. AR's claim that Section 194IA of the Act only contemplates an obligation cast upon the assessee to deduct/withhold tax at source from the payments made on transfer of certain immovable property, and thus, was not applicable to the purchase consideration of

Rs.99 lacs that was paid by the assessee towards purchase of machinery installed on the subject land, we principally concur with her on the said aspect. However, as nothing is discernible from the registered sale deed, dated 06.11.2015, based on which the Ld. AR had claimed that the assessee company had made a payment of Rs. 99 lacs for purchase of machinery, we are unable to accept her contention that no obligation was cast upon the assessee company to have deducted tax at source on the said amount.

21. As per the concession of the Ld. AR that she does not seek to press the challenge of the assessee as being treated as an assessee in default regarding the consideration that was paid for the building constructed on the subject land, therefore, we refrain from dealing with the same.

22. We, thus, find no merit in the appeal filed by the assessee company and dismiss the same.

23. Resultantly, the appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 8th August, 2025.

<p>Sd/- (एस. बालकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER</p>
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Hyderabad, dated 08.08.2025.
TYNM/sps

आदेशकी प्रतिलिपि अग्रेषित/ **Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Kushalava Spinners and Ginnners Private Limited, D.No.23/11/124, Sadu Complex Eluru Bazar, Guntur – 522003, Guntur.
2.	राजस्व/ The Revenue	:	The Income Tax Officer, Guntur.
3.	The Principal Commissioner of Income Tax, Visakhapatnam.		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Visakhapatnam.		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam