IN THE INCOME TAX APPELLATE TRIBUNAL
"A''BENCH: BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1031/Bang/2025
Assessment Year : 2017-18

Embassy Property Developments Private Limited No.150, Embassy Point, Infantry Road Bengaluru 560 001 **PAN NO :AAACD6927A**	**Vs.**	CIT TDS Circle-1(1) Bengaluru
APPELLANT		**RESPONDENT**

Appellant by	:	Ms. Nimashri K.A., A.R.
Respondent by	:	Sri Shivanand H Kalakeri, D.R.

Date of Hearing	:	02.12.2025
Date of Pronouncement	:	23.02.2026

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of ld. ADDL/JCIT(A)-2, Kolkata dated 6.3.2025 vide DIN & Order No.ITBA/APL/S/250/2024-25/1074143234(1) passed u/s 250 of the Income Tax Act, 1961 (in short "The Act") for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

GROUNDS OF APPEAL

(Annexure II to Form 36)

1.1. The learned Commissioner of Income Tax (Appeals) ["learned CIT(A)"] have erred in finalizing an order of which is devoid of merits and are contrary to facts on record and applicable law and has been completed without adequate inquiries and as such is liable to be quashed.

1.2. That the Learned Commissioner of Income Tax (Appeals) erred in passing the order ex parte without providing a reasonable opportunity of being heard to the appellant, thereby violating the principles of natural justice.

1.3. The learned CIT(A) has misapplied the provisions of the Act while adjudicating the matter and has failed to consider the detailed submissions, legal contentions, and documentary evidence placed on record by the Appellant. The impugned order suffers from non-application of mind and lacks appreciation of the factual and legal position advanced during the appellate proceedings.

1.4. The learned Commissioner of Income Tax (Appeals) has erred in upholding that the order of the learned Assessing Officer (AO) treatment of the Appellant as an 'assessee-in-default' under Section 201(1) of the Income Tax Act, 1961, despite the fact that tax was duly deducted and deposited with the Government along with applicable interest upon crystallization of the liabilities.

1.5. The learned CIT(A) has failed to appreciate that there was no actual loss of revenue , as the tax due was ultimately deposited by the Appellant. Therefore, the invocation of Section 201(1) and labeling the Appellant as an assessee-in-default is unwarranted and contrary to settled judicial principles.

1.6. The learned CIT(A) has erred that the interest under section 201(1A) has been wrongly computed without giving due credit to the date on which tax was actually deposited, thereby leading to an excessive and unjustified levy.

1.7. The learned CIT(A) has erred in upholding a demand based on an ad hoc application of a flat TDS rate of 10%, without examining the specific nature of the underlying transactions and the appropriate rates as per the relevant provisions of the Act. This blanket approach is contrary to the principles of fair adjudication and statutory interpretation.

1.8. The learned CIT(A) failed to consider that the Appellant had, on a bona fide basis and in good faith, voluntarily deducted and deposited the TDS along with applicable interest under Section 201(1A), without any direction from the Department. This proactive compliance reflects the Appellant's bona fides and should have been duly acknowledged in the adjudication.

1.9. The learned CIT(A) has erred in upholding the order passed under Sections 201(1) and 201(1A) of the Income Tax Act, 1961, which is arbitrary, excessive, and contrary to the settled principles of natural justice, fairness, and equity. The impugned order is therefore liable to be quashed in its entirety.

1.10. That the Learned CIT(A) failed to consider the adjournment application filed by the appellant and proceeded to pass the impugned order without any further notice, which is unjust, arbitrary, and against the principle of natural justice.

1.11. That the Learned CIT(A) erred in law and on facts in not granting the appellant a proper opportunity of hearing as mandated under Section 250(1) of the Income-tax Act, 1961.

1.12. The learned CIT(A) failed to appreciate that disallowance under Section 40(a)(ia) in the return and the subsequent demand under Section 201(1) on the same transaction lead to double taxation of the same amount, resulting in unjust enrichment of the Revenue and contravening well-established legal principles.

1.13. The learned CIT(A) failed to consider binding judicial precedents of the Hon'ble High Court of Karnataka, including in the cases of *M/s. Toyota Kirloskar Motors Pvt. Ltd.* and *Karnataka State Power Transmission Corporation Ltd.*, which hold that TDS defaults should not be sustained where the payee is identifiable and tax has subsequently been deducted and deposited. The failure to apply these binding precedents renders the order bad in law.

1.14. The Appellant craves leave to amend, modify, delete, or add to the aforesaid grounds of appeal at or before the time of hearing, without prejudice to each other.

That the appellant craves leave to add, amend, alter or withdraw any ground of appeal at the time of hearing.

3. Brief facts of the case are that the assessee is engaged in the business of real estate development. The Tax deduction Account Number (TAN) of the assessee is **BLRM02224F**. During the year under consideration, the assessee had created provisions for expenses amounting to Rs.58,06,03,613/- in its books of accounts and did not deduct tax at source at the time of creation of provision. However, as contended by the assessee, the TDS was deducted upon receipt of invoices from the vendors upon ascertaining the crystallization of expenditure. The ld. DCIT(TDS) observed that the assessee company had Suo-motto disallowed an amount of Rs. 17,41,81,084/- (30% of Rs.58,06,03,613/-) under section 40(a)(ia) of the Act & thus the assessee had failed to deduct tax on such expenses which were eligible for TDS. During the course of proceedings u/s 201 of the Act, the assessee company submitted **the party wise breakup** of disallowance made u/s 40(a)(ia) of the Act. Further, the assessee submitted that the assessee company had made payment of Rs. 55,51,01,470/- on 31/03/2017 and accordingly TDS was deducted. In support of this, the assessee submitted the form-16/16A issued to the parties. The ld. DCIT (TDS), Circle 1(1), Bengaluru vide his order passed dated 28.3.2024 u/s 201(1) & 201(1A) of the Act held that the assessee company has failed to deduct TDS on provisions made to the extent of

Rs.58,06,03,613/-. In view of the above fact, the deductor company was held "assessee in default" and accordingly default u/s 201(1) and interest u/s 201(1A) of the Act are charged as below:-

Sl.No.	Particulars	Amount
1.	Amount of provision for disallowance made u/s 40(a)(ia) of Rs.58,06,03,613/-	58,06,03,613/-
2.	Default u/s 201(1)	5,80,60,361/-
3.	Interest u/s 201(1A) for 96 months	5,57,37,946/-
	Total demand payable	**11,37,98,307/-**

4. Aggrieved by the order of ld. DCIT (TDS), Circle 1(1), Bengaluru, the assessee preferred an appeal before the ld. CIT(A)/Addl/ JCIT(A).

