

IN THE INCOME-TAX APPELLATE TRIBUNAL "A" BENCH,
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.4279/MUM/2025
(A.Y. 2021-22)

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| Income Tax Officer (TDS) – 2(2)(1) 3 rd Floor, MTNL Building, Cumballa Hill, Mumbai – 400 026, Maharashtra | v/s. बनाम | Sashwat Energy Private Limited, 10 th Floor, Universal Majestic Lokhande Marg, Chembur West, Mumbai – 400 043, Maharashtra |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: MUMS95080G | | |
| Appellant/अपीलार्थी | .. | Respondent/प्रतिवादी |

प्रत्याक्षेपसं./C.O. No.273/MUM/2025
(Arising out of ITA No. 4279/MUM/2025)
(A.Y. 2021-22)

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| Sashwat Energy Private Limited, 10 th Floor, Universal Majestic Lokhande Marg, Chembur West, Mumbai – 400 043, Maharashtra | v/s. बनाम | Income Tax Officer (TDS) – 2(2)(1), 3 rd Floor, MTNL Building, Cumballa Hill, Mumbai – 400 026, Maharashtra |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: MUMS95080G | | |
| Appellant/अपीलार्थी | .. | Respondent/प्रतिवादी |

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|---------------|-------------------------------|
| Assessee by : | Ms Kinjal Bhuta,AR |
| Revenue by: | Shri Surendra Mohan, (Sr. DR) |

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| Date of Hearing | 10.12.2025 |
| Date of Pronouncement | 13.01.2026 |



आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The above captioned appeal has been preferred by the Revenue and Cross appeal by the assessee against the order passed by the Learned Commissioner of Income-tax, Appeal, Addl./JCIT(A), Bhopal [hereinafter referred to as "CIT(A)"] pertaining to the order passed u/s. 201(1) and 201(1A) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Year [A.Y.] 2021-22.

2. The grounds of appeal are as under:-

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- Whether on the facts and in the circumstances of the case and in law, the Ld. Addl. CIT(A) is justified in holding that the assessee is not a defaulter for non-deposit of TDS when based on the documents filed by the assessee himself the AO held that it has deducted the TDS of Rs. 1,48,96,640/- on the interest of Rs.32,38,40,000/- paid to M/s. Shapoorji Pallonji and Co Pvt. Ltd. @4.60% based on LDC obtained by the deductee.*
- Whether on the facts and in the circumstances of the case and in law, the ld. Addl. CIT(A) is justified in holding that the assessee is not a defaulter as the payment of interest has not been made to the deductee and the assessee did not have any money to pay the TDS amount.*
- Whether on the facts and in the circumstances of the case and in law, the Ld. Addl. CIT(A) is justified in holding that the assessee is not a defaulter as the deductee has offered the interest income for tax and paid the due taxes thereon ignoring the factual finding that the assessee has deducted the tax as per its books of accounts but not deposited the same.*



4. *Whether on the facts and in the circumstances of the case and in law, the Ld. Addl. CIT(A) is justified in not appreciating the findings made by the AO in the order u/s 201/201(1A) of the I.T. Act, 1961 regarding assessee's default of non-deposit of TDS as the disallowance u/s. 40(a)(ia) has been made by the assessee for the same in its ITR and the TDS payable entry in the balance sheet has increased by the amount of TDS deducted during the year.*

3. The assessee company provides for undertaking Engineering Procurement and Construction (EPC) contracts for solar power plants and other electrical and engineering works. In this case, survey action u/s 133A(2A) of the Act was conducted for verification of proper TDS compliance by the assessee/deductor which had incurred expenditure like Interest expense on loan and consultancy fees/professional fee/Audit fee, etc. on which tax was deductible at source under the TDS provisions of sections like 194A,/194J of the Act during the year under consideration. However, it was found that the assessee failed to comply with the TDS provisions u/s 201(1) of Chapter-XVII-B of the Act. Further, the assessee had been claiming deductions u/s 40a(ia) in its annual ITRs. The assessee had not been furnishing its quarter-wise TDS statement as per subsection (3) of section 200 of Chapter-XVII-B of the Act for relevant financial years under consideration.



4. All the above grounds are interconnected and interlinked and therefore, being adjudicated together. During the course of survey, it was observed that in the previous year under consideration, the assessee had incurred expenses on account of Interest expense on loan of Rs. 32,39,55,000/- and professional fee/consultancy fees/Audit fee, etc of Rs. 25,00,000/-. The assessee had deducted TDS on Interest expense of Rs. 32,39,55,000/- under section 194A of the Act and Professional fees of Rs. 90,000/- u/s 194J of the Act. However, the assessee had failed to deposit the tax deducted at source after deduction in Government exchequer. On verification of details, it was observed that the deductee M/s Shapoorji Pallonji and Co Pvt Ltd. ('SPPL') had submitted lower deduction certificate u/s 197 of the Act which resulted in tax deducted at source @4.6% u/s 194A instead of @10%. Accordingly, the assessee had deducted TDS of Rs. 1,48,96,640/- u/s 194A of the Act and had made payment/credited of interest amount to SPPL. Further, on perusal of ITR for A.Y.2021-22 vis-à-vis computation of income furnished by the assessee, it was observed that while computing its income, the assessee had disallowed Rs.9,79,63,500/- u/s 40(a)(ia) on account of non-compliance with the provisions of Chapter XVII-B of the Act @30%. Thus, as per ITR defaults referred u/s 40(a)(ia) on accounts of payments



on which tax was not deducted or after deduction had not been paid was worked out to Rs. 32,65,45,000/-.

4.1 In response to the show cause notice as to why it should not be treated as “assessee in default” and order u/s 201(1)/201(1A) should not be passed for such non-compliance of TDS provisions i.e. TDS deducted of Rs. 1,49,52,541/- on payment made amounting to Rs. 32,40,45,000/- but not depositing the same into the Government Treasury, the assessee submitted that during the relevant year, the assessee company had an outstanding loan from Shapoorji & Pallonji amounting to Rs 281,60,00,000/-.The assessee company’s net-worth as on 31st March 2021 was Rs 95,11,70,000/-.- Thus, the assessee was in no position to repay the loan. There was no question of assessee company’s ability to pay the interest. However, as per the accounting standards, it was forced to record the interest on loan amounting to Rs 32,38,40,000/-. The assessee Company was in noposition to service this interest. Till date, the assessee Company had not paid this interest amount to SPPL. While recording the entry for Interest, the assessee Company had erroneously recorded the TDS on interest as well amounting to Rs 1,48,96,640/-.The cash and bank balance of the assessee as on 31st March 2021 was only Rs 12,14,499/-.- Thus, the



company did not have any money to make the TDS payment of Rs 1,48,96,640/-. SPPL. had offered the entire interest amount of Rs 1,48,96,640/- to tax in its return of income. Thus, as per the provisions of section 201(1), the assessee could not be considered as an assessee in default.

4.2 However, the AO rejected the contentions by observing that the fact remained that the assessee had deducted TDS @ 4.6% i.e. Rs. 1,48,96,640/- on total payment of Rs.32,38,40,000/- to SPPL as per certificate u/s 197 of the Act to it for F.Y.2020-21. Thus, the assessee was considered as defaulter for deducting TDS of Rs. 1,48,96,640/- and not paying the deducted amount in Government Treasury. Accordingly, Form 26A filed by the assessee was held as liable to be rejected and had no relevance while determining the TDS default of the assessee. Furthermore, it was the duty of the deductor to deposit the TDS deducted within the time specified in Rule 30. The deductee(s) cannot claim the credit of said amount in their return of income as the same will not reflect in their 26AS. The assessee was, therefore, held to be an “Assessee in Default” within the meaning of section 201 of the Act for F.Y. 2020-21 and accordingly, tax liability is computed till September, 2024. Accordingly, total TDS liability of the assessee for non-depositing



the TDS after deduction and interest thereon for FY 2020-21 relevant to AY 2021-22 was computed at Rs. 2,17,77,160/- which included the outstanding TDS amount of Rs. 1,49,14,890/- u/s. 201(1) of the Act and interest of Rs. 68,62,270/- u/s. 201(1A) of the Act, was chargeable till month of September, 2024.

