

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos. 181&182/Ahd/2022
(Assessment Year: 2015-16)

Keshavpriya Corp Pvt. Ltd., A-1/401, Fenil Avenue, Nr. Haridarshan Char Rasta, Ahmedabad-382350	Vs.	Additional Commissioner of Income Tax, TDS, Ahmedabad
[PAN No. AAECK5600K]		
(Appellant)	..	(Respondent)

Appellant by :	None
Respondent by:	Shri Ankit Jain, Sr. D.R.

Date of Hearing	01.05.2024
Date of Pronouncement	20.05.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

Both the appeals have been filed by the Assessee against the orders passed by the Ld. Commissioner of Income Tax (Appeals), (in short òLd. CIT(A)ö), National Faceless Appeal Centre (in short òNFACö), Delhi vide orders dated 15.03.2022 passed for A.Y. 2015-16. Since common facts and issues are involved for both the years under consideration, both appeals are being taken up together.

2. The assessee has raised the following grounds of appeal:

ITA No. 181/Ahd/2022 (A.Y. 2015-16)

“1. Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NF AC) grievously erred in law as well as in facts in upholding the order passed by Id. Assessing Officer confirming demand of TDS of Rs. 6,02,000 u/s 201(1) of the Income Tax Act, 1961.

2. Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NF AC) ought to have appreciated that Id. Assessing Officer had failed to ascertain and examine as to whether the tax has been recovered by the Income Tax Department from the respective sellers of the immovable properties while upholding the demand of TDS of Rs. 6,02,000 u/s 201(1) of the Income Tax Act, 1961.

3. *Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) grievously erred in law as well as in facts in upholding the order passed by Id. Assessing Officer confirming demand of interest of Rs. 3,84,260 u/s 201(1 A) of the Income Tax Act, 1961.*

4. *Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) was not justified in passing the impugned Order without affording an opportunity of personal hearing to the Appellant.”*

ITA No. 182/Ahd/2022(A.Y. 2015-16)

“1. *Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) grievously erred in law as well as in facts in upholding the order passed by Id. Assessing Officer confirming the imposition of penalty of Rs. 6,02,000/- u/s 271C of the Income Tax Act, 1961.*

2. *Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) was not justified in passing the impugned Order without affording an opportunity of personal hearing to the Appellant.”*

4. Before us, the Counsel for the assessee filed request for adjournment. While seeking for adjournment, the assessee has given a vague reason that “The A.R. is preoccupied and no cogent reasons have been given by the assessee for seeking adjournment”. Further, we observe that the assessee has also sought adjournment on various dates of hearings fixed for 05.10.2023, 07.11.2023, 13.12.2023, 29.01.2024, 05.01.2024, 16.04.2024 and finally again on 01.05.2024. In all the earlier occasions, the assessee has given very vague reasons for the non-appearance of the Authorized Representative and specifically on five occasions, the assessee has submitted that the assessee is seeking adjournment since the A.R. of the assessee is “preoccupied”. In view of the above facts and vague reasons given by the assessee for seeking adjournment we are not inclined to adjourn the matter any further.

5. In the result, the application for adjournment filed by the assessee is rejected.

ITA No. 181/Ahd/2022(A.Y. 2015-16)

6. The brief facts of the case are that the assessee is engaged in the business of real estate developers. The assessee filed return of income for

A.Y. 2015-16 on 31.10.2015 declaring total income of Rs. 14,64,440/-. The assessment order under Section 143(3) of the Act was passed on 12.12.2017 determining total income at Rs. 14,64,440/-. Subsequently, from the AIR information, the Assessing Officer observed that the assessee had purchased three immovable properties amounting to Rs. 67,00,000/-, Rs. 3,00,00,000/- and Rs. 2,35,00,000/-. However, the assessee failed to deduct and deposit TDS as per the provisions of Section 194-IA of the Act at the rate of 1% of purchase consideration. Accordingly, in the course of proceedings under Section 201(1) and 201(1A) of the Act, the Assessing Officer held that the assessee is an assessee-in-default on account of non-deduction of TDS on purchase of aforesaid properties under Section 194-IA of the Act. Accordingly, the Assessing Officer passed order under Section 201(1) and 201(1A) of the Act on 18.02.2020, alongwith order of penalty under Section 271(c) of the Act for non-deduction of tax at source on purchase of such properties.