5. The ld. Addl/JCIT(A)-2, Kolkata dismissed the appeal of the assessee by holding that as the assessee did not upload any reply at any time in spite of sufficient time allowed and accordingly believed that the assessee is not interested in pursuing its own case. The ld. Addl/JCIT(A), thereafter proceed to dispose of the appeal based on the materials available on record & dismiss the appeal by holding that the **amounts were credited in names of the 17 parties** but no TDS was made during the A.Y 2017-18. Had it been a provision, the total amount would have been made as provision in respect of certain expenditure head and not in the names of the parties. Hence, the amount cannot be treated as a provision made.

6. Before us, the ld. A.R. of the assessee vehemently submitted that in fact the assessee had requested for adjournment before the ld. Addl/JCIT(A) but the ld. Addl/JCIT(A) dismissed the appeal of the assessee by contending that assessee had neither replied nor

made any submissions. Further, with regard to the merits of the case, the ld. AR of the assessee vehemently submitted that the assessee company subsequently deducted & remitted the TDS along with applicable interest upon receipt of invoices from the vendors upon crystallization of the expenses/liabilities. Further, ld AR submitted that the Authorities below failed to appreciate that there was no actual loss of revenue, as the tax due was ultimately deposited by the assessee company & therefore the invocation of section 201(1) & 201(1A) of the Act is unwarranted.

7. The ld. D.R. on the other hand supported the order of the authorities below and vehemently submitted that in the present case the nature of the expenses are identified, the parties are identified & the amount of expenditure are also fairly estimated then the question of non-deduction of TDS does not arise at all. As the assessee company failed to deduct TDS on so called provision which is nothing but the Expenses Payables amounting to Rs. 58,06,03,613/-, the ld DCIT (TDS) has rightly held the "assessee in default" & accordingly levied the interest also.

8. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that during the financial year 2016-17 relevant for assessment year 2017-18, the assessee had suo-motto computed the disallowance u/s 40(a)(ia) of the Act as the assessee company could not deduct tax at source on which tax was required to be deductible at source under Chapter XVII-B & paid on or before due date specified u/s 139(1) of the Act and accordingly offered Rs. 17,41,81,084/- (30% of Rs.58,06,03,613/-) as income of the assessee company. The ld. Addl/JCIT(A) is also of the opinion that had it been a provision for expenses as claimed by assessee, the entire amount would have been added back as provision as it is not an allowable expenditure.

Further, the ld. Addl/JCIT(A) held that Had it been a provision, the total amount would have been made as provision in respect of certain expenditure head and not in the names of the parties and accordingly held that the amount of expenses cannot be treated as a provision made. The contention of the assessee is that the "year end provisions" are made on estimated basis and further it is credited to "Provision for expenses" account and not to the credit of vendors/service providers' account. Accordingly, it was contended that the TDS provisions will not apply to year end provisions.

8.1 Chapter XVII of the Act deals with provisions relating to tax deduction & collection at source. We are of the considered opinion that TDS is required to be deducted on the year end provision made by the assessee which are **ascertained liabilities.** As per Sub-sec. (2) of sec. 194C, *Explanation* (*ii*) to sec. 194I, *Explanation* (*c*) to sec. 194J, *Explanation* (*iv*) to Sec. 194H and *Explanation 1* to sec. 195, even if the sums referred to under these provisions are credited to any other account, whether called 'Suspense Account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such account to the account of the payee and the provisions of TDS shall apply accordingly. Hence, even if the amounts are credited to the "Provision" account instead of the concerned Party's account, the liability to deduct tax at source shall arise. In the present case as can be seen from the order of the ld. DCIT(TDS), the assessee had submitted the party wise breakup of expenses amounting to Rs.58,06,03,113/- for disallowance u/s 40(a)(ia) of the Act for the AY 2017-18. Thus, the nature & quantum of expenses were realistically estimated as per the contracts with the vendors/parties. Further, it is also an undisputed fact that the parties/vendors are identifiable. Therefore, it is not possible for the assessee to argue that there was no accrual of expenditure in

accordance with the mercantile system of account & therefore the TDS obligations do not get triggered. It is also not a case of the assessee that these are unascertained liabilities. When the expenditure incurred by the assessee, the corresponding liability definitely arises for payment of such expenditure. The amount of expenditure incurred can be determined only if, there is a recipient identified of the sum, there is a methodology available for working out the amount payable by the assessee to the recipient, there is a corresponding liability arising out of the existing contract or customs by the assessee with the recipient. If generally these ingredients are not satisfied assessee cannot be said to have incurred the expenditure. In absence of one of one of these criteria, if provision is made, it is not an ascertained liability but an unascertained liability, which does not, satisfied the concept of accrual of expenditure. There may be reasons for receiving the bills by the service providers after certain time lag but that does not absolve the assessee from the liability of deduction of tax at source. In the present case, the provision is made under the specified parties/vendors, provision is also made to on certain basis thereby ascertaining the amount of expenditure. It is not the case of the assessee that it has made an ad hoc provision. Therefore, we are of the considered opinion that the tax is required to be deducted on the year-end provisions made by the assessee which are ascertained liabilities. Further, We are also of the opinion that the assessee can escape from the disallowance to be made u/s 40(a)(i)/ 40(a)(ia) of the Act, if the assessee is not treated as an "assessee in default", however the converse is not true i.e. if the assessee makes disallowance u/s 40(a)(i)/ 40(a)(ia) of the Act, the assessee will not be exonerated from the liability u/s 201 of the Act.

8.2 Under the similar facts & circumstances of the case, this co-ordinate bench of ITAT in the case of **Biocon Ltd. Vs. Deputy**

Commissioner of Income Tax, LTU reported in [2023] 102 ITR(T) 485 (Bangalore-Trib) / [2023] 152 taxmann.com 55 (Bangalore-Trib) has held as under-

"6. We heard the parties and perused the record. Before addressing the issues contested before us, we feel it necessary to discuss about the accounting practice relating to making yearend provisions, its impact on profits and the legal effects. The accounts of a business concern can follow either "cash system of accounting" or "mercantile system of accounting". Under mercantile system of accounting, "revenue cost matching principle" is followed, *i.e.,* all the expenses incurred to earn the corresponding revenue should be accounted for. The accounting principle of "Prudence" also requires for accounting for all known expenses and losses at the time of finalising accounts at the yearend. Accordingly, the assessee's, who are following mercantile system of accounting are required to account for all known expenses and losses, even if the bills/invoices have not been received. This is done by making provision for various expenses at the year end. It will ensure that the financial statements reflect true profits of the fiscal period. Accounting Standard - 29 issued by the Institute of Chartered Accountants of India (ICAI) titled as "Provisions, Contingent Liabilities and Contingent Assets" deals with this aspect. As per AS-29, "A Provision is a liability which can be measured only by using a substantial degree of estimation". It further states as under:—

> "A Provision should be recognised when:-
>
> (*a*) an enterprise has a present obligation as a result of past event.
>
> (*b*) it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation; and
>
> (*c*) a reliable estimate can be made of the amount of the obligation."

