

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

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
&
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4407/MUM/2024
(A.Y.2018-19)**

Deputy Commissioner of Income Tax (OSD)(TDS)- 2(3) R. No. 320, 3 rd Floor, Income Tax Office, MTNL Building, Mumbai-400026.	Vs.	Tata Communications Transformation Services Limited 6 th Floor, Tower B, Vidyanagri Po, Plat C 21 and C 36, G BLC, Bandra Kurla Complex, Mumbai-400098.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: MUMV14350A		
Appellant	..	Respondent

Appellant by :	Shri J. D. Mistri
Respondent by :	Shri RiteshMisra- CIT DR

Date of Hearing	25.08.2025
Date of Pronouncement	07.10.2025

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the ADDL/JCIT (A)- 2 Coimbatore [hereinafter referred to as “CIT(A)”] dated 03.07.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2018-19.

2. The grounds of appeal are as followed:

“Being aggrieved by the order dated 20 February 2020 passed under section 201(1) /201(1A) of the Income-tax Act, 1961 [Act] by the Income Tax Officer (TDS), 2(3)(4), Mumbai [Learned TDS Officer]. Tata Communications Transformation Services Limited [Appellant], submits the following Grounds of Appeal for your sympathetic consideration.

All the below-mentioned Grounds of Appeal are independent and without prejudice to each other:

1:0 The impugned Order passed by the Learned TDS Officer is incorrect, illegal, bad in law and hence ought to be struck down as such.

1:1 in the facts and circumstances of the case and in law, the Learned TDS Officer erred in alleging the non-deduction of tax at source and charging interest on late payment and raising the demand without giving the Appellant adequate opportunity of being heard or to justify its stand or furnish any explanation or evidence and hence the impugned order is bad in law and hence ought to be quashed.

2:0 Re: Considering the Appellant as an 'assessee in default' under section 201(1) of the Act:

2:1 The Learned TDS Officer has erred in holding that the Appellant was liable to deduct tax at source on the amount of INR 90,89,52,854/- and in thereby holding that the Appellant was an 'assessee in default' since it has not deducted tax at source while making payments in terms thereof in accordance with the provisions of section 194C, section 194I and section 194J of the Act.

2:2 The Appellant submits that TDS provisions, wherever applicable, have been complied with by the Appellant vis-à-vis the Impugned amount of INR 90,89,52,854/- and hence the Appellant cannot be considered as an "assessee in default" for the same.

2:3 The Appellant submits that the Learned TDS Officer has erred in ignoring a vital fact that the whole amount of INR 90,89,52,854/- was disallowed by the Appellant in its return of income of the relevant year thereby paying income-tax thereon at the corporate tax rate by applying the provisions of section 40(a)(ia) of the Act and hence it is not a case that the said amount has escaped taxation.

2:4 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject no tax is/ was deductible at source on the amount of INR 90,89,52,854/- and the stand taken by the Learned TDS officer in this regard is misconceived, incorrect and erroneous.

2:5 The Appellant submits that the impugned order passed by the Learned TDS officer, treating the Appellant as an 'assessee in default' on the issue is bad in law and should be struck down.

3:0 Re.: Levy of Interest under section 201(1A) of the Act:

3:1 The Learned TDS Officer has erred in levying Interest under section 201(1A) of the Act on the Appellant for the alleged incidents of non-deduction

of tax at source which are mentioned in the table given in the paragraph No. 7 on page no. 5 of the impugned Order

3:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject wherever required tax has been appropriately deducted at source by the Appellant and hence there can be no question of there being any default whatsoever and accordingly no interest under section 201(1A) of the Act can be levied

3:3 The Appellant submits that the Learned TDS Officer be directed to delete the interest levied on it under section 201(1A) of the Act.

Without prejudice to the foregoing:

34 The Appellant submits that the interest under section 201(1A) of the Act calculated by the Learned TDS Officer is not in accordance with the law prevailing on the subject.

3-5 The Appellant submits that the provisions of section 201 of the Act cannot be applied, once the entire amount of year-end provisions made for expenses have been disallowed in the income-tax return filed for the relevant year under section 40(a) of the Act and the resultant income-tax thereon has been paid at the applicable rate of corporate Income-tax.

4:0 Re: General

4:1 The Appellant craves leave to add, alter, amend, substitute and/or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.”

3. Brief facts of the case are that the assessee, after taking into account the work done by the payees for the company, made a provision for the consequent liability in F.Y. 2012-13. However, in the computation of income, the assessee suo-moto made the disallowance u/s. 40(a)(ia) as no TDS had been done on these provisions totaling Rs. 90,89,52,854/-.

Subsequently, Ld. ITO (TDS) (hereinafter referred to as AO) treated the assessee in default for non deduction of TDS as per the provisions of sec.201 of the Act. Ld. AO, vide his order dated 20.02.2020, observed that in the Audit Report in form 3CD, in Col. 21(b), it is clearly mentioned by the auditor that TDS has not been deducted on the expenses claimed at Rs. 90,89,52,854/-. Since the

liabilities had crystallized and payees were identified, according to ld. AO, TDS had to be deducted by the assessee company which it had failed to do. Ld. AO rejected that assessee's contention that amounts disallowed u/s. 40(a)(ia) will not be subject to the provision of Chapter XVII.

