आयकर अपीलीय अधिकरण,"सी" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.3962/M/14
(**निर्धारण वर्ष** / Assessment Year: 2009-10)

Asstt. Commissioner of Income Tax(TDS)2(2) R. No. 703, 7th Floor, Smt. K. G. Mittal Ayurvedic Hospital Building, Charni Road, Mumbai - 400002	**बनाम**/ Vs.	M/s. Pfizer Pharmaceuticals India Pvt. Ltd. Pfizer Centre, Patel Estate, Jogeshwari, Mumbai - 400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACP3334M		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Dhanesh Bafna & Ravi Sawana
Department by:	Shri Shiddaramappa K. Navar

सुनवाई की तारीख / Date of Hearing: 03.12.2015
घोषणा की तारीख /Date of Pronouncement: 11.03.2016
आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 04.03.2014 passed by Commissioner of Income Tax(Appeals) - 14, Mumbai [hereinafter referred to as the "learned CIT(A)"], Mumbai for the assessment year 2009-10.

2. The Revenue has taken the following grounds:-

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the amount of non/short deduction determined u/s.201 and consequential interest u/s. 201(1A) by holding that no taxes required to be deducted under respective sections on year end provision made for expenses without appreciating that the AO has determined the short/non deduction by discussing at length various issues in the order u/s. 201/201(1A).*
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> *2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in accepting the assessee's contention that the amount covered by "Provision for Expenses" were not credited to the account of any of the payee but was credited to "Provision for Expenses", therefore TDS provision were not applicable without appreciating the provisions of sub-section (2) of section 194C, explanation (iv) to section 194H, explanation (ii) to section 194I, which reads as under:-*
> *"When any income 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 credited of such income to the account of the payee and the provisions of this section shall apply accordingly."*
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> *3. On the facts and in circumstances of the case and in law, the CIT(A) has erred in deleting the short/non deduction of tax by holding that in view of the disallowance u/s. 40(a)(i)/40(a)(ia), no demand can be raised u/s. 201(1) of the IT Act.*

3. The only effective ground which has been taken by the revenue is in connection with the deletion of amount of non/short deduction determined u/s. 201 of the Income Tax Act, 1961(in short "the Act") and consequential interest u/s. 201(1A). The

Assessing Officer passed the order u/s. 201 r.w. section 40(a)(i) of the Act by holding that the assessee company failed to comply with the TDS provisions as per the Income Tax Act and accordingly an amount of Rs.1,04,54,648/- was disallowed u/s. 40(a)(ia) of the Act and arrived at this conclusion that the assessee was under obligation to pay the tax u/s. 201(1) of the Act to the tune of Rs.23,69,023/- and interest u/s. 201(1A) to the tune of Rs.5,68,565/-. Feeling aggrieved the assessee filed the appeal before the learned CIT(A) and the appeals was allowed and deleted the said demand therefore the revenue has filed the present appeal before us.

4. We have heard the arguments advanced by the learned representative of the parties and perused the record carefully. The learned representative of the department has argued that the learned CIT(A) has wrongly deleted the demand to the tune of Rs.29,37,588/-, therefore, in the said circumstances the order dated 04.03.2014 in question is wrong against law and facts and is liable to be set aside. However, on the other hand learned representative of the assessee has refuted the said contentions. Keeping in view of the argument advanced by the learned representative of the parties, it is observed that the assessee made provision of expenditure without specific entries during current year. Thereafter, the same was return back u/s. 40(a)(ia) of the Act in the next year and the TDS provision was followed in the next year. Only in the current year assessee invoke the provision made u/s.

40(a)(ia) of the Act. Assessing Officer raised the demand on tax by default in tax liability and levied penalty u/s. u/s. 201/201A respectively. The learned CIT(A) deleted the said demand on the basis of decision passed by the ITAT Mumbai Bench 'C' in case Pfizer Ltd. Vs. Income Tax Officer (TDS)(OSD) Range – 2 dated 31.10.2012 for A.Y.2007-08 in assessee's own case. The judgment was passed on the basis of the law settled in BDA Ltd. Vs. ITO (TDS) [2006] 281 ITR 99/153 taxman 386 (Bom) and CIT Vs. Glenmark Pharmaceuticals Ltd. [2010] 324 ITR 199/191 taxman 455 (Bom.). In view of the said circumstances we are of the opinion that there is need to differ with the order passed by the Mumbai bench in assessee's own case for the A.Y.2007-08 [2013] 55 SOT 277(Mumbai) and Glenmark Pharmaceuticals Ltd. [2010] 324 ITR 199/191 taxman 455 (Bom.). In view of the effective finding of order dated 31.10.2012 for A.Y.2007-08 in assessee's own case is hereby reproduced below:-

> 3.3 "In view of the above decision of Co-ordinate Bench, since the payee is not identifiable in this case also at the time of making provision, no TDS need to be made on the above amount. Further, the entire provision has been written back in the next year and the actual amounts paid/credited were subjected to TDS as per the detailed statements filed before the authorities on which there is no dispute. Therefore,

assessee is following the provisions of TDS as and when amounts are paid/credited to respective parties.

As already explained and evidenced from the computation of income as well as the orders of the A.O. in the assessment proceedings, the entire provision has been disallowed u/s.40(a)(ia) and section 40(a)(i). Once the amount has been disallowed under the provisions of section 40(a)(i) on the reason that tax has not been deducted, it is surprising that AO holds that the said amounts are subject to TDS provisions again so as to demand the tax under the provisions of section 201 and also levy interest u/s.201(1A). We are unable to understand the logic of A.O. in considering the same as covered by the provisions of section 194C to 194J. Assessee as stated has already disallowed the entire amount in the computation of income as no TDS has been made. Once an amount was disallowed u/s.40(a)(ia) on the basis of the audit report of the Chartered Accountant, the same amount con not be subject to the provisions of TDS u/s.201(1) on the reason that assessee should have deducted the tax. If the order of A.O. were to be accepted then disallowance u/s. 40(a)(i) and 40(a)(ia) cannot be made and provisions to that extent may become otiose. In view of the actual disallowance

u/s.40(a)(i) by assessee having been accepted by A.O. we are of the opinion that 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 u/s.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) in the computation of income on the reason that TDS was not made. For this reason, alone assessee's grounds cannot be allowed. Considering the facts and reason stated above, assessee's grounds are allowed.

3.4 Adverting to the facts in the instant case, it is noticed that company has deducted tax at the time of credit or payment to parties and paid to Central Government. The A.O. is directed to examine whether the provision so made are written back in the next year and the actual amount credited/paid is subject to TDS. The appellant is directed to furnish all relevant details of A.O. Thereafter, the A.O. to re-compute/delete the demand raised u/s.201(1)/201(1A)."

Therefore, in the said circumstances the appeal of the revenue is dismissed.

4. In the result, **appeal of the Revenue is dismissed.**

Order pronounced in the open court on 11th March, 2016.

Sd/-	Sd/-
(D.KARUNAKARA RAO)	(AMARJIT SINGH)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 11th March, 2016

MP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**