

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH “H”, NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER

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| | I.T.A. Nos. 617, 618, 619 & 620/Del/2023 | |
| | A.Yrs.: 2014-15, 2015-16, 2016-17 & 2017-18 | |
| DCIT, TDS Circle, Gurgaon 6 th floor, Vanijaya Nikunj, HSIIDC Building, Udyog Vihar, Phase-5, Near Shankar Chowk NH-8, Gurgaon, Haryana – 122001 (PAN: AAACZ1958K) (ASSESSEE) | VS | M/S ZTE Telecom India Private Limited, 6 th floor, RMZ Infinity Tower, Plot No. 15, Phase-4, Gurgaon, Haryana (RESPONDENT) |

Assessee by : Ms. Reema Grewal, CA
Department by : Shri Amit Katoch, Sr. DR

Date of hearing : 06.08.2024
Date of pronouncement : 09.08.2024

ORDER

PER SHAMIM YAHYA, AM :

The Revenue has filed these 04 appeals against the separate Orders all dated 29.12.2012 passed by the Ld. CIT(A)-27, New Delhi relating to assessment years 2014-15 to 2017-18. Since common Grounds have been raised in all the 04 appeals of the Revenue, therefore, for the sake of convenience, we have heard the appeals together and disposing of the

same by passing a common order. The common Grounds raised in all the appeals read as under:-

1. The Ld. CIT(A) has erred in law and facts by directing the AO to delete the liability of the assessee created u/s. 201(1) of the Act after verifying the claims of assessee. By doing so, the Ld. CIT(A) has indirectly / virtually set aside the order of the AO which is in contravention to the statutory provisions and not in true spirit of law that do not allow such powers to him.
2. The appellant craves to leave to add, alter, amend and / or modify any of grounds of appeal at or before the hearing of appeal.

2. Briefly stated, facts are that the assessee is a company incorporated under the Companies Act, 1956, is engaged in the trading of telecom equipment and mobile handsets in India. It also provides a range of services to Indian Telecom operators and is also engaged in providing support services to its Group Companies. For the Assessment Years 2014-15 to 2017-18, proceedings under section 201(1)/201(1A) of the Act were initiated by the AO. The Assessing Officer in his order has held that the assessee was required to deduct TDS on the provisions made in the books of accounts. It was submitted by the assessee that the provisions were created as per accrual basis of accounting and were therefore reversed in the subsequent assessment year. The TDS compliance was done on such expenses when the actual invoices were booked in the next year. The assessee duly disallowed the expenses in its income tax return in the year

provision was made and claimed it as a deduction in the next year. However, the AO passed the orders u/s. 201(1)/201(1A) raising demand for TDS as well as interest upto the date of order as under:-

| Assessment Years | Demand u/s. 201(1) (In Rs.) | Interest u/s. 201(1A) (In Rs.) |
|-------------------------|------------------------------------|---------------------------------------|
| 2014-15 | 2,90,34,101 | 2,43,88,643 |
| 2015-16 | 4,19,95,539 | 3,94,75,804 |
| 2016-17 | 6,94,79,178 | 5,69,72,926 |
| 2017-18 | 2,47,04,095 | 54,34,901 |

2.1 Aggrieved with the aforesaid action of the Assessing Officer, assessee preferred the appeals before the Ld. CIT(A) and submitted before him that since the TDS has been deducted and paid in the subsequent year, asking the assessee to pay the TDS amount again would amount to double recovery of the same taxes. The assessee also stated that interest should be levied only upto the date of deduction of TDS in the subsequent year. There were certain provisions made where party was not known at the time of making the provisions. The assessee prayed that in such cases TDS provisions were not applicable.

3. Upon assessee's appeal, Ld. CIT(A) for assessment year 2017-18 has granted the relief by holding as under :-

"6. Findings and Decision:

6.1 Provision of Rs.32,44,38, 175/-

6.1.1 These provisions were reversed next year. The assessee has deducted and deposited the tax as and when the amount against the respective parties were booked, i.e. in AY 2018-19.