Hence, while finalising the accounts as at the year end, it is a usual accounting practice to ascertain the obligations that have arisen as a result of past events, which may involve probable cash outflow. All those obligations are recognised as expenses and provided for. Making a provision will be an easy task, if the assessee is aware of the quantum of liability. For example, audit fee might have been fixed in the AGM and hence it is easy to provide for the same as at the year end. On the contrary, if the assessee has received services of an advocate and he has not sent his bill by the year end, then the assessee shall be constrained to make an estimate of the amount that may be charged by an advocate and provide for it in the books of account as at the year end.

6.1 The accounting practice followed in this regard is that the Concerned expenses account shall be debited and "Provision for expenses" account shall be credited. The "book rule" of accounting practice is to debit 'Provision for Expenses' account with the payment made in the succeeding year. Since the expenses are provided for on estimated basis, four possible situations shall arise in the succeeding year, when payment is made. We explain the same by way of illustrations:-

Let us assume that provision for expenses is made for Rs. 1000/- towards a particular expense as on 31-3-2012 and the above said amount was determined on estimated basis.:

(*a*) Situation I:- In the subsequent year, the assessee receives bill for Rs. 1000/-. Accordingly, when the payment is made "Provision for expenses" account shall be debited with Rs. 1000/-. In this situation, the Provision for expenses a/c will show NIL balance after the payment. There will not be any impact on the Profit and Loss account of the succeeding year.

(*b*) Situation II:- In the subsequent year, the assessee receives bill for Rs. 1,200/-, meaning thereby, the provision created was short by Rs. 200/-. When the payment is made, the Provision for expenses account shall be debited with Rs. 1000/- and the concerned expenses account shall be debited with remaining amount ofRs.200/-. In this situation also, the Provision for expenses a/c will show NIL balance after the payment. There will be impact on the Profit and Loss account of the succeeding year by way of increase in expenses by Rs. 200/-.

(*c*) Situation III:- In the subsequent year, the assessee receives bill for Rs. 750/- only, meaning thereby, the provision created was in excess by Rs. 250/-. When the payment is made, the Provision for expenses account shall be debited with Rs. 750/-, which will leave a credit balance of Rs. 250/- in the Provision for Expenses account. This remaining credit balance will be transferred to the Profit and Loss account. Accordingly, the Provision for expenses account will show NIL balance and there will be an impact on the Profit and Loss account of the succeeding year by way of income of Rs. 250/-.

(*d*) Situation IV:- The assessee finds that it is not liable to pay the provision amount. Accordingly, the entire amount of Rs. 1000/- outstanding to the credit of Provision for expenses account shall be transferred to the Profit and Loss account. Accordingly, the Provision for expenses a/c will show NIL balance and there will be an impact on the Profit and Loss account of the succeeding year by way of income of Rs. 1000/-.

Thus, the effect of making provision in a year is that the "Profit and Loss account" of the year in which the said provision is made will absorb the relevant expenses to the extent so provided for, *i.e.,* those expenses will not get shifted to the next year when the payment is actually made. The profit and loss account of succeeding year will not be affected by the amount of provision made, if the actual payment made is equal to or in excess of the provision amount. However, if there is no requirement of making any payment or if the payment made is less than the amount provided for, then the Profit and Loss account of the succeeding year shall be affected to the extent of the amount transferred from "Provision for expenses a/c" to the credit of Profit and loss account.

6.2 However, in the present days, the above said "book rule" practice is not followed. The modern days accounting practice is to reverse the provision for expenses so created as at the yearend immediately on the first day of succeeding year. For example, yearend provisions created as on 31-3-2012 shall be reversed on 1-04-2012. Thereafter the expenses shall be booked as and when the invoice is accounted/payment is made in the succeeding year. This modern days practice is

followed only for convenient sake only. It can be noticed that the impact on the 'profit and loss' of the year in which provision for expenses was created and also on the 'profit and loss' of the succeeding year would be the same as discussed in the preceding paragraph, if the actual payment is made before the closure of the succeeding year. There will be a difficulty/risk in this modern days practice if the actual payment is not made before the closure of accounting year of the succeeding year against an acknowledged liability. In that kind of situation, the assessee should provide for the same again as at the year end of the succeeding year, which may sometimes lead to tax complications.

6.3 An argument was advanced that there will be no liability to deduct tax at source on the yearend provisions made as on 31-3-2012, since the same is reversed on 1-4-2012. From the discussions made in the preceding paragraphs with regard to the impact of the accounting entries relating to Provision for expenses, it would be clear that this argument is fallacious and devoid of merits. We also noticed that, it is only for the sake of convenience, the modern days practice of reversing the yearend "Provision for expenses" as at the beginning of succeeding year is followed. We have also seen that the effect/impact on the Net profit/loss of the preceding year in which provision was initially created or the effect/impact on net profit/loss of succeeding year would remain the same under "book rule" method of accounting practice and modern days accounting practice. The net result of making provision for expenses is that the expenses pertaining to a particular year shall be claimed in that year only even in the absence of bills/invoices received from the vendors/service providers.

7. We shall now advert to the Income-tax Act. Chapter VII of the Act deals with provisions relating to tax deduction at source. The contention of the assessee is that the "yearend provisions" are made on estimated basis and further it is credited to "Provision for expenses" account and not to the credit of vendors/service providers' account. Accordingly, it was contended that the TDS provisions will not apply to yearend provisions.

7.1 We noticed earlier that the Ld CIT(A) has referred to the provisions of sub-sec. (2) of sec. 194C, *Explanation* (*ii*) to sec. 194I, *Explanation* (*c*) to Sec. 194J, *Explanation* (*iv*) to sec. 194H and *Explanation 1* to sec. 195, which states that even if the sums referred to under these provisions are credited to any account, whether called 'Suspense Account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such account to the account of the payee and the provisions of TDS shall apply accordingly. For the sake of convenience, we extract below provisions of sec.194C(2):-

> "Where any sum referred to in sub-section (1) is credited to any account whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

Similar clause is available in all other provisions requiring deduction of tax at source.