Hence, ld. AO held the assessee in default within the meaning of section 201(1) for not deducting the TDS and it was directed to pay the interest alongwith amount of TDS default, computed as under:

<i>TDS has not deducted u/s.</i>	<i>Amount on which TDS has not been deducted</i>	<i>Rate of Deduction</i>	<i>Amount of TDS default committed</i>	<i>Interest on late payment between April 2017 to February 2020 [35 month]</i>	<i>Total Default of TDS = Interest</i>
	<i>(A)</i>		<i>(B)</i>	<i>(C)</i>	<i>(D)=(B)=(C)</i>
<i>194J</i>	<i>38,47,107</i>	<i>10%</i>	<i>3,84,711</i>	<i>1,31,649</i>	<i>5,19,360</i>
<i>194c</i>	<i>89,69,45,089</i>	<i>2%</i>	<i>1,79,38,902</i>	<i>62,78,616</i>	<i>2,42,17,518</i>
<i>194I</i>	<i>81,60,658</i>	<i>10%</i>	<i>8,16,066</i>	<i>2,85,623</i>	<i>11,01,689</i>
<i>Total</i>	<i>90,89,52,854</i>		<i>1,91,39,679</i>	<i>66,98,888</i>	<i>2,58,38,567</i>

Aggrieved, the assessee preferred an appeal before the ld. CIT(A) who has allowed the assessee's appeal with the following observations:

“4.2 Submission of the appellant along with form 35, statement of facts, grounds of appeal, return of income, tax audit report in Form No.3CD and the order of the ITO, TDS Ward 2(3)(4), Mumbai for the A.Y.2018-19 are perused. It is noticed that the appellant had claimed total amount of Rs.90,89,52,854/- in column 21(b) of tax audit report towards amount disallowable u/s 40(a)(ia)of the Act. As the appellant has failed to deduct the TDS for the amount Rs.90,89,52,854, the appellant suo motu disallowed 30% of the above amount amounting to Rs.27,26,85,856/- in return of income for the year under consideration.

4.3 The ITO(TDS), issued show cause notice to the appellant that TDS provisions are attracted for the sum disallowed u/s 40 a(ia). After giving opportunity, the TDS officer passed order u/s 201/201A raising total demand of Rs 2,58,38,567.The Officer distinguished the case laws relied on

by the appellant stating that the case laws do not apply, since the deductee's in the case of appellant are known .

4.4 The Hon ITAT Mumbai Bench in Bench in the case of Pfizer Limited vs. ITO(TDS) (ITA No.1667/MUM/2010) has observed as under:

"Once an amount was disallowed under section 40(a)(i)/(ia) on the basis of the audit report of the Chartered Accountant, the same amount cannot be subject to the provisions of TDS under section 201(1) on the reason that assessee should have deducted the tax. If the order of AO were to be accepted then disallowance under section 40(a) (i) and 40(a)(ia) cannot be made and provisions to that extent may become otiose. In view of the actual disallowance under section 40(a) (i) by assessee having been accepted by AO, we are of the opinion that the same amount cannot be considered as amount covered by the provisions of section 1940 to 194J so as to raise TDS demand again under section 201 and levy of interest under section 201(1A). Therefore, assessee's ground on this issue are to be allowed as the entire amount has been disallowed under the provisions of section 40(a)(i)/(ia) in the computation of income on the reason that TDS was not made. For this reason alone assessee's grounds can to be allowed. Considering the facts and reasons stated above assessee's grounds are allowed.

From the above it is clear that there is no distinction to be made whether the payee's were identifiable or not at the time of payment.

4.4 In view of the above discussion, the demand in order made by ITO(TDS) to pay Rs.1,91,39,679/- for default in deduction of TDS u/s.201(1) and interest of Rs.66,98,888/-u/s.201(1A) are hereby deleted."

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

4. Before us, ld. DR has vehemently argued that the ld. AO has rightly held the assessee in default and therefore alongwith the penalty it is liable to pay interest u/s. 201(1A).
5. On the other hand, ld. AR has argued that the assessee had itself made the disallowance u/s. 40(a)(ia) as no TDS had been deducted on these yearend provisions. However, TDS compliance was done in subsequent years as under:

"Summary of Post Compliances done for the expense provisions created as on 31st March 2018

Nature of Post Compliance	Provision for Expenses(Rs.)
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<i>TDS Compliance done in subsequent year (s)</i>	<i>76,31,57,103</i>
<i>TDS Not Applicable (Refer Note)</i>	<i>74,74,095</i>
<i>Provision Reversed</i>	<i>13,83,21,655</i>
<i>Grand Total</i>	<i>90,89,52,854</i>

Note- TDS is Not Applicable as it relates to material purchase, reimbursements, below threshold etc.

Ld. AR has relied on the order of ld. CIT(A) who has, in turn, relied on the order of the co-ordinate bench in the case of *Pfizer Limited Vs. ITO(TDS) [ITA No. 1667/Mum/2010]* which has been reproduced in the preceding para.