6.1.2 The payment was also made in AY 2018-19 only.

6.1.3 This issue has been dealt with by Hon'ble ITAT Bangalore in the case of IBM India (P.) Ltd vs Income-tax Officer (TDS) LTU, Bangalore (154 ITD 497). The relevant part of the judgement is produced below:

"23. We have heard the submissions of the learned counsel for the Assessee and the learned DR. The learned counsel for the Assessee at the outset brought to our notice that pending disposal of the appeals, the Assessee had furnished before the AO, details regarding the actual payment of TDS in subsequent financial year, on the provisions made in the various financial years. These details were verified by the AO. The AO has addressed a letter to the DR in which the AO after verification has found that the Assessee had deducted tax at source at the time when the provision made in one financial year is subsequently reversed and the expense booked in the subsequent financial year... The following are the contents of the said letter (copy filed by DR in Court), in so far as it relates to taxes deductible at source.

"3. During the course of appellate proceedings before the Hon'ble ITAT the assessee company took the same plea that it had deducted tax at source in the subsequent year on all the amounts that was disallowed u/s. 40a(i) and 40a(ia) as and when these amounts were paid. The Hon 'ble ITAT

therefore directed that such details be produced before the Income Tax Officer (TDS) for verification.

4. At the remand stage the assessee company has now submitted year wise details of rental charges paid, professional charges paid, contract amounts paid and details of other payments. The details of year end provisions as per tax audit report (disallowed u/s. 40a(i) and 40a(ia), payments made in subsequent year in respect of these provisions and details of tax deducted at source on such payments along with proof of deposit of such TDS into Govt. account were called for and systematically verified. Since, the transactions were enormous in respect of these four assessment years, verifications were carried out randomly for different months for these assessment years. After thorough verification of the transactions in respect of the months selected randomly and after analysis of consolidated annual figures separately for each sections of TDS, it is seen that the amounts which were shown as provisions as on 31 March of a particular year, whether either liquidated by way of payment or was added back to the profit and loss account in subsequent year. Wherever payments were made tax has been deducted at

source under the relevant provisions of the IT Act and remitted to the Govt. account.

5. Though, the tax has been deducted at source at the time of payments in respect of provisions made as on 31 March, it is be stated that it was the assessee company's responsibility to deduct tax at source and remit it to the Govt. account as soon as item of expenditure is debited by it in the books of accounts. Reference is invited to sub section 2 of section 194C, which mandates that the any amount credited to any account whether called "suspense account" or by any other name, in the books of accounts such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly. Similar rovisions/explanation is also to be found in other sections relating to TDS.

Thus, it can be seen that the assessee company has failed to deduct tax at source on the provisions made by it as at 31st March within the stipulated time. The assessee company has deducted tax at source on these amounts in the subsequent year as and when the same were paid by it. Thus, it is liable for charging of interest u/s. 201 (1A) for delayed deduction and remittance of tax to Govt. account. " (Emphasis supplied)

24. In view of the above, the demand on account of tax u/s. 201(1) of the Act, in Our view, will no longer survive. However, the appeals will survive with regard to the liability of the Assessee to interest u/s. 201(1A) of the Act. Therefore, the appeals in so far as it relates to challenge to order u/s. 201(1) of the Act have to be allowed."

6.1.4 In view of the above decision of the Hon'ble Tribunal and going by the spirit of the Act, once the assessee has deducted TDS in the subsequent year, the demand u/s 201(1) cannot be raised. At the most, the appellant can be held liable to consequences for late deduction of taxes i.e. interest up to the date of deduction. Therefore, ld. AO is directed to verify the claim of the appellant and if it is found that TDS has been deposited in next year on the provisions made during this year, the ld. AO is further directed not to charge the TDS u/s 201(1) of the Act on such amount.

6.1.5 In view of the above discussion, the appellant gets the relief to that extent.

6.2 Provision of Rs. 8,06,65,102/-

6.2.1 The appellant has submitted that in this case, the deductees were unknown; therefore, the TDS provisions are not applicable as TDS is tax of the deductee. Unless the deductee is known, TDS compliance cannot be done by the deductor. After deducting taxes, the deductor is required to report the income and TDS party-wise in the

TDS returns. In the absence of the deductee name, this is not possible.