7.2 The question as to whether the above said clause available in various TDS provisions shall apply even to "Provision for expenses" created at the yearend was examined by the co-ordinate bench in the case of *IBM India (P.) Ltd.* v. *ITO (TDS) LTU* [2015] 59 taxmann.com 107/154 ITD 497 (Bang. - Trib.) in (ITA Nos. 749 to 752/Bang/2012 dated 14-5-2015) and the said question was decided as under:-

> "29. sec. 194C applies when payment is made to contractor. The point of time at which tax had to be deducted at source is at the time of credit to the Account of contractor or payment in cash or cheque, whoever is earlier. sub-section (2) of sec. 194-C lays down that where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly. Similar provision such as sec. 194(2) exists in sec. 194H *Explanation* (*ii*) of the Act which applies when the payment made is in the nature of commission or brokerage, in sec. 194J *Explanation*(*c*) when payment made is Fees for Technical Service and Sec. 195 Expln.-1 when payment is made to non-resident. The reason for introduction of provisions such as Sec. 194(2) of the Act has been explained in CBDT circular No. 550 dated 1-1-1990 as follows:-
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> "26.3 Under the existing provisions of section 193 of the Income-tax Act, tax has to be deducted at source by the person responsible for making any payment in the nature of interest on securities at the time of payment. The liability to deduct tax at source was being postponed by making a provision for such payment. In order to prevent the postponement of liability to deduct tax and payment to the credit of the Central Government, the Finance Act has provided that tax will be deducted at source either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier. For this purpose, credit to any suspense account or any other account, by whatever name called, shall be deemed to be a credit of such income to the account of the payee."
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> 30. It is thus clear from the statutory provisions that the liability to tax at source exists when the amount in question is credited to a 'suspense Account' or any other account by whatever name called, which will also include "Provision" created in the books of accounts. Therefore it is not possible for the Assessee to argue that there was no accrual of expenditure in accordance with the mercantile system of account and therefore the TDS obligations do not get triggered."

7.3 We notice that the Delhi bench of Tribunal has also considered the question of applicability of TDS provisions on yearend provisions in the case of *Inter Globe Aviation Ltd.* v. *Asstt. CIT* [2020] 114 taxmann.com 460/181 ITD 225 (Delhi - Trib.) in (ITA No. 5347/Del/2012 dated 7-01-2020), wherein it was held as under:-

> "19. We have carefully considered the rival contentions and perused the orders of the lower authorities. Assessee has made provision for Airport expenses of Rs. 32314535/-, Airport Handling expenses Rs. 14115000/-, Crew Accommodation expense Rs. 694000/-, IT Communication charges Rs.

7021580/- and provision for other expenses Rs. 74335080/-. Admittedly assessee has not deducted tax and source on the above sum stating that it is yearend provision and the payees are not identified. It is not the case of the assessee that these are we are not ascertained liabilities. According to the provisions of the income tax act the tax is required to be deducted as and when assessee becomes responsible for payment of above sum to other parties. The claim of the assessee is that it is maintaining its books of account on accrual basis of accounting and therefore the amount is required to be provided for. When the expenditure incurred by the assessee, the corresponding liability definitely arises for payment of such expenditure. The amount of expenditure incurred can be determined only if, there is a recipient identified of the sum, there is a methodology available for working out the amount payable by the assessee to the recipient, there is a corresponding liability arising out of the existing contract or customs by the assessee with the recipient. If generally these ingredients are not satisfied assessee cannot be said to have incurred the expenditure. In absence of one of one of these criteria, if provision is made, it is not an ascertained liability but an unascertained liability, which does not satisfied the concept of accrual of expenditure. There may be reasons for receiving the bills by the service providers after certain time lag but that does not absolve the assessee from the liability of deduction of tax at source. In the present case the provision is made under the specified head, provision is also made to on certain basis thereby ascertaining the amount. It is not the case of the assessee that it has made an ad hoc provision. Thus it cannot be said that the payee is not identified. Therefore, according to us, the tax is required to be deducted on the year-end provisions made by the assessee which are ascertained liabilities. No doubt, the learned CIT(A) has given the benefit of the assessee if tax is deducted by the assessee subsequently. Therefore we do not find any infirmity in the order of the learned CIT(A) in holding that assessee has failed to deducted tax at source on year-end provisions. Thus the order of the learned CIT(A) is upheld to that extent."

7.4 Following the above said decisions of the co-ordinate benches, we hold that the TDS provisions are triggered for the amount credited to "Provision for expenses account" also, in view of specific provisions (extracted above) available in all TDS sections. Accordingly, the assessee is liable to deduct tax at source from the yearend provision for expenses.

8. One more contention raised by Ld A.R is that the assessee has voluntarily disallowed the amount of yearend provision u/s 40(*a*)(*i*)/40(*a*)(ia) of the Act and hence there is no requirement to raise any demand u/s 201(1)/201(1A) of the Act, *i.e.,* disallowance made u/s 40(*a*)(*i*)/40(*a*)(ia) would exonerate the assessee from the liability u/s 201 of the Act. In this regard, he placed his reliance on the decision rendered by co-ordinate bench in the case of *Robert Bosch Engineering and Business Solutions (P.) Ltd.* v. *ITO (TDS) LTU* [2022] 137 taxmann.com 150/194 ITD 340 (Bang. - Trib.) in (ITA Nos.1689 & 1690/Bang/2017 dated 31-1-2022).

8.1 We notice that the very same contention was urged before Cochin bench of Tribunal in the case of *Agreenco Fibre Foam (P.) Ltd. (supra)* and it was rejected with the following observations:-

"5.2 The liability to deduct tax at source on the interest payments is prescribed u/s 194A of the Act. Sub-section (1) of sec. 194A reads as under:-

194A. (1) Any person, not being an individual or a Hindu Undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax thereon at the rates in force."

Explanation:- For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of payee and the provisions of this section shall apply accordingly."

A plain reading of above provision clearly shows that the person responsible to pay the interest is liable to deduct tax at source at the time of credit or payment, whichever is earlier. It is pertinent to note that the section uses the term "any income by way of interest". The interest payment may constitute expenditure in the hands of the person making the payment, while it may constitute income in the hands of the payee/recipient. Since the section uses the term "any income by way of interest", in our view, it should be viewed from the angle of the recipient/payee and not from the angle of the person making the payment. Accordingly, the accounting/tax treatment given by the payer in respect of interest paid by him may not be relevant at all for the purposes of sec. 194A of the Act. So long as the interest amount constitutes "income" in the hands of recipient, the payer shall be liable to deduct tax at source on the interest amount so paid. Accordingly, even if the payer has disallowed the expenditure u/s 40(*a*)(ia) of the Act or did not claim the same as expenditure at all, he shall still be liable to deduct tax at source u/s 194A of the Act on the interest amount so paid, if the said payment is liable for tax deduction at source. We notice that the Mumbai bench of Tribunal, in the case of *Pfizer Ltd*. (*supra*) did not consider the express provisions contained in sec. 194A of the Act. Further we notice that the provisions of sec. 40(*a*)(ia) does not override the provisions of sec. 201 of the Act. We notice that provisions of sec. 40(*a*)(ia) do not provide for absolute disallowance as in the case of say, sec. 40A(3) of the Act. The amount disallowed u/s 40(*a*)(ia) in one year can be claimed as deduction in the year in which the TDS provisions are complied with. Thus, in our view, the provisions of sec. 40(*a*)(ia) provide only for deferment of the allowance and it does not provide for absolute disallowance. The objective of sec. 40(*a*)(ia) appears to be to compel the assessee to deduct tax at source in order to claim the relevant expenditure as deduction."