5. In the subsequent appeal filed before the Id.CIT(A), the assessee reiterated the same contention stating that during the relevant year, the assessee company had an outstanding loan from SPPL amounting to Rs 281,60,00,000/-. Its net worth as on 31st March 2021 was Rs 95,11,70,000/-. Thus, the company was in no position to repay the loan. However as per the accounting standards, the assessee was forced to record the interest on loan amounting to Rs 32,38,40,000/-. The Id.CIT(A) observed that as per the provisions of section 201(1), the assessee Company had not made any payment towards interest to M/s SPPL. Further, as per Form 26A, SPPL had offered the interest income to tax in its return of income. As per provisions of section 201(1) of the Act, if the other party has offered the income to tax in its return of income, the assessee company could not be considered as assessee in default. Considering the above discussion, the assessee should not be treated as assessee in default in respect of non-deposition of TDS to



SPPL as the appellant had neither made any payment to it towards interest nor had it deducted any TDS on it. The ld.CIT(A) deleted the impugned sums holding that the assessee could not be treated as a defaulter under the aforesaid sections of the Act.

6. Before us, the learned Departmental Representative, appearing for the Revenue has supported the orders of the authorities below by pointing out that the assessee has been rightly held liable for TDS in terms of [section 201\(1\)](#) and [201\(1A\)](#) of the Act. Even with regard to the plea of the assessee that the taxes on such income have been duly paid by the payee.

6.1 Per contra, the ld.AR has repeated the same arguments claiming that the assessee was not in a position to repay the loan and interest. Since no interest payments were made during the year, the appellants did not deduct any TDS on the interest. The assessee had merely recorded an interest entry in the books as per requirement of the Accounting Standards. The interest of TDS entry of Rs. 1,48,96,640/- was inadvertently recorded in the books; however, no such TDS was deducted as no payment was made. Also, bank statements were provided to show that there was no interest payment to SPPL. The interest income



of Rs. 32,38,40,000/- had been considered by SPPL in its return of income. A total tax of Rs. 128,57,99,996/- was paid on the returned income. Annexure A of Form 26A showed that the income was included in total income and tax thereon had been duly paid. The assessee had also paid the applicable interest of Rs. 22,35,720/- u/s. 201(1A) from the date on which tax was deductible till the date of filing the return of income by the payee. A copy of Form 26A was submitted before the lower authorities. It is submitted that the first proviso to section 201 of the Act states deductor shall not be deemed to be an assessee in default if the payee: i) has furnished his return of income u/s. 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.

7. We have carefully considered the rival submissions. The main controversy in the captioned appeal relates to the stand of the Revenue that the assessee company is "an assessee in default" under [section 201\(1\)](#) of the Act and is also liable to pay interest under [section 201\(1A\)](#) of the Act in relation to its failure to deduct tax at source under [section 194A](#) of the Act. For the same reasons, the assessee is also held liable for payment of interest under [section 201\(1A\)](#) of the Act.