6.2.2 Ld. AO is directed to verify the claim of the appellant. If the same is found to be correct or to the extent it is found to be correct, the ld. AO is directed not to charge the TDS u/s 201 (1) of the Act on such amount.

6.2.3 In view of the above discussion, the appellant gets the relief to that extent.

6.3 Provisions aggregating to Rs.1,74,39,068/-

6.3.1 These provisions were created party wise on estimation basis and the same were reversed in the next year. However, the appellant has claimed that it has either not received the invoices or, the invoices, which have been received next year, pertain to purchase of material on which TDS is not applicable.

6.3.2 Ld. AO is directed to verify the claim of the appellant. If the same is found to be correct or to the extent it is found to be correct, the ld. AO is directed not to charge the TDS u/s 201(1) of the Act on such amount.

6.3.3 In view of the above discussion, the appellant gets the relief to that extent.

6.4 Charging of Interest

6.4.1 The Ld. Assessing officer has computed the interest u/s 201(1A) from the date of provision till the date of the impugned order.

6.4.2 However, as per section 201(1A), which provides for the computation part of TDS, the appellant is liable

to consequences for late deduction of taxes i.e. interest up to the date of deduction only, which is given in section 201(1A) of the Act as produced below:

"201...

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest-

(i) At one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and..."

6.4.3 In view of the above provisions, the ld. A0 is directed to calculate the interest from the due date to the date of actual payment of the TDS (wherever TDS payment is applicable as discussed in above paras)."

In the result, the appeal is "Partly Allowed."

4. Against the above order of the Ld. CIT(A), Revenue is in appeal before us. We have heard both the parties and perused the records.

5. At the time of hearing, Ld. DR did not controvert the factual matrix of the case.

6. Ld. AR for the assessee submitted that Ld. CIT(A) appreciated the assessee's contention and passed the appellate orders for AY 2014-15 to AY 2017-18 holding that once the assessee has deducted TDS in the subsequent year, the demand u/s. 201(1) cannot be raised. Further, the interest u/s. 201(1A) only can be charged upto the date of deduction. The CIT(A) also held that where party is not known, or where transactions have been reversed/ cancelled, TDS provisions are not applicable. Thus, the Ld. CIT(A) granted relief to the assessee in as much as the question of TDS payment was concerned and directed the AO to verify the facts and calculate interest upto the date of deduction. Giving effect to the order of the CIT(A), the AO has passed appeal effect orders for all the impugned assessment years viz. AYrs 2014-15 to 2017-18, providing relief to the assessee and raising interest demand only upto the date of deduction. In view of above, she submitted that the appeals filed by the Revenue are not maintainable and therefore, liable to be dismissed.

7. After hearing rival contentions and perusing the materials on record. We find considerable cogency in the contention of the Ld. AR for the assessee that after appreciating the contention of the Assessee and relying the ITAT, Bangalore decision in the case of IBM India (P) Ltd. vs. ITO (TDS) LTU, Bangalore (154 ITD 497), Ld. CIT(A) passed the appellate orders for AY 2014-15 to AY 2017-18 by holding that once the assessee has deducted TDS in subsequent year, the demand u/s. 201(1) cannot be raised and further interest u/s. 201(1A) only can be charged upto the date of deduction and where party is not known, or where transactions have

been reversed / cancelled, TDS provisions are not applicable. Hence, the Ld. CIT(A) has rightly granted the relief to the assessee in as much as the question of TDS payment was concerned and directed the AO to verify the facts and calculate interest upto the date of deduction, which does not need any interference on our part. In view of aforesaid discussions, we affirm the finding of the Ld. CIT(A) on the issue in dispute and dismiss the Grounds raised by the Revenue in all its Appeals.

8. In the result, all the 04 Appeals filed by the Revenue are dismissed.

Order pronounced in the Open Court on 09/08/2024.

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar

