

IN THE INCOME TAX APPELLATE TRIBUNAL
‘C’ BENCH : BANGALORE
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2865 & 2866/Bang/2018
Assessment Year : 2013-14 & 2014-15

Biocon Ltd., 20 th KM, Hosur Road, Electronic City, Bengaluru-560 100.	Vs.	The Income-Tax Officer (TDS), LTU, Bengaluru.
PAN – AAACB 7416 R		
APPELLANT		RESPONDENT

Revenue by	:	Smt. R Premi, JCIT
Assessee by	:	Shri P.C Khincha, C.A

Date of Hearing	:	06-04-2021
Date of Pronouncement	:	14-06-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals have been filed by assessee against order dated 10/08/2018 passed by the Ld.CIT(A)-3, Bangalore for assessment year 2013-14 on following grounds of appeal:

“The grounds mentioned herein below are independent and without prejudice to the other grounds preferred by the Appellant.

- 1. That on facts and circumstances of the case and in law, the order passed by the Learned Commissioner of Income-tax Appeals [“CIT(A)"] to the extent prejudicial to the Appellant, is bad in law and facts and liable to be quashed.*
- 2. That on facts and circumstances of the case, the Learned CIT (A) erred in upholding the action of the Learned Assessing officer ("the Learned AO") that*

tax ought to have been deducted at source in respect of year- end provisions debited to the profit and loss account.

3. That on the facts and circumstances of the case, the Learned CIT(A) erred in disregarding the submission of the Appellant that the year-end provisions are made based on fair estimates in the light of applicable accounting standards and generally accepted accounting principles and the same is an estimated liability subject to adjustments based on production of vendor invoices.

4. That on the facts and circumstances of the case, the Learned CIT(A) erred in disregarding the submission of the Appellant that such year-end provisions were reversed in the immediately subsequent month by crediting the profit and loss account and therefore income does not accrue in the hands of payee.

5. That on the facts and circumstance of the case, the Learned CIT(A) erred in disregarding the submission of the Appellant that upon crystallisation of liability, the amounts paid or credited to the payee were recorded as liabilities due to the respective parties at which point in time taxes were deducted at source.

6. That on the facts and circumstances of the case, the Learned CIT(A) erred in not accepting the Appellant's contention that the obligation to deduct taxes at source would have to be determined as per the relevant withholding tax provisions under Chapter XVJI-B of the Act. Merely because an amount is disallowed under section 40(a)(i)/ (ia) of the Act, the same cannot be subject to levy of interest under section 201(1A) of the Act.

7. Without prejudice to the above ground, the Learned CIT(A) erred in not appreciating the fact that the amount suo moto disallowed by the Appellant under section 40(a)(ia) of the Act should not be further subjected to the provisions of section 201 of the Act in the hands of the deductor.

8. That on the facts and circumstances of the case, the Learned CIT(A) erred in upholding the action of the Learned AO on levy of interest under section 201(1A) of the Act.

The assessee craves leave to add, alter, vary, omit, substitute or amend the above grounds, at any time before or at the time of hearing. Each of the above grounds is independent and without prejudice to the other grounds preferred by the assessee.”

2. Brief facts of the case are as under:

The assessee is a private limited company engaged in the manufacture and sale/licensing of active pharmaceutical ingredients and trading of certain pharma formations.

3. The Ld.ACIT, TDS Circle 3(1) initiated proceedings under section 201(1) of the Act, requiring assessee to show cause as to

why, it should not be treated as “assessee in default” for non-deduction of tax at source under the Act, for disallowance made under section 40(a)(ia) of the Act.

4. Assessee in response filed reply to the show cause notice wherein it was submitted that it has created year-end provision for expenses amounting to Rs.21,98,26,517/- The assessee voluntarily disallowed the said sum under section 40(a)(ia) of the Act, on account of non-deduction of TDS and that the provision created was not credited to any parties or individuals account, since quantum of payment to the parties was not determinable as on the year-end. Further assessee had not deducted tax at source/short deduction on a sum of Rs.20,70,756/-. It was thus submitted that, there is a reasonable cause to believe that tax should not be deducted at source on the year-end provision.

5. The Ld.AO accordingly called on assessee to confront on the issues of non deduction of TDS. The assessee submitted that the tax was deducted in the subsequent assessment years and furnished details of the same. The Ld.AO accordingly levied interest u/s 201(1A) for delay in remittance of TDS by assessee.

