आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
'' SMC'' BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No. 532/AHD/2022**

निर्धारण वर्ष/Asstt. Year: 2014-2015

Mrudulagauri Jaysukhlal Bhalodia, Ajanta Transistor Clock Mfg. Co. Orpat Industrial Estate, Rajkot Morbi Highway-363641. **PAN: AJKPB2322F**	Vs.	Income tax Officer, TDS Ward-2, Ahmedabad.
(Applicant)		**(Respondent)**

Assessee by :	Shri Vimal Desai, A.R
Revenue by :	Shri R.R Makwana, Sr.D.R

सुनवाई की तारीख/**Date of Hearing : 24/04/2023**
घोषणा की तारीख /**Date of Pronouncement: 19/05/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned DRP-2, dated 24/01/2022 Mumbai, arising in the matter of assessment order passed under s. 201 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-2015.

2. The assessee has raised following grounds of appeal:

1 The order u/s. 201(1)/ 201(1A) is bad in law.

2 The learned A.O. has erred in law as well as on facts in treating the appellant as an assessee in default to the extent of TDS of Rs. 4,50,000/- u/s. 201(1) and the learned CIT(A) has erred in confirming it.

3 The learned CIT(A) has erred in law as well as on facts in treating appellant as assessee in default in respect of 2 sellers, without appreciating the fact that deductees have already paid the tax due on such reciepts alongwith applicable interest.

4 The learned CIT(A) has erred in law as well as on facts in appreciating that the obligation to deduct tax at source did not arise in respect of 18 sellers as their respective/individual share of consideration does not exceed the threshold of Rs. 50 lacs as specified u/s. 194IA of the Act.

5 The learned A.O. has erred in law as well as on facts in charging interest under section 201(1A) of the Income-tax Act, 1961 and the learned CIT(A) has erred in confirming it.

3. The only interconnected issue raised by the assessee is that the Ld.CIT(A), erred in confirming the order of the AO by treating himself (the assessee) as the assessee in default and raised the demand of Rs. 4,50,000/- and Rs. 4,09,500/- under the provisions of section 201(1) and 201(1)A of the Act.

4. The facts in brief are that the assessee in the present case is an individual and deriving income from the partnership firm and income from other sources. The assessee in the year under consideration has purchased property of Rs. 4,50,00,000/- from twenty co-owners. The necessary list of co-owners who sold the property to the assessee is placed on pages 5 to 7 of the Ld. CIT(A) order.

4.1 The AO during the assessment proceedings found that the assessee was under the obligation to deduct TDS @ 1% under the provision of section 194-IA of the Act but he failed to do so. Accordingly, the AO treated the assessee in default and raised the demand for Rs. 4.50 lacs and 4,09,500 aggregating to Rs. 8,59,500.00 on account of TDS and the interest thereon under the provision of section 201(1)/201(1A) of the Act

5. Aggrieved assessee preferred an appeal to the Ld.CIT(A).

6. The assessee before the Ld.CIT(A) submitted that the assessee is liable to deduct TDS on the purchase of property if the purchase consideration of such property exceeds Rs. 50 lacs only. However, in the given case there were 18 co-owners who sold the property to the assessee where the consideration was below their whole limit of Rs.50 lacs and therefore assessee with respect to such purchase of land from 18 co-owners cannot be treated as assessee in default for the purpose of provision of section 201(1) and 201(1A) of the Act.

6.1 The assessee for the balance two parties submitted that the purchase consideration exceeds Rs. 50 lacs and therefore he is liable to deduct TDS under the provision of section 194 IA of the Act. However, both the parties have paid due taxes and therefore, the assessee cannot be treated as the assessee in default under the proviso to section 201(1) of the Act. Accordingly, no demand along with the interest can be raised upon the assessee for non-deduction of TDS.

7. However, the Ld. CIT(A) found that for getting the immunity from the deduction of TDS under the provision of section 194IA of the Act, the payees are liable to disclose income in their respective return of income and pay the due taxes thereon. However, both the payees had not filed the return of income but only has paid due taxes. Thus, according to the Ld.CIT(A) in the absence of disclosure of the amount received from the payer in the return of income, the conditions as provided under the provision of section 201(1) of the Act, has not been complied with. Accordingly, the Ld. CIT(A) disregarded the contention of the assessee.

8. Being aggrieved by the order the Ld. CIT(A), the assessee is in appeal before me.

9. The Ld. AR before me filed a paper book running from pages 1 to 237 and reiterated the submissions made before the Ld.CIT(A).

10. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

11. I have heard the rival contention of both the parties and perused the materials available on record. From the preceding discussion, I find that the assessee has purchased a property worth of Rs. 4.50 crores from 20 co-owners as per the details available in the order of the Ld.CIT(A). Out of the 20 co-owners the payment made by the assessee to the 18 co-owners for the purchase of the property is less than Rs. 50 lacs as prescribed under the provisions of section 194 IA of the Act. Hence, the assessee cannot be treated as assessee in default with respect to 18 parties. Admittedly, for the remaining 2 parties the taxes has been made by the transferor of the land on the amount received from the assessee but such receipt has not been disclosed in the income tax return. As such the vendor/transferor filed their income tax return u/s 139(1) of the Act, without considering/ including the receipt of money from the assessee but such 2 parties on a later date have paid taxes on the amount received from the assessee without disclosing the receipt in the return of income. On perusal of provision of section 201(1) of the Act, it reveals that the purpose for raising the demand on account of non deduction of TDS was that the tax has to be deducted by the payers on the income received by the payees and credit thereof has to be given on such tax payment to such payees. In the given case, admittedly the tax has been paid but without filing the return of income. Thus, what I notice that the transferor of the land (remaining 2 parties) has made substantial compliance by making payment of tax and the revenue is not aggrieved for that. Thus, if any demand is raised in the hands of the assessee on account of non deduction of TDS, it will lead to double payment of tax which is not desirable under the provision of law. Accordingly I hold that the assessee cannot be treated as the assessee in default and no demand can be raised under the provision of section 201(1) of the Act.

11.1 Regarding the element of interest under the provisions of section 201(1A) of the Act, the Ld. AR agreed that the same can be charged as per the provision of law. After considering the fact that the payment of tax has been paid by the payees, accordingly I am inclined to delete the demand raised by the revenue under the provision of 201(1) of the Act, subject to the direction of charging interest u/s 201(1A) of the Act as per the provision of law. Hence, the ground of appeal of the assessee is partly allowed.

12. In the result, the appeal filed by the assessee is **partly allowed.**

Order pronounced in the Court on 19/05/2023 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 19/05/2023
Manish