7. In appeal before Ld. CIT(A), the assessee submitted that in view of First Proviso of Section 201(1) of the Act, since the sellers of property have discharged their income tax liability, then the assessee cannot be held to be an assessee-in-default in terms of Section 201(1) of the Act. However, the Ld. CIT(A) observed that even if it were to be presumed that the assessee is entitled to claim benefit of First Proviso to Section 201(1) of the Act, in the instant case, the assessee was required to prove various conditions precedent for invoking the First Proviso to Section 201(1) of the Act. As per First Proviso to Section 201(1) of the Act, the assessee, in terms of Rule 31ACB of the Income Tax Rules, 1962, was required to file Form 26A, alongwith furnishing a certificate issued by the Chartered Accountant as Annexure-A containing various details. However, the assessee failed to provide any such details which were required to be furnished for claiming the benefit of First Proviso to Section 201(1) of the Act either before the

Assessing Officer and neither before the Ld. CIT(A), during the course of appellate proceedings. Accordingly, so far as the ground relating to invoking the First Proviso to Section 201(1) of the Act is concerned, the Ld. CIT(A) was of the view that the appeal of the assessee was liable to be dismissed.

8. Regarding interest under Section 201(1A) of the Act, Ld. CIT(A) was of the view that it is a well settled legal proposition that irrespective of the payee / seller filing the return of income alongwith disclosing the income related to the payment made by the payer without deducting tax at source and payment of tax on such income, by virtue of which the assessee cannot be deemed on õassessee-in-defaultö under Section 201(1) of the Act, such payer / purchaser is liable for payment of interest under Section 201(1A) of the Act. This statutory as well as legal position has been clarified by CBDT vide Circular No. 275/201/95-IT(B) dated 29.01. 1997, wherein it is clearly stated that the payer / deductor is liable to pay interest under Section 201(1A) of the Act, till the date of payment of taxes by the deductee / the recipient. Further, the Ld. CIT(A) held that the Honøble Supreme Court in the case of **Hidustan Coca Cola Beverage Pvt. Ltd. vs. CIT (2007) 163 taxmann.com 355 (SC)** has reiterated the fact that the payer / deductor assessee is required to pay interest under Section 201(1A) of the Act till the payment of taxes by the deductee / payee. While doing so, the Honøble Supreme Court made reference to the CBDT Circular No. 275/201/95-IT(B), dated 29.01.1997 which stated that as per proviso to Section 201(1A) of the Act, which was inserted by Finance Act 2012, interest was liable to be levied till the date of filing of return of income by the payee / deductee / recipient. Therefore, looking into the instant facts, the Ld. CIT(A) held that the Assessing Officer is correct in holding that the assessee is liable to pay interest under Section 201(1A) of the Act up to the

date of filing of return of income by payee / deductee. Accordingly, this ground of appeal of the assessee was also dismissed by the Ld. CIT(A).

9. The assessee is in appeal before us against the aforesaid order passed by the Ld. CIT(A) confirming the additions made by the Assessing Officer. Before us, despite multiple opportunities of hearing, the assessee has sought adjournment from time to time on frivolous / vague grounds and has neither caused appearance and nor furnished any documents to support to demonstrate that the assessee is covered by the proviso to Section 201(1) of the Act and hence, the assessee is not an assessee-in-default, in the instant set of facts. In absence of any arguments by the assessee in support of its case and in absence of any documentary evidences to demonstrate that the assessee is eligible for claiming benefit of First Proviso to Section 201(1) of the Act, we find no reason to interfere with the findings of the Ld. CIT(A), who also observed in his order that despite several opportunities, the assessee failed to furnish any evidences to support that the assessee is eligible for claiming the benefit of First Proviso to Section 201(1) of the Act.

10. As regards the levy of interest under Section 201(1A) of the Act, we find no infirmity in the findings of the Ld. CIT(A) that the assessee is liable to pay interest under Section 201(1A) of the Act till the date of furnishing of return by the payee / deductee / recipient and accordingly, in our considered view, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference. In view of the above observation, the appeal of the assessee is dismissed.

ITA No. 182/Ahd/2022(A.Y. 2015-16)

11. This appeal has been filed against the order by Ld. CIT(A) confirming the levy of penalty under Section 271(c) of the Act on account

of non-deduction of tax at source on the payments made by the assessee towards purchase of products referred to above. In view of our observations in the foregoing paragraphs, we find no infirmity in the order of Ld. CIT(A) holding that the Assessing Officer was justified in imposing penalty under Section 271C of the Act for non-deduction of taxes at source under Section 194-IA of the Act, looking into the instant facts.

12. In the result, the appeal of the assessee is dismissed.

13. In the combined result, the appeal of the assessee is dismissed with respect to both the appeals filed by the assessee.

This Order pronounced in Open Court on 20/05/2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 20/05/2024

TANMAY, Sr. PS

TRUE COPY

आदेश क० प्रतिलिपि अर्पित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. वृत्तभागीय प्रतिलिपि, आयकर अपीलार्थी अधीकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

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

आयकर अपीलार्थी अधीकरण, अहमदाबाद / ITAT, Ahmedabad