

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ)
and Shri A.T. Varkey, Judicial Member**

**I.T.A. Nos. 1481, 1482 & 1483/KOL/2018
Assessment Years: 1993-1994, 1998-1999 & 1999-2000**

***Steel Authority of India Limited,.....Appellant
Ispat Bhawan, Main Gate,
Durgapur-713 203***

-Vs.-

***Deputy Commissioner of Income Tax (TDS),.....Respondent
Circle-4, Durgapur,
Aayakar Bhawan, City Centre,
Durgapur-713 216***

Appearances by:

Shri S.K. Tulsiyan, Advocate, for the Appellant

Shri Christopher Jerome Singh, JCIT, Sr. D.R., for the Respondent

Date of concluding the hearing : December 05, 2018

Date of pronouncing the order : January 25, 2019

O R D E R

Per Shri P.M. Jagtap, Vice-President (KZ):-

These three appeals filed by the assessee are directed against the common order of Id. Commissioner of Income Tax (Appeals), Siliguri dated 05.06.2018 for assessment years 1993-94, 1998-99 and 1999-2000 whereby he upheld the common order passed by the Assessing Officer under section 250/201(1)/201(1A) of the Act raising a total demand of Rs.6,55,20,378/- against the assessee on account of interest payable under section 201(1A) and 220(2) of the Income Tax Act, 1961.

2. The assessee in the present case is a Public Sector Undertaking. It had deposited TDS on estimated basis for the eleven financial years from 1988-89 to 1998-99 while utilizing the funds meant for modernisation

section. On finalisation of the bills received from the contractors, the assessee-company determined the actual liability of TDS and claimed that there being excess deposit of TDS of Rs.3.2 crores for the relevant eleven financial years taken together, a refund to that extent was due to it. The details prepared and furnished by the assessee in this regard revealed that there was excess deposit of TDS by the assessee for the financial years 1990-91, 1991-92, 1993-94, 1994-95, 1995-96, 1996-97 while there was short deposit of TDS for the financial years 1989-90, 1992-93, 1997-98 and 1998-99. Keeping in view these details, the Assessing Officer originally passed the order under section 201(1)/201(1A) for only five financial years, i.e. 1988-89, 1989-90, 1992-93, 1997-98 and 1998-99, wherein there was a short-fall in payment of TDS and after charging interest under section 201(1A) for such short-fall, a total demand of Rs.14.10 crores was raised by him against the assessee. On appeal by the assessee, the said order passed by the Assessing Officer under section 201(1)/201(1A) was set aside by the Id. CIT(Appeals), Durgapur vide an order dated 12.03.2014 with a direction to the Assessing Officer to consider the case of the assessee on merit in respect of all the relevant eleven financial years and allow appropriate relief. Accordingly fresh proceedings were initiated by the Assessing Officer and from the details and documents furnished by the assessee, the following re-casted statement showing year-wise TDS liability and corresponding deposits was drawn by the Assessing Officer:-

F.Y.	Arrear liability/Current liability of immediate previous year	Certificate issued during the FY	Out of issued certificate current liability booked as per figure appeared in the immediately succeeding FY	Deposit actually made during the year as per statement	Actual deposit had to be made during the FY under consideration	Excess deposit/short deposit against the FY marked as (+)/(-)
1988-89	0	19652504	17902323	1750181	1750181	-
1989-90	17902323	33279432	3776995	48145666	47404760	(+)740906
1990-91	3776995	25193940	16634033	33974528	12336902	(+)21637626
1991-92	16634033	54215278	33523589	55072265	37325722	(+)17746543
1992-93	33523589	77396437	37011225	58327954	73908801	(-)15580847

1993-94	37011225	20267736	26570942	39045863	30708019	(+)8337844
1994-95	26570942	10044956	13454150	26570942	23161748	(+)3409194
1995-96	13454150	8692223	24579843	13454150	0	(+)13454150
1996-97	24579843	8463253	0	24579843	33043096	(-)8463253
1997-98	0	1800256	0	0	1800256	(-)1800256
1998-99	0	11114234	0	1271882	11114234	(-)9842352
Net result (excluding interest u/2 201(1)/201(1A) etc for failure to deduct tax and for failure to deposit tax even on deduction)						(+)29639555 which may be treated as refundable TDS amount without adjusting applicable interest.

3. On the basis of the above re-casted statement, the Assessing Officer found that there was a short-fall in deposits of TDS by the assessee for assessment years 1992-93, 1996-97, 1997-98 and 1998-99. He accordingly worked out the interest payable by the assessee under section 201(1A) for the said four years on the short-fall of TDS payment aggregating to Rs.7,21,85,256/- and after adjusting the overall excess payment of TDS amounting to Rs.2,96,39,555/-, he worked out the amount payable by the assessee for financial years 1992-93, 1997-98 and 1998-99 at Rs.1,16,03,337/-, Rs.48,60,132/- and Rs.2,60,82,232/- respectively. He also charged interest under section 220(2) of the Act for financial years 1992-93, 1997-98 and 1998-99 at Rs.62,65,801/-, Rs.26,44,471/- and Rs.1,40,84,405/- respectively and raised a total demand of Rs.6,55,20,378/- against the assessee vide an order dated 16.01.2017 passed under section 250/201(1)/201(1A) of the Act.

4. Against the order passed by the Assessing Officer under section 250/201(1)/201(1A) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) and since the submissions made on behalf of the assessee disputing the levy of interest under section 201(1A) and 220(2) were not found acceptable by him, the Id. CIT(Appeals) upheld the order passed by the Assessing Officer under section 250/201(1)/201(1A) of the Act. Aggrieved by the order of the Id. CIT(Appeals), the assessee

has filed these appeals before the Tribunal on the following common grounds:-

“(1) That, the Ld. C.I.T.(A) wrongly assumed the facts narrated by the A.O. in his appeal effect order dated 16-01-2017 as correct facts without considering the full and complete facts of the case in upholding the order of the A.O. raising an uncalled for and erroneous demand of Rs.6,55,20,378/- u/ss 201(1), 201(1A) and 220(2) of the Act in respect of FYs 1992-93, 1997-98 and 1998-99.

2. That, the Ld. C.LT.(A) further erred in having held that the A.O. on examination of the appellant's contentions passed appropriate appeal effect order when as per A.O's admission, the order was passed without going through the vivid details filed by the appellant and that being so, the erroneous demand of Rs.6,55,20,378/- sustained by the Ld. C.I.T.(A) is liable to be quashed.

3. That, the Ld. C.I.T.(A) erred in having completely ignored the comparative statement for FYs 1988-89 to 1998-99 drawn as per accounting entries duly audited by the statutory auditors and CAG and hence his action in confirming the erroneous TDS liability in the guise of assessee-in-default being without any valid reason and illegal is liable to be quashed.

4. That, the Ld. C.I.T.(A) acted capriciously and unlawfully in having passed the impugned order inasmuch as on the date of hearing fixed on 05.06.2018, the appellate order dated 05.06.2018 was duly handed over to the A.R. of the appellant, who was present for hearing, without conducting any lawful judicial exercise.

5. That, the Ld. C.I.T.(A) further erred in having assumed that the appellant did not have any dispute with the working of quantum of surplus/deficit of TDS worked out by the A.O. as per Table-A admittedly made with incomplete/partial details, in spite of the fact that by challenging such wrongful working the appellant vide written submission dated 03.08.2017 gave a comparative chart drawn from records showing excess deposit of TDS by Rs.3,20,73,023/-.

6. That, the Ld. C.I.T.(A) went wrong in having alleged that the appellant has not pressed for Rs.24,33,470/- pertaining to FY 1995-96 when objection against such alleged shortfall was raised before him vide paras 1 & 3 of the written submission dated 20.03.2008 and hence the order passed confirming the order of the A.O. on incorrect assumption of facts is liable to be quashed.

7. That, the Ld. C.I.T.(A) further erred in having held that the demand created vide appeal effect order dated 16.01.2017 was not time barred as in terms of sec.201(3) of the Act, bar to limitation pertains to sec.201(1) and not applicable to sec.201(1A) of the Act in spite of the fact that if TDS demand u/s.201(1) is time barred in view of sec.201(3), then the issue of consequential interest u/s.201(1A) is automatically time barred.