8.2 The co-ordinate Bangalore bench of Tribunal has also examined similar argument raised before it in the case of *IBM India (P.) Ltd. (supra)* and it was rejected with the following observations:-

"27. We have carefully considered rival submissions. Provisions of Sec.40 of the Act start with a *non-obstante* clause and provides that, "Notwithstanding

anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession." Sec.40(*a*)(*i*) and 40(*a*)(ia) of the Act lists of certain items of expenditure and categories payees as "Residents" "Non Residents". In respect of the items of such expenditure there if there is an obligation to deduct tax at source under Chapter XVII-B and such tax has not been deducted or after deduction, has not been paid during the previous year, then the expenditure cannot be claimed as a deduction. Sec. 200(1) appears in Chapter XVII-B of the Act and it provides that any person deducting any sum in accordance with the foregoing provisions of this Chapter *i.e.,* Chapter-XVII-B shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs. Sec.201(1) of the Act is triggered when if any such person referred to in section 200 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, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax. The contention of the learned DR that the assessee having admitted its default u/s 40(*a*)(*i*) & 40(*a*)(ia) of the Act, cannot in proceedings u/s 201(1) of the Act, be heard to say that there was no default under Chapter XVII-B of the Act is therefore correct. The disability u/s 40(*a*)(*i*) & 40(*a*)(ia) of the Act and the liability u/s 201(1) of the Act cannot be different and they arise out of the same default. Once there is disallowance u/s 40(*a*)(*i*) & 40(*a*)(ia) of the Act, it is not possible to argue that there was no liability under Chapter XVII-B of the Act and therefore the provisions of Sec.201(1) of the Act will not be attracted.

8.3 It can be noticed that the co-ordinate benches have, in the case of *Agreenco Fibre Foam (P.) Ltd.* (*supra*) and also in the case of *IBM India (P.) Ltd.* (*supra*), expressed the view that the disallowance u/s 40(*a*)(*i*) and 40(*a*)(ia) and the demand raised u/s 201 are two different consequences. In this connection, we may advert to various provisions of the Act. We may notice that the Income-tax Act provides for different types of consequences for the failure to deduct tax at source or failure to remit the tax so deducted either in full or in part. The consequences provided under the Act are:

(*a*) disallowance of expenses should be made u/s 40(*a*)(*i*)/40(*a*)(ia);

(*b*) assessee shall be deemed to be an assessee in default and hence the demand u/s 201(1)/201(1A) could be raised upon the assessee.

(*b*) penalty can be levied u/s 271C/271CA and

(*c*) prosecution can be launched/s 276B of the Act.

It is pertinent to note that each of the consequences mentioned above are independent of each other. However, in case of disallowance of expenses to be made u/s 40(*a*)(ia) (w.e.f AY 2013-14) and u/s 40(*a*)(*i*) (w.e.f 2020-21), the proviso inserted in those sections gives a relief, *i.e.,* if the assessee is "not deemed to be an assessee in default u/s 201", then there is no requirement of making any disallowance u/s 40(*a*)(ia)/40(*a*)(*i*). The corollary is that if the assessee is deemed to be an assessee in default, the above said relief given under the proviso to sec.40(*a*)(*i*)/40(*a*)(ia) shall apply. Thus the proviso given under

sec.40(*a*)(*i*)/40(*a*)(ia) itself makes it very clear that liability u/s 201 is independent of the above said disallowances.

8.4 Our view that each of the consequences is independent of each other is also supported by the *Explanation* given under sec. 191, which reads as under:-

> *Explanation*.—For the removal of doubts, it is hereby declared that if 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 after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of sub-section (1) of section 201, in respect of such tax.

In view of the above said explanation given under sec.191 of the Act, the provisions of sec.201 are triggered when the assessee is "deemed to be an assessee in default". Further this explanation makes it very clear that this liability is "without prejudice to any other consequences which he may incur". The assessee can escape from the disallowance to be made u/s 40(*a*)(*i*)/40(*a*)(ia), if he is not treated as an "assessee in default". In our considered view, the converse is not true, *i.e.,* if the assessee makes disallowance u/s 40(*a*)(*i*)/40(*a*)(ia), he will not be exonerated from the liability u/s 201 of the Act.

8.5 Another pertinent point to be noted is that the disallowance required to be made u/s 40(*a*)(*i*)/40(*a*)(ia); penalty to be levied u/s 271C/271CA are the direct liabilities, *i.e.,* liabilities which are directly imposed upon the assessee due to his failure. On the contrary, the demand raised u/s 201(1)/201(1A) is vicarious liability imposed upon an assessee. The tax is deducted at source from the amount payable to the payee, *i.e.,* it is not paid in discharge of assessee's own liability. The role of an assessee is that of "Pipe line" role, *i.e.,* TDS is deducted from the amount payable to a vendor and remitted to the credit of the Government on behalf of the vendor. For example, if an assessee is liable to pay interest amount of Rs. 10,000/- to a person named Mr. A and the said payment is liable for tax deduction at source @ 10%, then the assessee shall pay Rs. 9000/- to Mr.A and deposit Rs. 1000/- to the credit of Government as TDS on behalf of Mr.A. Thus the TDS amount is actually a form of recovery of tax from the payee Mr.A and it belongs to him only. Hence Mr.A is entitled to claim set off of the TDS amount of Rs. 1000/- against the tax payable by him. If there is failure on the part of an assessee to deduct tax at source, the provisions of sec.191 introduces a "deeming fiction" as per which the said assessee is deemed to be an assessee in default. Accordingly, the TDS amount could be recovered from the assessee, even if he has not yet paid the amount or fully paid the amount to the payee, *i.e.,* the assessee is made liable for the tax belonging to the payee. In the above said example, the assessee would be liable to pay Rs. 1000/- as per the provisions of sec.201(1) over and above the amount of Rs. 10000/- payable/paid to Mr.A. Hence it is called vicarious liability. The concept of vicarious liability has been well explained by Mumbai bench of

Tribunal in the case of *Industrial Development Bank of India* v. *ITO* [2007] 107 ITD 45/[2006] 10 SOT 497 which are going to discuss infra. 8.6 In view of the foregoing discussions on legal provisions, following the decisions rendered by the co-ordinate benches of Tribunal in the case of *IBM India (P.) Ltd.* (*supra*) and *Agreenco Fibre foam (P.) Ltd.* (*supra*), we hold that the disallowance made u/s 40(*a*)(*i*)/40(*a*)(ia) will not absolve the assessee from the liability u/s 201 of the Act, when an assessee is deemed to be an assessee in default.

9. The Ld A.R submitted that the assessee has deducted tax at source when the payments are actually made in the succeeding year. The co-ordinate bench in the case of *IBM India (P.) Ltd.* (*supra*) has held that the demand raised u/s 201(1) is liable to be cancelled, if the assessee has deducted tax at source at the time of accounting the invoices/bills or at the time of making payment in the succeeding year. It was further held that the assessee would be liable to pay interest u/s 201(1A) of the Act, in view of the delay in deduction/remittance of TDS amount. Following the above said decision, we also hold so.

9.1 The Ld A.R expressed the view that there are certain practical difficulties involved in complying with the provisions of TDS. He prayed that the Tribunal may clarify the law on the practical difficulties. We shall address them one by one. The first difficulty pointed out by him is that the payees are not identifiable in respect of certain expenses, even though the same has been included in the yearend provisions. We have noticed earlier that the provision for expenses have been created by the assessee for the liability towards:

(*a*) Contract expenses covered by sec. 194C
(*b*) Professional fees covered by sec. 194J
(*c*) Rent expenses covered by sec. 194I
(*d*) Commission expenses covered by sec.194H
(*e*) Payments to non-residents covered by sec. 195

The Ld CIT(A) rejected this submission of the assessee with the following observations:-

> "4.2 With regard to the appellant's claim that the identity of the recipients was not known and, hence, it could not have deducted tax on the provisioned amounts, I find that the facts and probability largely belie this claim. It is commonsensical to expect that the appellant's creation of the provision for the services received by the year end to obtain a correct view of its profit at year end was not based on any arbitrary or whimsical estimate. It is clear from the provisioned expenses that the estimate has followed from pre-existing contracts with known parties for identified services and, hence, the accounting of amounts liable to be paid to these parties for services availed as per known terms of transaction is a specific exercise which carries with it the statutory responsibility for deducting tax at source also. The appellant cannot wriggle out of this responsibility by holding that the provisions were made without any basis towards unidentified parties for unascertained liabilities."

From the nature of expenses listed above, the view expressed by Ld CIT(A) appears to be quite reasonable. In our view, it is the responsibility of the assessee to satisfy the assessing officer by preparing a list of expenses, for which payees

could not be identified at the time of making provision and the reasons for the same.

9.2 We notice that there are certain judicial rulings holding that there will not be TDS liability, if the payee is not identifiable. We shall discuss about the same.In the case of *Dishnet Wireless Ltd.* v. *Dy. CIT* [2015] 60 taxmann.com 329/154 ITD 827(Chennai - Trib.), the Chennai bench of Tribunal held that when the tax deductor cannot ascertain the payee who is the beneficiary of credit of tax deduction at source, the mechanism of Chapter XVII-B cannot be put into service. It was further held that if the payee is identifiable and the amount payable to him is ascertainable, then the assessee would be required to deduct tax at source in respect of such provision. We shall discuss some more decisions:-

(*a*) The first decision is that of Honourable Delhi High Court in case of UCO Bank (369 ITR 335). The facts prevailing in this case are that the Court had directed one of the parties to the suit to deposit certain sums in the High Court. The amount was invested in Fixed deposit by the Registrar General of the High Court with UCO Bank. The High Court dealt with the question as to whether the bank is liable to deduct TDS on the interest income credited to the above said Fixed deposit. The bank's case was that the Registrar General was merely a custodian of the funds on behalf of the High Court and the Registrar General per se was neither an assessee nor he was beneficiary entitled to receive any interest on the fixed deposits. Under these facts, the Hon'ble Delhi High Court held that if TDS is deducted that would amount to recovery of tax without corresponding income being assessed in the hands of any assessee. In the absence of ascertainable assessee, the machinery of recovering tax by deduction of tax at source breaks down because it does not aid the charge of tax u/s 4 of the Act, but takes a form of a separate levy, independent of other provisions of the Act, which is not permissible. Therefore, it can be seen that the decision of the Hon''ble Delhi High Court has been rendered in the peculiar facts prevailing in that case.

(*b*) The next decision is of Hon''ble Karnataka High Court in the case of Karnataka Power Transmission Corporation Ltd (383 ITR 59). In this case, the assessee before Hon'ble High Court of Karnataka made provision towards interest payable on delayed payments. However, subsequently assessee noticed that interest is not payable in view of understanding reached between the parties. Accordingly it reversed the provision entries in books of account. Under these set of facts, the Hon'ble Karnataka High Court held that the interest which partakes the character of income alone is liable for deduction of tax at source u/s 194A of the Act.

(*c*) The Mumbai bench of Tribunal, in the case of Industrial Development Bank of India vs. ITO (2007) (107 ITD 45) has examined the aspect of liability to deduct tax at source, when the payees could not be identified. The question before Mumbai bench of Tribunal was whether or not Section. 193 of the Act requires tax deducted at source in respect of the provision for interest accrued but not due made by an assessee where the ultimate recipient of such interest accrued but not due cannot be ascertained at the point of time when the provision is made. In this case, the assessee issued 'Regular Return Bond-Series II', which carried interest rate of 16 per cent p.a. payable annually. The interest was payable on 9th of June every year. However, the

assessee closed its accounting year on 31st March. Accordingly, it made provision of interest accrued upto 31st March, which however has not become due. This issue was adjudicated in a detailed manner. The discussions made by the Tribunal in lucid manner are extracted below:-

9. The above terms and conditions, so far as material for the purposes of our adjudication, can be summarized as follows:

(*a*) The assessee is liable to pay interest @ 16 per cent annually in respect of regular return bondholders.

(*b*) The interest is payable on 9th June of each calendar year, except in the year of maturity, when interest is payable on maturity.

(*c*) The interest, except at the time of maturity, is paid to the person whose name is registered in the records of the assessee-company as on 15th May of each calendar year.

(*d*) The bonds are transferable by endorsement and delivery, and the assessee does not, in any way, control such transfer of ownership.