Ld. AR has also placed reliance on various other decision of the co-ordinate benches on the same issue which have followed this decision.

6. We have heard the rival submissions and perused the case laws cited by the ld. AR. Admittedly, there was a provision of Rs. 90,89,52,854/- made by the assessee on which TDS had not been deducted as certified by the auditors in the audit report.

6.2 We note that in so far as the provisions of section 40(a)(ia) are concerned, it is clear that since TDS was not deducted, disallowance was required to be made u/s. 40(a)(ia) of 30% of the said amount. The assessee suo-moto disallowed the 30% of this amount i.e Rs. 27,26,85,856/- while computing the taxable income at the time of filing of return. In other words, he claimed 70% of the total amount as deduction and was entitled to claim the remaining amount in subsequent years as per the provision of section 40(a)(ia).

6.3 As regards applicability of section 201, it is worthwhile to peruse the relevant provisions which are as under:

Section 201
“Consequences of failure to deduct or pay.
(1) Where any person, including the principal officer of a company,—
(a) who is required to deduct any sum in accordance with the provisions of this Act; or
(b) referred to in sub-section (1A) of section-192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:
Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—
(i) has furnished his return of income under section-139;
(ii) has taken into account such sum for computing income in such return of income; and
(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:
Provided further that no penalty shall be charged under section-221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.
(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—
(i) 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; and
(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,
and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section-200:
Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.
(2)
(3)”

6.4 Thus a plain reading of the above provisions makes it clear that liability under section 201 is independent of other consequences such as disallowance u/s. 40(a)(ia) of the Act etc.

Further, the assessee shall not be deemed to be in default if the following conditions are satisfied.:

- The recipient has furnished his return of income u/s. 139
- The recipient has taken into account the above income in its return of income
- The recipient has paid the taxes due on the income declared in such return of income
- The recipient furnishes a certificate to this effect from an accountant in Form No. 26A.

Thus, in case all the above conditions are cumulatively satisfied then the payer will not be treated as an assessee-in-default. However, he would still be liable to pay the interest u/s. 201(1A).

6.5 In the present case, the assessee follows mercantile system of accounting and the provisions have been made after taking into account the amount of work/services rendered by the payees for the assessee company. Thus liability has crystallized and credit entries to that effect have been made in the books of account by the assessee. Accordingly, corresponding expenditure of Rs. 90,89,52,854/-has been claimed in the profit and loss account and, thereafter, in view of provisions of section 40(a)(ia), 30% of this amount has been suo-moto disallowed by the assessee while computing income at the time of filing of return.

6.6 Under these circumstances, it would be incorrect to say that liability of TDS has not arisen and that having made suo-moto disallowance, the assessee cannot be treated in default. It is our considered opinion in the light of clear provisions of section 201 that the assessee is liable to be treated as assessee-in-default subject to the conditions mentioned in the section. However, we note that neither in the penalty order nor in the assessee's submissions at any stage, the requisite conditions have been discussed or examined.

Thus we are of the view that, it was for the assessee to demonstrate before the AO that he should not be treated as an assessee-in-default, for which the requisite conditions were satisfied. Instead, the assessee and the ld. CIT(A) have simply relied on the decision of the coordinate bench in the case of *Pfizer Ltd. (supra)* without going into the facts of that case.

6.7 We are not in agreement with the argument of ld. CIT(A) that once disallowance u/s. 40(a)(ia) has been made suo-moto by the assessee, the same amount cannot be considered as amount covered by the provisions of section 194C to 194J so as to raise TDS demand again u/s. 201 and levy of interest under section 201(1A). Rather we note that the facts of present case are distinguishable from the facts in the case of *Pfizer Ltd. (supra)* as in that case the entire amount of provision was added back in the computation of income. In the present case, however, the assessee has only added back 30% of the total amount in question,

under section 40(a)(ia) and has thus taken deduction for the balance 70% of the impugned amount. Infact, the provisions of section 201 clearly mention that liability thereunder is 'without prejudice to any other consequences that may arise'.

7. Accordingly, in our considered opinion, the assessee is liable to be treated as assessee-in-default unless it can demonstrate that the requisite conditions as mentioned in the proviso to sub section (1) of section 201 are satisfied.

7.2 Since this aspect has not been demonstrated by the assessee before any of the lower authorities, in the interest of justice, we deem it fair to grant an opportunity to the assessee to prove that it is not an assessee-in- default as the requisite conditions u/s. 201(1A) are fulfilled.

7.3 Hence, the matter is restored to ld. AO to provide an opportunity to the assessee for demonstrating that requisite conditions are satisfied and therefore he should not be treated as an assessee in default u/s. 201 of the Act.

8. The appeal of the revenue is allowed for statistical purposes.

Order Pronounced in Open Court on 07.10.2025

Sd/-
(PAWAN SINGH)
(JUDICIAL MEMBER)

Sd/-
(RENU JAUHRI)
(ACCOUNTANT MEMBER)

Place: Mumbai

Date 07.10.2025

Anandi.Nambi/STENO

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.