8. That, the Ld. C.I.T.(A) misinterpreted the direction of earlier C.I.T.(A)'s order dated 12.03.2014 in holding that the A.O. has appropriately passed appeal effect order on de novo basis in spite of the fact that Ld. C.IT.(A) on the basis of details submitted before him held the claim of refund of excess deposit of TDS over actual liability justified and allowed all the appeals with a direction to verify those details and hence the impugned order confirming erroneous demand being bad in law is liable to be quashed”.

5. The ld. Counsel for the assessee submitted that the assessee in the present case is a Government of India Undertaking, which undertook modernisation work involving a total cost of about Rs.5,000 crores. He submitted that during the period of modernisation from financial years 1988-89 to 1998-99, various types of jobs were carried out by several contractors and sub-contractors. He submitted that the amount payable towards such jobs during the running of the project was being ascertained on estimated basis in the absence of receipt of proper bills from the concerned contractors and sub-contractors. He submitted that the TDS accordingly was made and deposited on adhoc basis on the basis of estimated liability towards contractors which resulted in excess and short payment of TDS on year to year basis as found/ascertained when TDS certificates were finally issued on the basis of actual bills received from the concerned contractors and sub-contractors. He invited our attention to the details of such excess and short deposit of TDS on year to year basis given in his written submission as under:-

Financial Year	TDS deposited	TDS recovered as per certificate	Excess deposit	Short deposit	Running Account (Refund+)
1988-89	32552219	19652504	12899715	-	12899715
1989-90	29696016	33279432	-	(9583416)	3316299
1990-91	46428170	25193940	21234230	-	24550529
1991-92	76677732	54215278	22462454	-	47012983

1992-93	56962318	77396437	-	(20434119)	26578864
1993-94	26570942	20267736	6303206	-	32882070
1994-95	13454150	10044956	3409194	-	36291264
1995-96	24579843	8692223	15887620	-	52178884
1996-97	-	8463253	-	(8463253)	43715631
1997-98	-	1800256	-	(1800256)	41915375
1998-99	1271882	11114234	-	(9842352)	32073023

6. The Id. Counsel for the assessee submitted that the above details which were furnished by the assessee even before the Assessing Officer and reproduced in the order passed under section 250/201(1)/201(1A) of the Act clearly show that there was no short-fall in the payment of TDS if the overall position is considered. He contended that the assessee, on the other hand, had paid excess TDS at any stage during the relevant period of eleven financial years, but the Assessing Officer selected only five years, wherein there was a short-fall in the deposits of TDS on yearly basis and charged interest under section 201(1A) without considering that the excess amount of TDS deposited by the assessee for the earlier year/(s) was available for adjustment, which was more than the short-fall. He contended that such adjustment is permissible as per the communication dated 10.09.2014 issued by the CPC (TDS) and since there would be no short-fall in the payment of TDS by the assessee after such adjustment at any stage during the relevant period, the question of charging of interest under section 201(1A) would not arise and the demand raised against the assessee would require to be quashed.

7. The Id. Counsel for the assessee further contended that even the TDS certificates were issued by the assessee on the basis of bills raised by the concerned contractors and sub-contractors and not on the basis of adhoc payment of TDS made on estimated basis. He contended that since the concerned parties have availed the credit for TDS on the basis of TDS certificates issued by the assessee, there is no case of claim any extra credit for TDS by the concerned parties than the deposits made by the assessee. He contended that this vital position was appreciated by the Id.

CIT(Appeals) while passing the appellate order in the first round and accordingly specific findings in favour of the assessee were recorded by him which the Assessing Officer failed to understand and follow.

8. The ld. D.R., on the other hand, strongly relied on the orders of the authorities below in support of the revenue's case on the issue under consideration. He submitted that the unit of assessment is the assessment year and therefore, the year-wise position as regards the compliance of TDS provision by the assessee is required to be considered. He contended that even though there was a surplus deposit of TDS by the assessee in some years, there was also a short-fall in the payment of TDS in the years under consideration. He contended that the assessee, therefore, was liable to pay interest under section 201(1A) of the Act for such short-fall in respect of the said years and it was a fit case to charge such interest taking into consideration the year-wise position as rightly held by the authorities below.

9. We have considered the rival submissions and also perused the relevant material available on record. It is observed that pending the finalization of bills of the contractors and sub-contractors, which were involved in carrying out the various jobs in the modernization work of the assessee's Steel Plant, adhoc payments of TDS were made by the assessee on estimated basis. After finalization of the bills of the contractors and sub-contractors, the exact amount of TDS required to be deducted was ascertained in respect of each of the relevant years and TDS certificates of such amounts were issued by the assessee to the concerned contractors and sub-contractors. After ascertaining the exact amounts of TDS, it came to light that the amounts deposited by the assessee were in excess for some years, whereas there was some short-fall in respect of other years. A perusal of the year-wise details showing excess and short-deposit of TDS shows that there was no short payment of TDS by the assessee at any stage if the overall position of the relevant period is

taken into consideration and the excess deposit of TDS made in the earlier year is adjusted against the TDS liability for the subsequent year. Neither the authorities below nor the Id. D.R. at the time of hearing before the Tribunal has disputed the fact that there was no short deposit of TDS by the assessee at any stage if the total period of financial year 1988-89 to 1998-99 is taken into consideration as a whole. Their case, however, is that the position is required to be considered year-wise and the short-fall in deposit of TDS is required to be considered in respect of each year separately without adjusting the excess deposit of TDS made by the assessee in the earlier years. In our opinion, this stand taken by the revenue authorities is contrary to the communication issued by the CPC(TDS) on 10.09.2014, which has clarified with an example that in case tax has been deposited more than the required tax deducted at source for a particular assessment year, the excess amount of tax can be claimed in the following quarters of the relevant year and the balance amount, if any, can be carried forward to the next year for claim in the TDS statement.

10. It is also observed that section 245 of the Act duly authorises the concerned Income Tax Authority to set off the amount of refund or any part of that amount due to any person under any of the provisions of the Act against the sum, if any, remaining payable by the Act by the person to whom the refund is due. It is thus clear that the refund due to any person under the provisions of the Act for one year can be adjusted against the tax liability for the other year and the concerned authorities are duly authorized to make such adjustment. In the case of Motion -vs.- CIT [214 Taxman 335 (Del.). Hon'ble Delhi High Court has taken note of this procedure prescribed under section 245 of the Act and directed the Assessing Officer to adjust the past arrears due to the assessee against the tax liability of the subsequent years.

11. Keeping in view the communication dated 10.09.2014 issued by the CPC (TDS), the provisions of section 245 and the decision of the Hon'ble Delhi High Court in the case of Motion (supra), we hold that the assessee is entitled for adjustment of the excess deposit of TDS made in the earlier year against the TDS payable for the subsequent year/(s). We accordingly set aside the impugned order of the Id. CIT(Appeals) on this issue and direct the Assessing Officer to recompute the amount payable/ refundable to the assessee on account of TDS for the years under consideration after making such adjustment.

12. During the course of appellate proceedings before the Tribunal, the assessee has raised an additional ground claiming interest under section 244A of the Act on the refund, if any, due to the assessee for excess deposit of TDS. Since this issue raised by the assessee is purely a legal issue and all the facts relevant to decide the said issue are available on record, the additional ground raised by the assessee is admitted by us keeping in view the decision of the Hon'ble Supreme Court in the case of National Thermal Power Corporation Limited [229 ITR 383]. Since this issue is raised by the assessee for the first time before the Tribunal and the Assessing Officer is required to be given an opportunity to examine/verify the same from the relevant facts available on record as rightly contended by the Id. D.R., we restore this issue to the file of the Assessing Officer for consideration in accordance with law.

13. In the result, the appeals of the assessee are allowed as indicated above.

Order pronounced in the open Court on January 25, 2019.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Vice-President (KZ)**

Kolkata, the 25th day of January, 2019

- Copies to :*
- (1) ***Steel Authority of India Limited,
Ispat Bhawan, Main Gate,
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 - (2) ***Deputy Commissioner of Income Tax (TDS),
Circle-4, Durgapur,
Aayakar Bhawan, City Centre,
Durgapur-713 216***

 - (3) *Commissioner of Income Tax (Appeals), Siliguri,*

 - (4) *Commissioner of Income Tax- ,*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.