Let us now appreciate the impact of the above terms and condition so far the issue in appeal before us is concerned. As on 31st March of the year, the assessee's liability for 'interest accrued but not due' because interest is payable only once annually on a date other than the date of closure of accounts but the assessee will have no means to find out as to who could be the recipients of 'interest due but not payable' in respect of 'regular return bonds' because while assessee's liability to pay interest @ 16 per cent is certain and is to be made as on 31st March, *i.e.,* on the end of the relevant accounting year, the bonds in question being freely transferable, it cannot ascertain as to who will be the registered bondholder as on 15th May of that year. The assessee cannot be expected to have clairvoyance of knowing, as on 31st March, as to who will own the bonds on 15th May of that year. Therefore, in such a situation while the assessee certainly has the liability to pay the interest for the period till the end of the relevant accounting year, the assessee certainly does not know for sure as to who will be entitled to receive this interest…… *In our humble understanding, conceptually, liability of TDS is in the nature of a vicarious or substitutionary liability which presupposes existence of a principal or primary liability.* Chapter XVII-B is titled 'Collection and recovery of tax--Deduction of tax at source" and this title also indicates that the nature of TDS obligations are obligations for collection and recovery of tax. Under the IT Act, tax is on the income and it is in the hands of the person who receives such income, except in the case of dividend distribution tax which is levied under Section. 115-0--a Section outside the chapter providing for collection and recovery mechanism and set out under a separate chapter 'Determination of tax in certain special cases-Special provision relating to tax on distributed profits of domestic companies'. A plain reading of section. 190 and section. 191, which are first two sections under the Chapter XVII, and of sections 199, 202 and 203(1) would show this underlying feature of the TDS mechanism…….

Section 190 makes it clear that the scheme of TDS is one of the methods of recovering the tax due from a person and it is notwithstanding the fact that the

tax liability may only arise in a later assessment year. The tax liability is obviously in the hands of the person who earns the income and TDS mechanism provides for method to recover tax under such liability. Therefore, this TDS liability is, as we begun by taking note of, a sort of substitutionary liability. Section 191 further makes this position clear when it lays down that in a situation TDS mechanism is not provided for a particular type of income or when the taxes have not been deducted at source in accordance with the provisions of Chapter XVII, income-tax shall be payable by the assessee directly. This provision thus shows that TDS liability is a vicarious liability and the principal liability is of the person who is taxable in respect of such income. Section 199 makes it even more clear by laying down that the credit for taxes deducted at source can only be given to the person from whose income the taxes are so deducted. Therefore, when tax deductor cannot ascertain beneficiaries of a credit, the tax deduction mechanism cannot be put into service. Section 202 lays down that TDS provisions are without any prejudice to any other mode of recovery from the assessee, which again points out to the tax deduction liability being vicarious liability in nature. Section 203(1) then lays down that for all tax deductions at source the tax deductor has to "furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued" which presupposes that at the stage of tax deduction the tax deductor knows the name of person to whom the credit is to be given though whether by way of credit to the account of such person or by way of credit to some other account. This again shows that TDS liability is a vicarious liability to pay tax on behalf of the person who is to be beneficiary of the payment or credit, with a corresponding right to recover such tax payable from the person to whom credit is afforded or payment is made. *It would be thus seen that the whole scheme of TDS proceeds on the assumption that the person whose liability is to pay an income knows the identity of the beneficiary or the recipient of the income. It is a sine qua non for a vicarious tax deduction liability that there has to be a principal tax liability in respect of the relevant income first, and a principal tax liability can come into existence when it can be ascertained as to who will receive or earn that income because the tax on the income and in the hands of the person who earns that income. In this view of the matter, TDS mechanism cannot be put into practice until identity of the person in whose hands, it is includible as income can be ascertained.*

18. It is indeed correct that *Explanation* to section. 193 lays down that even when an income is credited to any account in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly, but the fact that the credit to any account is to be deemed to be credit to the payee's account also presupposes that payee can be ascertained. Therefore, this deeming fiction can only be activated when the identity of the payee can be ascertained. To illustrate, in the example that we had taken in para 4 above as long as assessee knows the identity of lenders, whether the assessee credits the interest accrued but not due in the account of the assessee or in some other account, tax would continue to be deductible under section 193 by the virtue of deeming fiction set out in the *Explanation*

to Section. 193. The liability to pay in such a case would crystallise later, *i.e.,* on due date of 31st December, and the corresponding credit to the lender's account will also be given on 31st December, but the assessee will still have tax deduction liability in respect of interest accrued but not due as on 31st March. However, on the facts of the present case, this *Explanation* cannot be put into practice because the payee is not known at the stage of provision for 'interest accrued but not due' being made. It is not difficult to visualize that *Explanation* to Section. 193, which was introduced w.e.f. 1st June, 1989, was apparently to take care of a situation in which instead of crediting the account of the payee, some other proxy account was credited, to avoid the TDS liability being invoked. For example, if at the end of the accounting year, the assessee is to make a provision for interest of Rs. 10,000 payable to Mr. X, but he creates the provision by way of credit to 'interest payable account'. In such a situation 'interest payable account' is *de facto* a proxy account for Mr. X, either fully or to the extent of the amount payable to Mr. X. However, it could have been argued, in the absence of the *Explanation* to Section. 193, that since the credit is not to the account of Mr. X, the tax deduction liability cannot be invoked. The *Explanation* itself makes it clear that even when such a practice is adopted the credit will be deemed to be credit to the payee's account. In our considered view, fiction embodied in the *Explanation* is only applicable in situations in which tax deduction liability is sought to be escaped by crediting interest to some other account other than that of recipient of interest. In our considered view, *Explanation* to Section. 193 cannot be invoked in a case where the person who is to receive the interest cannot be identified at the stage at which the provision for interest accrued but not due is made. This position is also accepted by the CBDT, as evident from its letter dt. 5th July, 1996 addressed to the Tata Iron and Steel Co. Ltd. (Letter No. 275/126/96 IT (B)], which, *inter alia*, states as follows:

I am directed to refer to your letter ref. 3A 13-21/1460 dt. 23rd May, 1996, on the above subject, and to say that difference between the issue price of Rs. 5,000 and face value of Rs. 25,500 is in the nature of interest subject to provisions of Sections 193/193A. Although the company would be making provisions for interest on year to year basis in their books of account, there will be no deduction of tax at source in each such year as the payee is not known.

(Emphasis, italicised in print, supplied by us now) We agree with the merits of the stand so taken by the CDBT. The deduction of tax at source can only be effected when payee is known. As far as the situation before us is concerned, the regular return bonds being transferable on simple endorsement and delivery and the relevant registration date being a date subsequent to the closure of books of account, the assessee could not have ascertained the payees at the point of time when the provision for interest accrued but not due was made. Accordingly, no tax was required to be deducted at source in respect of the provision for interest payable made by the assessee which reflected provision for 'interest accrued but not due' in a situation where the ultimate recipient of such 'interest accrued but not due' could not have been ascertained at the point of time when the provision is made. In the present case, interest to such bondholders is to be paid as are registered with the

> assessee-company as on 15th May, 1994 but there could not have been any method of ascertaining, as at the time of making the provision for 'interest accrued but not due', *i.e.,* on 31st March, 1994, as to who will be registered bondholders as on 15th May, 1994. It is also important to bear in mind that taxes were duly deducted at source at the time of payment, *i.e.,* on 9th June, 1994 and that there is no loss of revenue as such. In the light of these discussions, we hold that the assessee did not have any liability to deduct tax at source, in respect of provision for 'interest accrued but not due', in respect of regular return bonds made on 31st March, 1994. When there was no obligation of deduct tax at source, there cannot be any question of levy of penalty or interest. The appellant, therefore, must succeed."

It can be noticed that the decision, in all these cases has been rendered on the peculiar facts of the case.

9.3 We also notice that in all these decisions, the assessee therein has established the fact that the payees are not identifiable. Hence there should not be any dispute to the proposition that the TDS mechanism will fail, if the payees are not identifiable. However, it is the responsibility of the assessee to prove that payees are not identifiable with credible reasons. Accordingly, if the assessee, in the present case, is able to prove that the payees could not be identified in respect of particular expenses, then the mechanism provided under Chapter XVII-B would fail and hence the AO is not entitled to demand tax u/s 201(1) and interest u/s 201(1A) in respect of those expenses.

10. The second practical difficulty expressed by Ld A.R is that the yearend provisions are made on estimated basis and hence there might be difference between the estimate so made and the actual payments finally made. Under these circumstances, the question that arises is how the provisions of sec.201 could be applied. In our view, the Ld A.R has raised a valid point. Since the yearend provisions are made on estimated basis, following five scenarios may emerge at the time of making actual payments in the succeeding year:-

(*a*) The actual payment made in the succeeding year is more than the provision amount.

(*b*) The actual payment made in the succeeding year is less than the provision amount.

(*c*) No payment is required to be made, since it was ascertained that there is no liability to pay the Amount. Accordingly, entire amount of provision is reversed in the succeeding year.

(*d*) Payment has not yet been made in the succeeding year, even though the liability is acknowledged. However, the TDS was deducted/paid in the succeeding year.

(*e*) Payment has not yet been made in the succeeding year, even though the liability was acknowledged. However TDS was not deducted in the succeeding year.

Under Scenario (*a*) and (*b*) above, if the assessee has deducted tax at source at the time of making payment, then the provisions of sec.201(1) will not be attracted as held by us in the preceding paragraphs. However, since there was delay in

deduction and payment of TDS amount, the assessee would be liable to pay interest u/s 201(1A) of the Act. We shall discuss the same in the ensuring paragraphs.

10.1 The first scenario is that the actual payment made is more than the amount of provision made. The TDS was deducted at the time of credit or at the time of making actual payment. Since yearend provision was made on 31-3-2012 in this case, the date on which TDS was deductible shall be 31-3-2012. The assessee shall be liable to pay interest from that date to the date of actual deduction/payment as per the provisions of sec.201(1A) of the Act on the amount of "Provision" created as on 31-3-2012. For example, the provision made as on 31-3-2012 was Rs. 1000/- and the actual payment made was Rs. 1200/-. The interest shall be payable on the provision amount of Rs. 1000/-, since the provision amount alone was claimed as deduction during the year ending 31-3-2012.

10.2 The second scenario is that the actual payment made is less than the amount of provision made. The TDS was deducted at the time of credit or at the time of making actual payment. Since yearend provision was made on 31-3-2012 in this case, the date on which TDS was deductible shall be 31-3-2012. The assessee shall be liable to pay interest from that date to the date of actual deduction/payment as per the provisions of sec.201(1A) of the Act on the amount of "actual payment" made. For example, the provision made as on 31-3-2012 was Rs. 1000/- and the actual payment made was Rs. 800/-. The assessee would be reversing the excess provision of Rs.200/- in the succeeding year. Hence the liability to deduct TDS shall arise on the amount of actual payment only. We derive support in this regard from the decision rendered by Mumbai bench of Tribunal in the case of *Industrial Development Bank of India* (*supra*), wherein it was held that "It is a sine *qua* non for a vicarious tax deduction liability that there has to be a principal tax liability in respect of the relevant income first." In this scenario, the principal tax liability upon the recipient will be on the amount of Rs. 800/- only. Accordingly, the TDS liability will also on the above said amount actually paid and consequently, the interest u/s 201(1A) shall be leviable on Rs. 800/-.

10.3 The third scenario is that no payment was required to be made in the succeeding year, since it was ascertained that there was no liability to pay the Amount. Accordingly, entire amount of provision was reversed in the succeeding year. In this scenario, there will no liability to deduct tax at source from the amount of provision created as on 31-3-2012, as it was found that the said amount is not payable at all to anyone. Hence this provision amount cannot be linked to any payee, in which case, there will not be any liability to deduct tax at source from the provision amount. Hence, in our view, the provisions of sec.201 will not be applicable in this scenario.

10.4 The fourth scenario is that the payment was not yet made in the succeeding year, even though the liability to pay was acknowledged. However, Tax was deducted at source and paid in the succeeding year. In this scenario, the interest u/s 201(1A) shall be payable as discussed in Scenario 1 above.

10.5 The fifth scenario is that the payment was not yet made in the succeeding year, even though the liability was acknowledged. TDS was also not deducted in the succeeding year. In this scenario, the assessee would be liable to pay demand

u/s 201(1) of the Act equivalent to the TDS amount deductible on the entire amount of provision. The assessee shall also be liable to pay interest u/s 201(1A) of the Act till the date of deduction/payment, which may cross the succeeding year.

10.6 We noticed earlier that the assessee has claimed to have deducted tax at source at the time of accounting of invoices/payments. Accordingly, the yearend provisions may fall under anyone of the categories discussed above. Accordingly, we restore this issue to the file of AO in order to enable him to re-compute the liability, if any, u/s 201(1) and interest u/s 201(1A) of the Act."

8.3 Respectfully, following the above decision of the co-ordinate bench of this Tribunal, we are also inclined to restore this issue to the file of the ld. DCIT(TDS), Circle-1(1), Bengaluru to re-compute the liability of the assessee company if any, u/s 201(1) and interest u/s 201(1A) of the Act in the light of the observations as made in the above decision.

9. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 23rd Feb, 2026

Sd/-	**Sd/-**
(Waseem Ahmed)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 23rd Feb, 2026.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.