

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

1. आयकरअपील सं./ I.T.A. No.5895/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2008-09)

Mobile Trading & Investment Pvt. Ltd. 141, Mittal Tower, C-Wing Nariman Point, Mumbai-400 021	बनाम/ Vs.	ACIT CPC-TDS Aaykar Bhavan, Sector-3, Vaishali, Ghaziabad(UP) Pin 201010
स्थायीलेखासं ./जीआइआरसं ./PAN/TAN AACCM-1419-N / MUMM-27615-A		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Dinkle Haria, Ld. AR
Revenue by	:	Shri Bharat Andhale, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	01/06/2021
घोषणा की तारीख / Date of Pronouncement	:	26/07/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year (AY) 2008-09 arises out of the order of learned Commissioner of Income-Tax (Appeals)-59, Mumbai [CIT(A)], Appeal No. CIT(A)59/IT-133/ITO(TDS)-1(3)(4)/2015-16 dated 30/06/2017 on following grounds of appeal: -

1. NATURAL JUSTICE:

1.1 In the facts and the circumstances of the case, and in law, Commissioner of Income-tax Appeals - 59, Mumbai, ["The CIT(A)"] be held as held as bad and illegal, as the same is framed in breach of the principals of natural justice.

2. WITHOUT PREJUDICE TO THE ABOVE:

2.1 The Commissioner of Income - tax (Appeals) -59, Mumbai ["Id. CIT(A)"] erred in confirming, action of the A.O. in making addition on account of Short Deduction of TDS amounting to Rs.91,770/- at Serial No. (2) of the Intimation u/s. 200A dated 07.10.2015.

2.2 It is submitted that, in the facts and the circumstances of the case, and in law, no such addition was called for.

2.3 Without prejudice to the above, in the facts and the circumstances of the case, and in law, the computation of the same is not in accordance with the law, is arbitrary and excessive.

3.1 The Ld. CIT (A) erred in confirming, action of the A.O. in levying Interest u/s. 201(1A) of the Act, 1961 for late payment of tax deducted at source amounting to Rs.1,18,754/- at Serial No. 3(b) of the Intimation as stated above.

3.2 It is submitted that, in the facts and the circumstances of the case, and in law, no such confirmation was called for.

3.3 Without prejudice to the above, in the facts and the circumstances of the case, and in law, the calculation of the Interest is not in accordance with the law, is arbitrary and excessive.

4.1 The Ld. CIT (A) erred in setting aside to the A.O., the issue of levying Interest u/s. 201(1A) of the Act, 1961 for short deduction of tax at source amounting to Rs.93,432/- at Serial No. 4(a) of the Intimation as stated above.

4.2 While doing so the CIT(A) erred in observing that, "interest u/s. 201(1A) of the Act, 1961 is to be recomputed, the period for which will commence from the date on which tax was first deductible by the appellant deductor and conclude on the date of filing of the relevant return of income by the recipient deductees".

4.3 It is submitted that, in the facts and the circumstances of the case, and in law, no such action was called for.

4.4 Without prejudice to the above, in the facts and the circumstances of the case, and in law, the calculation of the interest is not in accordance with the law, is arbitrary and excessive.

5.1 The Ld. CIT (A) erred in setting aside to the A.O., the issue of levying Interest u/s. 201(1A) of the Act, 1961 on Late Deduction/ Collection amounting to Rs.1,18,754/- at Serial No. 4(b) of the Intimation as stated above.

5.2 While doing so the CIT(A) erred in observing that, "interest u/s. 201(1A) of the Act, 1961 is to be recomputed, the period for which will commence from the date on which tax was first deductible by the appellant deductor and conclude on the date of filing of the relevant return of income by the recipient deductees.

5.3 It is submitted that, in the facts and the circumstances of the case, and in law, no such action was called for.

5.4 Without prejudice to the above, in the facts and the circumstances of the case, and in law, the calculation of Interest is not in accordance with the law, is arbitrary and excessive.

1.2 The registry has noted a delay of 3 day in the appeal which we are inclined to condone keeping in view the length of delay.

1.3 Having heard rival submissions and after due consideration of material on record, our adjudication to the appeal would be as given in succeeding paragraphs.

1.4 The relevant facts are that the assessee received an intimation u/s 200A dated 07/10/2015 from TDS, CPC, Ghaziabad in respect of quarterly TDS return in Form No.26Q as filed by the assessee for Q-1 of AY 2008-09. An aggregate demand of Rs.4,22,710/- was raised in the intimation which include following components: -

No.	Nature	Serial no.	Amount (Rs.)
1.	Short Deduction of Tax	2	Rs.91,770/-
2.	Interest on Late Payment	3(b)	Rs.1,18,754/-
3.	Interest on Short Deduction / collection	4(a)	Rs.93,432/-
4.	Interest on late deduction /collection	4(b)	Rs.1,18,754/-
	Total		4,22,710/-

The default of short deduction arises from the fact that the assessee paid certain sum to two entities and deducted tax at source @5.61% as against correct rate of 5.665%. The interest component is consequential in nature.

1.5 The assessee assailed the interest demand listed at serial nos. 4(a) & 4(b) before Ld. CIT(A) wherein the assessee, inter-alia, relied on the decision of Hon'ble Apex Court in **Hindustan Coca Cola Beverages Pvt. Ltd. (293 ITR 226)** for the submission that since the recipients paid full taxes by way of advance tax or self-assessment tax, department could not recover the same from deductor on same income by treating the assessee as assessee-in-default. The assessee submitted that the two payees paid advance taxes by March, 2008 and the tax was fully

paid by September, 2008. In the said background, the assessee asserted that no interest was to be charged u/s 201(1A) of the Act or alternatively, the interest should be charged till the date of payment of taxes by the recipients in the year 2008.

1.6 The Ld. CIT(A) concurred that benefit would be available to the assessee. The cited decision held that interest u/s 201(1A) shall continue till the date of tax payment by the payees. However, the period shall commence from the date on which the tax was first deductible and conclude on the date of filing of return of income by the two payees. In other words, the terminating date shall not be the date of payment of advance tax or self-assessment tax as canvassed by the assessee, The Panaji Tribunal in **State Bank of Mysore V./s ITO (ITA Nos.207-210/Pan/2016 dated 13/02/2017)**, held that interest u/s 201(1A) was to be computed for the period from the date from which tax was deductible to that date of filing of return of income by the deductee. This is because once any amount is liable for TDS then no interest is charged from deductee in respect of such income. Therefore, till such income is disclosed by the deductee in its return, the liability of tax rests on the deductor. Once the deductee files the return of income by including such income, taxes on the basis of such return has to be paid and the credit of taxes goes to the payee. Similar was the decision of Mumbai Tribunal in **Maharashtra Pollution Control Board V/s ITO (ITA No.902/Mum/2014 dated 25/08/2016)**. Even otherwise, the said view was in accordance with the statutory provisions of Sec 201(1A) of the Act. Finally, TDS officer and the assessee was directed to follow the procedure / documents as prescribed and provided in the first proviso to Section

201(1) & 201(1A) read with Rule 31ACB along with notification no.11/2016 dated 02/12/2016 of the CBDT. The assessee was directed to file afresh the requisite details / documents to show the fulfilment of requirements of proviso to Sec.201(1) and allow relief only with respect to impugned interest payable u/s 201(1A) of the Act. Aggrieved, the assessee is in further appeal before us.

2. We find that as per the provisions of Sec.201(1), where the assessee, inter-alia, fails to deduct whole or any part of the tax then such persons shall be deemed to be an assessee-in-default. However, as per the first proviso, the assessee shall not be deemed to be assessee-in-default in respect of such tax if the payee has furnished his return of income u/s 139 and has taken into account such payment for computing income and has paid tax due on income declared by him in such return of income. For the same, the payee is required to furnish a prescribed certificate to that effect. Thus, if the assessee could demonstrate the fulfilment of all these requirements, he could not be treated as assessee-in-default. To get the benefit of the proviso, the assessee is directed to demonstrate the fulfillment of these requirements before Ld. TDS officer who shall consider the same. If the same are found in order, the assessee could not be treated as assessee-in-default and the demand raised for short deduction of TDS shall stand deleted. We order so. The ground thus raised stands allowed for statistical purposes.

3. The computation of interest is governed by the provisions of Sec.201(1A). As per clause (i), The assessee is liable to pay simple interest on short payment of tax from the date on which tax was deductible to the date on which tax was deducted. Clause (ii) provides

for interest on the amount of such tax from the date on which the tax was deducted to the date on which the tax was actually paid.

However, it has been provided that in case the assessee is not treated as assessee-in-default in terms of first proviso to sub-section (1) then interest under clause (i) shall be payable from the date on which tax was deductible to the date of furnishing of return of income by the payee.

Therefore, the statutory provisions are quite clear. The payment of interest shall be mandatory and the period shall run from the date on which tax was payable to the date of furnishing of return of income by the payee. We order so.

To summarize, payment of interest is mandatory but the same may be re-computed at correct rates after ascertaining the fact that whether the assessee could be treated as assessee-in -default or not. The grounds, thus raised, stand partly allowed for statistical purposes.

4. The appeal stands partly allowed for statistical purposes.

Order pronounced on 26th July 2021.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 26.07.2021
PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

ITA No. 5895/Mum/2017
M/s Mobile Trading & Investment Pvt. Ltd.
Assessment Year: 2008-09

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.