7.1 [Section 201\(1\)](#) of the Act envisages that where an assessee does not deduct or does not pay after so deducting fails to pay the whole or any part of the tax as required under the Act, then such an assessee shall be deemed to be an assessee in default in respect of such tax. Further, in terms of [section 201\(1A\)](#) of the Act, an assessee is liable to pay simple interest if the assessee does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under the Act. In the present case, as per the Revenue the assessee was required to deduct tax in terms of [section 194A](#) of the Act. As per [section 194A](#), an assessee who is responsible for paying to a resident any income by way of interest other than interest on securities, shall deduct income- tax thereon at the prescribed rates at the time of payment or at the time of credit of such income to the account of the payee, whichever is earlier. The Assessing Officer held that the assessee had defaulted in not deducting the tax at source as required under [section 194A](#) of the Act. It is argued that no demand visualized under [section 201\(1\)](#) of the Act is liable to be enforced after the tax deductor satisfies the AO that taxes due have been paid by the deductee assessee. The assessee has asserted all along that notwithstanding that it was being held to be an assessee in default, there could be no recovery of tax alleged to be in default once again from the



appellant considering that SPPL had already paid taxes on the income stated to have been received from the appellant.

7.2 Having regard to the parity of reasoning laid down by the Hon'ble Supreme court in the case of **Hindustan Coca Cola Beverage P. Ltd. v CIT, (2007) 293 ITR 226 (SC)** and as declared by the CBDT in its circular dated 29.1.1997 , the aforesaid claim by the assessee is required to be evaluated. We find that the aforesaid settled position in law has also been legislatively recognized by insertion of a proviso in sub-section (1) of **section 201** of the Act by the **Finance Act, 2012**. Thus, the settled position in law is that if the deductee/payee has paid the tax, no recovery can be made from the person responsible for paying of income from which he failed to deduct tax at source. In a case where the deductee/payee has paid the tax on such income, the person responsible for paying the income is no longer required to deduct or deposit any tax at source. If the assessee succeeds in demonstrating that the deductee assessee, i.e. SPPL had paid taxes due on the impugned income, no liability contemplated by **section 201(1)** of the Act can be fastened on the assessee. In view of the aforesaid, in our view, having regard to the judgment of the Hon'ble Supreme Court in the case of **Hindustan Coca Cola Beverage P. Ltd.** (supra) as also CBDT Circular



dated 29.1.2007, once taxes on the subjected sums have been recovered from the payee assessee, thereafter assessee cannot be treated as an assessee in default under [section 201\(1\)](#) of the Act for non-deduction of tax at source on such amount. The grounds in this regard are dismissed.

7.3 In so far as the liability to pay interest under [section 201\(1A\)](#) of the Act for any delay in deduction and subsequent deposit of tax is concerned, the payer is liable to pay interest under section 201(1A) on the amount of non/short deduction of tax from the date on which such tax was deductible to the date on which the payee has discharged his tax liability directly. The amended section 201 provide that the payer who fails to deduct the whole or any part of the tax on the payment made to a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident payee-

- (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 payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payer.



7.4 Further, where the payer fails to deduct the whole or any part of the tax on the payment made to a resident and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the such resident, the interest under section 201(1A)(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 payee.

8. We restore this issue to the file of the AO with the direction that the assessee shall provide all the details to him with regard to the recipient of the income and taxes paid by it. The AO shall carry out necessary verification in respect of the payments and taxes of such income and also filing the return by the recipient. In case, the AO finds that the recipient has duly paid the taxes on the income, the addition made by him stand deleted. Thus this ground is allowed for statistical purposes

9.C.O. No.273/MUM/2025

*The ADDL/JCIT(A), Bhopal, and Assessing Officer erred in **levying fees u/s. 234E of the Income Tax Act, 1961, without appreciating that TDS was not required to be deducted and therefore no TDS return was also required to be filed.***

10. The cross objection of the assessee is consequential in nature in view of our decision concurring with the Id.CIT(A) that the assessee



was not liable to be treated as 'assessee in default' while dealing with the Revenue's appeal(supra).The AO would re-examine the chargeability of interest u/s 234E of the Act accordingly. In the result, the CO is allowed for statistical purposes.

11. Consequently, Revenue's appeal is partly allowed and the CO is allowed for statistical purposes.

Order pronounced in the open court on **13/01/2026**.

Sd/-

SANDEEP GOSAIN

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 13.01.2026

Lubhna Shaikh / 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.

