



IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

INCOME TAX APPEAL No. 32 of 2014

COMMISSIONER OF INCOME TAX TDS

Versus

PROJECT DIRECTOR NATIONAL HIGHWAYS AUTHORITY OF INDIA PIU  
NARSINGHPUR SHRI RAMDAS BHAWAN

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Appearance:

*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

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WITH

INCOME TAX APPEAL No. 33 of 2014

COMMISSIONER OF INCOME TAX TDS

Versus

PROJECT DIRECTOR NATIONAL HIGHWAYS AUTHORITY OF INDIA PIU  
NARSINGHPUR S

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Appearance:

*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

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INCOME TAX APPEAL No. 34 of 2014

COMMISSIONER OF INCOME TAX TDS

Versus

PROJECT DIRECTOR NATIONAL HIGHWAYS AUTHORITY OF INDIA PIU



**NARSINGHPUR**

**Appearance:**

*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

**INCOME TAX APPEAL No. 35 of 2014**

**COMMISSIONER OF INCOME TAX INCOME TAX DEPARTMENT**  
*Versus*  
**AUTHORITY OF INDIA PIU NARSINGHPUR PROJECT DIRECTOR**  
**NATIONAL HIGHWAYS**

**Appearance:**

*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

**INCOME TAX APPEAL No. 36 of 2014**

**COMMISSIONER OF INCOME TAX TDS**  
*Versus*  
**PROJECT DIRECTOR NATIONAL HIGHWAYS AUTHORITY OF INDIA PIU**  
**NARSINGHPUR**

**Appearance:**

*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

**INCOME TAX APPEAL No. 37 of 2014**

**COMMISSIONER OF INCOME TAX TDS**  
*Versus*  
**PROJECT DIRECTOR NATIONAL HIGHWAYS AUTHORITY OF INDIA PIU**  
**NARSINGHPUR**



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Appearance:

*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

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**INCOME TAX APPEAL No. 38 of 2014**

**COMMISSIONER OF INCOME TAX TDS**

*Versus*

**PROJECT DIRECTOR NATIONAL HIGHWAY AUTHORITY OF INDIA PIU  
NARSINGHPUR**

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Appearance:

*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

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**INCOME TAX APPEAL No. 39 of 2014**

**COMMISSIONER OF INCOME TAX TDS**

*Versus*

**M/S NATIONAL HIGHWAY AUTHORITY OF INDIA NATIONAL  
HIGHWAYS OF INDIA**

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Appearance:

*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

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**INCOME TAX APPEAL No. 40 of 2014**

**COMMISSIONER OF INCOME TAX TDS**

*Versus*

**M/S NATIONAL HIGHWAYS AUTHORITY OF INDIA NATIONAL  
AUTHORITY OF INDIA**

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Appearance:



*Shri Siddharth Sharma - Advocate for the appellant.*

*Shri Sumit Nema - Senior Advocate with Shri Abhijeet Shrivastava and  
Shri Ayush Gupta - Advocates for the respondent.*

RESERVED ON: 25.02.2026

PRONOUNCED ON: 06.03.2026

**ORDER**

***Per. Justice Vivek Rusia***

These bunch of income tax appeals are filed by the Commissioner of Income Tax, (TDS), Bhopal, (M.P.) under Section 260-A of the Income Tax Act, 1961 in respect of assessment years 2008-09 and 2009-10 challenging the orders dated 12.09.2013 and 20.09.2013 passed by the Income Tax Appellate Tribunal, Jabalpur (for short 'Tribunal') in I.T.A. No.70/Jbp/2013, 73/Jbp/2013, 69/Jbp/2013, 72/Jbp/2013, 67/Jbp/2013, 71/Jbp/2013, 68/Jbp/2013, 22/Jbp/2012 and 23/Jbp/2012. As these appeals involve an identical issue, they are heard analogously and are being decided by this common order.

Facts of these cases are being taken from I.T.A. No.32/2014:-

2. M/s Ssangyong Engineering and Construction Company Ltd. (hereinafter referred to as 'deductee company') entered into a contract with the respondent assessee, i.e., the National Highway Authority of India (in short 'NHAI') for the development of national highways. The NHAI, being an assessee, made a payment to the deductee company with TDS as provided under Section 195 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') at marginal rates after obtaining orders under Section 197(1) from its Assessing Officer, ITO(TDS), Ward 2(1),



International Taxation, New Delhi. By virtue of the aforesaid order passed under Section 197, the deductee company was entitled to receive payment from the respondent/assessee at a marginal rate @ of 2.1% for assessment year 2006-07, @ of 2.112% for the assessment year 2007-08, @ of 1% for the assessment year 2008-09 and @ of 0.75% for the assessment year 2009-10 and 2010-11.

3. The respondent/assessee was treated as a person responsible for making payments to the foreign contractor, deducting tax at source and filing a return under Section 206 of the Act. On verification, it was noticed that the respondent/assessee had made payment of a contract worth of Rs.19,61,36,514/- to the deductee company from 01.04.2008 to 30.06.2008 without proper deduction of tax at source. Upon issuance of notice, the respondent/assessee filed an explanation that the payments were made with a lower deduction of tax at source as a consequence of the order issued under Section 195/197 by their A.O., New Delhi, on 30.06.2008 for the F.Y. 2008-09.

4. The Assessing Officer opined that the payments were made by the respondent/assessee for a sum of Rs.19,61,36,513/- for the period from 10.04.2008 to 24.06.2008, when no certificate for non-deduction of tax at source was in force, meaning thereby, at the time of making such payment or crediting such payment, there was no certificate. The certificate dated 30.06.2008 came into effect from the date of its issuance. Therefore, the period prior to 30.06.2008 suffered a lower deduction of tax at source than the rate prescribed under the Act. The Assistant Commissioner of Income Tax (TDS), Jabalpur, being an Assessing Officer, passed an order dated 04.03.2011, assessed Rs.31,03,54,504/- as total default of TDS and imposed the interest and directed for initiation of proceedings for penalty, in total of Rs.41,89,78,580/-.



5. Being aggrieved by the order dated 04.03.2011, the respondent/assessee preferred an appeal before the Commissioner of Income Tax (TDS), Jabalpur. Vide order dated 12.04.2012, the appeal was dismissed. Thereafter, the respondent/NHAI filed an appeal before the Income Tax Appellate Tribunal.

6. Vide order dated 12.09.2013, the learned ITAT has allowed the appeal by holding that it is not a fit case for holding that the assessee deductor is in default under Section 201(1) nor for interest under Section 201(1A) of the Act and set aside the order passed by the Assessing Officer as well as CIT. Hence, these appeals before this Court.

7. Vide order dated 26.06.2014, these appeals were admitted on the following substantial questions of law:-

*“1. Whether on the facts and in the circumstances of the case, the ITAT was justified in law in holding that the assessee could not be held to be assessee in default u/s 201(1) ? and 201(1A) of the Act and thereby granting the relief?”*

*2. Whether, on the facts and in the circumstances of the case, the ITAT was justified in law in deleting the interest levied u/s 201(1A) of the Act, while failing to appreciate that the deductor cannot consider the assessment status of the deductee unless and until a certificate u/s 197 of the Act is granted by the Assessing Officer ?”*

8. We have heard learned counsel for the parties.

9. Shri Siddharth Sharma, Advocate, submits that the sole issue, which requires consideration, is whether the benefit and effect of the certificate dated 30.06.2008 is liable to be given from the date of issuance of the certificate or for



the entire assessment year. Learned counsel submits that the ITAT has committed a serious error of law, while appreciating the order passed by the learned A.O. and CIT, as both the Authorities have categorically held that the effect of the said certificate under Section 197(1) can only be given prospectively and not retrospectively. The respondent/assessee was in default on the date of deduction of tax, because the deductor had to deduct the tax irrespective of the income, in the absence of any valid certificate of lower deduction/no deduction.

10. Per contra, Shri Sumit Nema, Senior Advocate, submits that as per the language of Section 197 of the Income Tax Act, the certificate is liable to be issued for the entire financial year. Therefore, the learned ITAT has rightly held that the respondent/assessee cannot be held in default of deducting the tax at source. In support of his contentions, learned counsel for the respondent has placed reliance on a judgment passed by the Division Bench of the High Court of Delhi at New Delhi in the case of *Conner Institute of Health Care and Research Center Pvt. Ltd. Vs. DCIT, Circle - 73(1), Delhi* in W.P.(C) No.16978/2022 dated 30.04.2025, where the similar controversy has been put to rest. He has also placed reliance on a judgment passed by the Apex Court in the case of *Commissioner of Income-tax Vs. Bovis Lend Lease (I) Ltd.* [2016] 72 taxmann.com 137 (SC), whereby the judgment passed by High Court of Karnataka has been upheld by dismissing the SLP, in which, the High Court has held that under Section 197, there is no obligation on part of payer to pay tax as long as the certificate issued under Section 197 is enforced and not cancelled.

#### Appreciation & Conclusions

11. The facts of the aforesaid case are not in dispute. Let the respondent



obtain a certificate under Section 197 on 30.06.2008 for the assessment year 2008-09. The only issue which requires consideration is whether the certificate will be treated as effective from the date of issuance or for the entire assessment year.

12. Section 197 of the Act is reproduced below:-

*197. Certificate for deduction at lower rate*

*(1) Subject to rules made under sub-section (2A), where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or, as the case may be, at the time of payment at the rates in force under the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBA, 194LBB, 194LBC, 194M, 194-O, 194Q and 195, the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of income-tax, as the case may be, the Assessing Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.*

*(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.*

*(2A) The Board may, having regard to the convenience of assesseees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (1) and the conditions subject to which such certificate may be granted and providing for all other matters connected*



*therewith.*

13. It is clear from the language of Section 197 that if the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income tax at any lower rate or no deduction of income tax, as the case may be, the A.O. shall on an application made by the assessee in his behalf, give him such certificate as may be appropriate. Under Sub-section (2), where any such certificate is given, the person responsible for paying the income tax shall deduct the income tax at the rate specified in such certificate unless the same is cancelled by the A.O throughout the assessment year. As per sub-rule (2) of Rule 28AA, the certificate shall be valid for the assessment year to be specified in the certificate, unless it is cancelled at any time before the expiry of the specified period. The assessment in income tax is always for the entire assessment year. Every provision of the Income Tax Act is liable to be applied for a particular assessment year. Even the tax liabilities are fixed on the assessee for the entire assessment year.

14. Section 201 of the I.T. Act deals with the consequences of failure to deduct or pay the income tax. It is reproduced below:-

*Consequences of failure to deduct or pay.*

*(1) Where any person, including the principal officer of a company,—*

*a) who is required to deduct any sum in accordance with the provisions of this Act; or*

*(b) referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this*



*Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:*

*Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such payee—*

*(i) has furnished his return of income under section 139;*

*(ii) has taken into account such sum for computing income in such return of income; and*

*(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:*

*Provided further that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.*

*(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,*

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*(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*



*(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of subsection (3) of section 200:*

*Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such payee:*

*Provided further that where an order is made by the Assessing Officer for the default under sub-section (1), the interest shall be paid by the person in accordance with such order.*

*(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).*

*(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.*

*(4) The provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation 1 to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).*

15. As per the proviso to Section 201, any person, including Principal



Officer or Company, shall not be deemed to be an assessee in default in respect of such tax, if he furnishes a certificate to this effect from the accountant in such form. In view of the above, the question of law No.1 is answered against the revenue that the respondent cannot be held as an assessee in default under Section 201 and Section 201(1A); and so far as the question of law No.2 is concerned, the ITAT was justified in deleting the interest levied under Section 201(1A) of the Act because the assessee had certificate under Section 197 for an entire assessment year.

16. Accordingly, the present income tax appeals are **dismissed**. A photocopy of this order be kept in all the income tax appeals.

(VIVEK RUSIA)  
JUDGE

(PRADEEP MITTAL)  
JUDGE

Shruti