6. Aggrieved by the order passed by the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

7. Before Ld.CIT(A) assessee contended that these were end provisions that were reserved in subsequent financial year and based on invoices raised by the vendors were accounted in the books of account after deducting TDS. The assessee submitted that assessee has disallowed the said amount u/s 40(a)(ia)

during the relevant period. It was also submitted that, such was a consistent approach followed by assessee from year to year basis. Assessee in support relied on the decision of *Hon'able Supreme Court* in case of *CIT vs Eli Lilly & Co. (India) (P.) Ltd.* reported in (2009) 178 taxman 505.

8. The Ld. CIT (A) after considering various decisions relied by the assessee decided the issue as under:

"In view of the aforementioned arguments, judicial precedents and given that:

- *the Company has suo moto disallowed the amount under section 40(a)(ia) in the return of income;*
- *the Company has also deducted and paid TDS in the next year; and*
- *The Company has also paid the interest under section 201(1A) of the Act demonstrates that the Company did not have any malafide intention and it has reasonable cause for non-deduction of tax. Hence, the Appellant submits that the levy of penalty under Section 271C is erroneous in law and liable to be dropped.*

10. *The submissions of Appellant has been considered. It is mainly emphasized that:*

At the time provision was created in the books of account, the issue of deduction of taxes at source was not a settled issue. As submitted by the appellant, the provisions created with respect to dealers commission are to be paid to the dealers on the sales effected by them. Such commission is payable to the dealers as a percentage of sale only on actual realization of sale proceeds. Similarly with respect to provisions for payments to contractors on which TDS was required to be deducted, wherein the provisions are created on the basis of agreements entered into with the contractors where gross amount payable to the vendor is not fixed. Also, it would be pertinent to note that various tribunals and courts have divergent views on this issue, as can be seen from the above discussion and this fact in itself is a reasonable cause for the Appellant for non-deduction of tax on yearend provisions.

The Appellant also states that it has suo moto disallowed the amount under section 40(a)(ia) in the return of income. Further, it has also deducted and paid TDS in the next year and has also paid the interest under section 201(1A) of the Act and it demonstrates that the Appellant did not have any malafide intention and it has reasonable cause for non-deduction of tax. The Appellant has relied on its own case i.e. Wipro GE Medical Systems Ltd. (supra) where the Bangalore ITAT has allowed relief to the Appellant where the amount of tax was already paid to the department and the interest under section 201(1A) of the Act for the period of non-deduction was also paid. Hence, there was no amount due to the government under section 201(1) of the Act and also there as reasonable cause for non-deduction of tax at source at the time of creating of provision.

9. Further the Ld.Counsel placed reliance on decision of Hon'ble Karnataka High Court in case of *Karnataka Power Transmission Corporation Ltd. vs DCIT* reported in (2016) 383 ITR 59, wherein it has been held that the for purpose of deducting tax at source the income which finally partakes character alone is allowable for deduction under the Act. If the amount is not considered to be income in the hands of the deductee, the provision of tax deducted at source would not be made applicable.

10. In the present facts of the case, the provision created at the end of the accounting year has not been credited to the relevant parties to whom the payments has to be made for the reason that it was unquantifiable. Further, assessee has *suo moto* disallowed the said sum under section 40(a)(ia) for non-deduction of TDS. Therefore there is a sufficient and reasonable cause for not deducting TDS on the year-end provision. It is also observed that

assessee consistently follows this kind of accounting system for year-end provisions which is subsequently reversed in the subsequent year in the month of April, as and when the bills are received, and the payment is made to the payee by deducting TDS. Further, admittedly, assessee has paid interest under section 201(1A) which further demonstrates there was no malafide intention. We also note that under similar circumstances in assessee's own case reported in (2005) 3 SOT 627, coordinate bench of this *Tribunal* on similar facts deleted penalty as it was unsustainable. Further the decisions relied by the Ld.Sr.DR are distinguishable on facts, and therefore not applicable to the present facts of the case. Based on the above observations we do not find any infirmity in the view taken by the Ld.CIT(A) to delete the penalty levied under section 271C read with 273B of the Act due to existence of reasonable cause for non-deduction of TDS, and therefore, assessee cannot be held to be "assessee in default".

11. Accordingly, grounds raised by assessee stands dismissed.

12. In the result appeal filed by assessee stands dismissed.

Order pronounced in the open court on 14th June, 2021

Sd/-
(CHANDRA POOJARI)
Accountant Member
Bangalore,
Dated, the 14th June, 2021.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order
Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-6-2021		Sr.PS
3.	Draft proposed & placed before the second member	-6-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-6-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-6-2021		Sr.PS/PS
6.	Kept for pronouncement on	-6-2021		Sr.PS
7.	Date of uploading the order on Website	-6-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-6-2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS