IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER

ITA Nos. 2771 to 2778/Mum/2024
(A.Ys: 2012-13 to 2019-20)

The Great Eastern Shipping Co. Ltd., M/s. Kalyaniwalla & Mistry LLP, Esplanade House, 2nd Floor, 29, Hazarimal Somani Marg, Fort, Mumbai – 400 001.	Vs.	DCIT, TDS Circle – 2(3) MTNL Bldg, Cumbala Hill, Peddar Road, Mumbai + 400 026.
PAN/GIR No. AAACT1565C		
(Applicant)		(Respondent)

Assessee by	Shri Jeet Kumar, Adv., Shri Yasmin Dastur
Revenue by	Shri nagnath Bhimroa Pasale, CIT(DR)

सुनवाई की तारीख/Date of Hearing	13.11.2024
घोषणा की तारीख/Date of Pronouncement	27.11.2024

आदेश / ORDER

PER BENCH:

The present appeals have been filed by the assessee challenging the common impugned order 27.06.2024, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the A.Ys 2012-13 to 2019-20.

2. Since all the issues involved in these eight appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity. We shall take ITA No. 2771/Mum/2024, A.Y 2012-13 as lead case and facts narrated therein. The assessee has raised the following grounds of appeal:

1) The learned Commissioner of Income Tax (Appeals) erred in confirming the levy of interest under Section 201(1A) of the Act in respect of the alleged late deduction of tax at source on salaries paid to floating staff members. The Appellant denies its hability to the levy of such interest and submits that the same be deleted.

2) The learned Commissioner of Income Tax (Appeals) failed to appreciate that the residential status of the floating staff members, who were deployed in foreign waters, could only be determined by the Appellant towards the end of the year.

3) The learned Commissioner of Income Tax (Appeals) erred in holding that Circular No.586 dated November 28, 1990, nowhere states that interest is not liable to be charged although the facility for adjustment of TDS is permitted within the financial year, by misinterpreting the provisions of Section 192(3) of the Act.

4) The learned Commissioner of Income Tax (Appeals) erred in disregarding the judgements of several High Courts and Tribunals relied upon by the Appellant, where on a similar issue, the interest levied on late deduction of salaries was deleted.

5) The learned Commissioner of Income Tax (Appeals) erred in confirming the levy of interest under Section 220(2) of the Act. The Appellant denies its liability to the levy of such interest and submits that the same be deleted.

3. There is delay in filing this appeal, for which the assessee filed an application for condonation of delay and the contents of application for condonation of delay reads as under:

a) The Order under Section 250 of the Act passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ("CIT(A)") against the Order passed under Section 201(1A) of the Act for the abovementioned Assessment Year was forwarded by e-mail to Mr. Aloysius D'Mello, Assistant General Manager, Accounts (the designated staff member), of the Company on June 27, 2022. The physical copy of the aforesaid Order passed under Section 250 of the Act has not been served on the Company till date.

b) The Company recently received a notice dated May 2, 2024, from the Deputy Commissioner of Income Tax, OSD TDS Circle 2(3), Mumbai, for recovery of the outstanding demands raised vide the Orders dated March 11, 2019 passed under Section 201(1A) of the Act for the Financial Years 2011-12 to 2018-19. The said notice was served on the Company by speed post at the registered office of the Company on May 9, 2024.

c) The recovery notice was immediately forwarded to our consultants M/s. Kalyaniwalla & Mistry LLP, Chartered Accountants, on May 9, 2024, to enable them to draft a response thereto.

d) Our consultants thereafter requested the Company to log into the Income Tax portal to check the status of the pending appeal before the learned Commissioner of Income Tax (Appeals) filed against the Order passed under Section 201(1A) of the Act, to enable them to respond to the aforesaid notice. When the Company logged into the site on May 10, 2024, it was seen that the order under Section 250 of the Act had been passed by the learned CIT(A) on June 27, 2022, and was available under the heading 'For Your Information' in the 'e-proceedings' tab under the Proceeding Name "First Appeal Proceedings (Wealth Tax) New." The order was downloaded and forwarded to our consultants on May 10, 2024.

e) Subsequent thereto, since the aforesaid appeal order had not been received by the Company in the regular mail box, the Company immediately requested their internal Information Technology support team to check all the e-mails received from the Income Tax Department in the month of June 2022. On a verification of the Systems, the technical support team of the Company reported that there was no e-mail received in the regular mail box of the designated staff member but it was found that the e-mail sent by the National Faceless Appeal Centre on June 27, 2022, containing the Order passed under Section 250 of the Act was lying in the Spam folder of the designated staff member, due to which the Company had not received the order through the designated channel and was unfortunately unaware of the same.

f). As per the discussions held with our consultants thereafter, it was decided to file an appeal to the Hon'ble Income Tax Appellate Tribunal against the Order passed by the learned CIT(A). Our consultants have therefore immediately drafted the Grounds of Appeal and informed us of the Affidavit which has been executed by the undersigned.

I most earnestly request the Hon'ble Income Tax Appellate Tribunal to kindly condone the delay in the filing of the aforesaid appeal petition, as the same was neither willful nor intentional, and as there was sufficient cause for the same.

I hereby confirm that the statements in this Affidavit hereto are true and correct to the best of my knowledge and belief.

4. On the other hand, the ld DR could not rebut the facts submitted by the assessee before us for seeking condonation of delay.

5. We have considered the rival submissions as well as relevant material on record. As regards the sufficiency of cause for filing the appeals belatedly, it is settled principles of law that the Courts have to take liberal approach while interpreting the expression 'sufficient cause' for condonation

of delay. In case of Collector, Land Acquisition Vs. Mst. Katiji (1987) 167 ITR 471, the Hon'ble Supreme Court has laid down the principle that the power to condone the delay provided under the statute is to enable the Courts to do substantial justice to the parties by disposing of the matter on merits, therefore, while considering the matters for condonation of delay, the law must be applied in a meaningful manner which subserves ends of justice and technical considerations should not come in the way of cause of substantial justice. There is no quarrel that the explanation and reasons explained for delay must be bonafide and not merely a device to cover an ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in the underhand way. If the party who is seeking condonation of delay has not acted in malafide manner and reasons explained are factually correct then the Court should be liberal in construing the sufficient cause and lean in favour of such party. A justice-oriented approach has to be taken while deciding the matter for condonation of delay. However, this does not mean that a litigant gets free right to approach the court at its will.

6. If we apply the settled principles as laid down by the Hon'ble Supreme Court as well as other courts on the facts of the present case we find that the assessee has explained cause of delay, therefore, in the facts and circumstances of

the case, we condone the delay in filing the present appeal and admit the appeal for hearing.

7. Ground Nos. 1 to 4 raised by the assessee are inter related and inter connected and relates to challenging the order of CIT(A) in confirming the levy of interest u/s 201(1A) of the Act in respect of late deduction of tax at source on salaries paid to floating staff members. Therefore, we have decided to adjudicate these grounds through the present consolidated order.

8. Ld. AR appearing on behalf of the assessee reiterated same arguments as were raised by him before the revenue authorities. The Ld. AR also relied upon the statement of facts filed along with the appeal memo which are at page 25 to 29 the same are reproduced herein below:

Interest under Section 201(1A) of the Act

The Assessing Officer has levied interest under Section 201(1A)(ii) of the Act @1.5% per month as in his opinion the Appellant has not followed the approach envisaged in sub-section (1) of Section 192 of the Act which requires an employer to estimate the salary income of the employee for the entire year and deduct monthly TDS on a pro-rata basis. The Appellant submits that the levy of interest under section 201(1A)(ii) is erroneous for the following reasons:

1) The Appellant is a shipping company. The Appellant's employees can be broadly divided into two categories. The first category is onshore staff and the second category is the floating staff.

2) The onshore staff of the Appellant is the office staff which handles accounts, finance, HR, and legal matters from the Appellant's office in Mumbai. They are the staff which is permanently stationed in the office. The Appellant submits that determining the residential status of onshore staff was not an issue and therefore, there is no delay whatsoever in deducting and depositing the TDS under section 192 in respect of salaries paid to onshore staff.

3) The second category i.e, the floating staff, are employees who are deployed on-board vessels. The vessels of the Appellant are deployed within Indian waters as well as in foreign waters. It may be noted that the Appellant has duly deducted TDS on salaries of employees for the period when the vessel was in Indian waters.

4) In respect of the period when the vessels were deployed in foreign waters, the Appellant was unable to determine at the start of the financial year as to which of the floating staff would be non-resident and which staff would become resident during the Financial Year on account of their stay in Indian waters or on Indian soil (on account of leave, break in service, etc.).

5) Furthermore, many of the employees are contractual employees who take up employment with the company generally for 60 days at a time. In such cases, the employees declare that they are non-residents, and if the vessel on which such employees are deployed, continues to work outside India, then the employee remains a non-resident. The salary earned outside Indian waters by a non-resident employee is not liable to tax in India as such salaries do not to the floating staff are paid outside India.

6) Hence, it is virtually impossible to determine the residential status of such staff members at the start of the year or even mid-year, as the actual status becomes apparent only/towards the end of the year.

7) In view of what is stated in the foregoing, the Appellant is unable to follow the approach

envisaged in sub-section (1) of Section 192 of the Act which requires an employer to estimate the salary income of the employee for the entire year and deduct monthly TDS on a pro-rata basis. It is only towards the end of the year, that the picture regarding the residential status of the floating staff becomes clear. The Appellant keeps track of the number of days each of the floating staff has spent in India. In the absence of clarity on the residential status, the Appellant has deducted TDS in a bonafide manner on a best estimate basis in respect of the floating staff. The final liability in respect of floating staff is determined only in the last quarter of the financial year and tax is deducted and deposited on the same by the end of the financial year. In fact, the Appellant discharges the entire TDS liability within the due date as prescribed by the Act.

8) The provisions of Section 192(3) of the Act read as under:

"The person responsible for making the payment referred to in sub-section (1) or sub-section (1A) or sub-section (2) or sub-section (24) or sub-section(2B) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

9 The Appellant submits that the object and purpose of sub-section (3) of section 192 is that the person who is required to deduct tax at source in respect of salaries is permitted to make adjustments ie, any shortfall in deduction of TDS under section 192 in the initial months of the year can be made good in the later months or in the last month of the financial year. Sub- section (3) not only authorizes adjustment in case of excess or deficient deduction, but also authorizes adjustment in case of total failure to deduct tax during the financial year. Sub- section (3), therefore, makes it abundantly clear that if there is a failure to deduct tax in a financial year, the same can be deducted by way of adjustment during the financial year. In those circumstances, the obligation to deduct tax at the time of payment, which is the mandate of sub-section (1) of section 192, extends up to the end of the financial

year by virtue of the provisions contained in sub-section (3) of section 192.

10) In this regard, attention is also drawn to Circular No.586 dated 28-11-1990, the relevant extract whereof is reproduced hereunder:

"Circular: No. 586, dated 28-11-1990 Clarification regarding liability to income-tax in India and deduction of tax at source of members of the crew of foreign going Indian ship

4. Under section 192 of the Income-tax Act, persons responsible for paying salary and other incomes chargeable under Income-tax Act under the head "Salaries" are required to deduct income-tax from such income at the time of payment. For this purpose, the amount of tax to be deducted is computed at the average rate of income-tax arrived at by applying the rates in force for the financial year in which the payment is made on the estimated income of the person to whom salary is paid. Since, as explained above, in the case of members of crew of foreign-going Indian ships, who are not likely to be in India for a period or periods exceeding 182 days in a year, income which accrues or arises outside India and is also received outside India is not liable to tax in India, the shipping companies and other persons responsible for paying salary to such members of crew may take these factors into account while computing the amount to be deducted as tax and deduct only so much of tax as would be chargeable on the estimated income liable to tax in India. If the shipping company or other person responsible for paying to such members of crew subsequently finds that any person who was earlier considered as not likely to be resident in India and deduction of tax at source was made on that basis is now likely to be resident in India, the shipping company or the other person responsible for making the payment, may increase the deduction so as to adjust any deficiency arising out of an earlier short deduction or non-deduction during the same financial year."

11) The Appellant submits that if there are bonafide reasons in deducting a lower tax in the earlier months of financial year and the same is made good immediately after noticing such shortfall,

then section 192(3) would save the employer from the liability of making payment of interest. It is respectfully submitted that in the present case, on ascertaining the residential status of the employees, the entire TDS is duly deducted by the end of the financial year and the same is deposited by 5th April.

12) In this regard, the Appellant relies on the decision of the Uttarakhand High Court in the case of CIT v. Enron Expat Services Inc. reported in 330 ITR 496 wherein it was held as under:

4. It is true that sub-section (1) of section 192 of the Act contemplates deduction of income- tax at the time of payment and at the same time, section 201(14) deals with a situation when tax is not deducted, but sub-section (3) of section 192 is a part of section 192 required to be read with sub-section (1) thereof, for nothing has been expressed in the Act to treat sub- section (3) as a separate provision. The object and purpose of sub-section (3) is to permit the person obliged to deduct to make adjustments. Sub-section (3) does not stop while authorising adjustment in case of excess or deficient deduction, but also authorises adjustment in case of total failure to deduct during the financial year. Sub-section (3). therefore, makes it abundantly clear that if there is a failure to deduct in a financial year, the same can be deducted by way of adjustment during the financial year. In those circumstances, the obligation to deduct at the time of payment, which is the mandate of sub- section (1) of section 192, stands extended up to the end of the financial year by virtue of the provisions contained in sub-section (3) of section 192 of the Act. The right to adjust, granted by sub-section (3) does not extend beyond the financial year.

5. The learned counsel for the appellants submitted that in view of the pronouncement as above, the provisions of section 201(14) of the Act would become otiose. We do not think so. Section 201(1A) applies only when during the financial year whole or any part of the tax deductible has not been deducted. We accordingly, conclude the matter and answer the question, as above, in favour of the assessee, while dismissing the appeal."

13) There are several judgments of various High Courts and the ITATs, wherein on a similar issue, the interest levied on late deduction of TDS on salaries was deleted.

A The Madhya Pradesh High Court in the case of Gwalior Rayon Silk Co. Ltd. (140 ITR 832) has held that the provisions of section 201 are attracted in the case of an employer only when that employer does not deduct or, after deducting, fails to pay the tax as required by the Act. It was further held that the said section requires an employer to deduct and pay tax on the estimated income of his employee. A duty is cast on an employer to form an opinion about the tax liability of his employee in respect of the salary income. While forming this opinion, the employer is undoubtedly expected to act honestly and fairly. But if it is found that the estimate made by the employer is incorrect, this fact alone, without anything more, would not inevitably lead to the inference that the employer has not acted honestly and fairly. Unless that inference can be reasonably raised against an employer, no fault can be found with him. It cannot be held that he has not deducted tax on the estimated income of the employee.

The Delhi High Court in the case of CIT v. Delhi Public School (247 CTR 317) has held that when TDS has been deducted on "estimated income" of the employee, the employer was not expected to step into the shoes of the Assessing Officer and determine the actual income. Furthermore, under Section 191 of the Act the liability to pay the tax was that of the employee, and that while forming this opinion the employer was undoubtedly expected to act honestly and fairly and, therefore, if it is found that the estimate made by the employer is incorrect, this fact alone, without anything more, would not inevitably lead to the inference that the employer has not acted honestly and fairly as held in the decision of Gwalior Rayon Silk Co. Ltd. (supra). Unless that inference can be reasonably raised against an employer, no fault can be found against him and it cannot be held that he has not deducted tax on the estimated income of the employee.

14. This very issue based on identical facts has been decided in favour of the Appellant by the learned Commissioner of Income Tax (Appeals)-59, Mumbai, in the case of Greatship (India) Ltd.

vide the Order dated May 19, 2015, for the Assessment Year 2010-11.

15) The Appellant further relies on the following decisions where on a similar issue the interest on late deduction of TDS on salaries was deleted:

a) Vinsons vs. Third ITO (89 ITD 267) (Mumbai)

b) Hero Honda Motors Ltd. vs. ITO (112 Taxman 154) (Delhi Trib.)

c) ITO vs. Asian Hotels Ltd. (41 TTJ 28) (Delhi Trib.)

d) Executive Engineer, T.L.C. Division, A.P. State Electricity Board v. ITO (20 ITD 318) (Hyd.)

e) ITO v. Cadila Laboratories Pvt. Ltd. (56 TTJ 156) (Ahmedabad Trib.)

In view of what is stated in the foregoing, the Appellant is not liable for the levy of interest under section 201(1A) of the Act as it has deducted tax at source in accordance with the provisions of Section 192 of the Act,

Erroneous Rate of Interest

The Assessing Officer has erroneously computed the interest under Section 201(1A) of the Act @1.5% p.m. as against the rate of 1% p.m. on the alleged deferment in the payment of the tax deducted at source.

The provisions of Section 201(1A) of the Act read as under:

"(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 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 sub-section (3) of section 200"

Without prejudice to the contention of the Appellant that the provisions of Section 201(1A) of the Act are not applicable, even assuming though not conceding that the provisions of Section 201(1A) of the Act were applicable to the Appellant, it is respectfully submitted that the company has not deducted monthly TDS on a pro-rata basis and hence would be liable to pay interest in accordance with the provisions of Section 201(1A)(i) of the Act @1% per 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. The Appellant has clearly not committed a default envisaged under Section 201(1A)(ii) of the Act as there is no instance in which tax was deducted and the payment of the same was delayed.

In view of what is stated in the foregoing, it is respectfully submitted that the interest has been erroneously levied @1.5% per month in accordance with the provisions of Section 201(1A)(ii) of the Act instead of the correct rate of 1% per month in accordance with the provisions of Section 201(1A)(i) of the Act.

Interest under Section 220(2) of the Act

The Assessing Officer has erroneously levied interest under provisions of Section 220(2) of the Act read as under:

"(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid."

It is respectfully submitted that Section 220(2) of the Act is applicable only where the amount specified in the notice of demand issued under Section 156 of the Act is not paid within the stipulated period. The provisions of Section 220(2) of the Act are not applicable to the Appellant as no order or notice of demand was issued in respect of the aforesaid Assessment Year. In view of what is stated in the foregoing, Appellant denies its liability to the levy of interest under Section 220(2) of the Act, and submits that the same be deleted.

9. The Ld. DR relied upon the orders passed by the revenue authorities.

10. We have heard the counsels of both the parties and perused the material placed on record, judgments cited by the parties and also orders passed by the revenue authorities.

11. The entire controversy in the present appeal is with regard to levy of interest by the AO u/s 201(1A) of the Act @ 1.5 pm. As per AO the assessee has not followed the approach envisaged in sub-section (1) of section 192 of the Income Tax Act which mandates an employer to estimate salary income of the employee for the entire year and deduct monthly TDS on prorate basis.

12. To adjudicate the controversy in question, it is necessary to evaluate the factual as well as legal aspect of the present case.

13. As per the facts of the present case the assessee is a shipping company and its employees are broadly divided in to two categories i.e first category is of on shore staff and the second category is of floating staff. Since the on shore staff

of the assessee is the office staff which handles accounts, finance etc., from the assessee office in Mumbai, and are permanently stationed in the office. Therefore determining the residential status of on shore staff was not an issue and thus there was no delay in deducting and depositing the TDS u/s 192 of the Act in respect of salaries paid to on shore staff. Whereas the second category i.e the floating staff of employees who are deployed on board vessels and the vessels of the assessee are deployed within Indian waters as well as foreign waters and the assessee has duly deducted TDS on salaries of employees for the period when the vessel was in Indian waters. However, in respect of period when the vessels were deployed in foreign waters, then the assessee was unable to determine at the start of financial year as to which of the floating staff would be non-resident and which staff become resident during the financial year on account of their stay in Indian water or on Indian soil.

14. Apart from this many of the employees of the assessee are contractual employees to take up employment for 60 days at a time. In such cases, the employees declare that they are non-residents, and if the vessel on which such employees are deployed, continues to work outside India, then the employees remains a non-resident. In this way the salary earned outside Indian water by non-resident employee is not liable to tax in India and as such salaries do not accrue or arise in India nor are such salaries deemed to accrue or arise

in India as the salaries of the floating staff are paid outside India.

15. In this way, as per assessee, it was virtually impossible to determine the residential status of such staff members at the start of the year or even midyear, as the actual status becomes apparent only towards the end of the year. Thus, under the above discussed circumstances as per the assessee, it was unable to follow the approach envisaged in sub-section (1) of section 192 of the Act, which requires an employer to estimate the salary income of the employee for the entire year and deduct monthly TDS on a prorata bases and therefore it is only towards the end of the year that picture regarding the residential status of the floating staff becomes clear. In this regard, it was further submitted by Ld. AR that the assessee keeps track of the number of days each of the floating staff has spent in India. In the absence of clarity of the residential status the assessee has deducted TDS in a bonafied manner on a best estimate basis in respect of the floating staff and the final liability in respect of floating staff is determined only in the last quarter of the financial year and tax is deducted and deposited on the same by the end of the financial year. Even otherwise as per Ld. Ld.AR, the appellant discharges the entire TDS liability with the due date as prescribed by the Act.

16. Before we proceed, further we would like to evaluate the provisions section 192 sub-clause 3 of the Act which reads as under;

> *"The person responsible for making the payment referred to in sub-section (1) or sub-section (1A) or sub-section (2) or sub-section (2A) or sub-section(2B) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of Aadjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year."*

17. In our view, the object and purpose of sub-section (3) of section 192 is that the person who is required to deduct tax The Appellant submits that the object and purpose of sub-section (3) of section 192 is that the person who is required to deduct tax at source in respect of salaries is permitted to make adjustments i.e. any shortfall in deduction of TDS under section 192 in the initial months of the year can be made good in the later months or in the last month of the financial year. Sub- section (3) not only authorizes adjustment in case of excess or deficient deduction, but also authorizes adjustment in case of total failure to deduct tax during the financial year. Sub- section (3), therefore, makes it abundantly clear that if there is a failure to deduct tax in a financial year, the same can be deducted by way of adjustment during the financial year. In those circumstances, the obligation to deduct tax at the time of payment, which is the mandate of sub-section (1) of section

192, extends up to the end of the financial year by virtue of the provisions contained in sub-section (3) of section 192.

18. Our attention was further drawn to Circular No. 586 dated 18.11.2022 and the relevant extract thereof is reproduced hereunder;

> *"Circular: No. 586, dated 28-11-1990*
>
> *Clarification regarding liability to income-tax in India and deduction of tax at source of members of the crew of foreign going Indian ship*
>
> *4. Under section 192 of the Income-tax Act, persons responsible for paying salary and other incomes chargeable under Income-tax Act under the head "Salaries" are required to deduct income-tax from such income at the time of payment. For this purpose, the amount of tax to be deducted is computed at the average rate of income-tax arrived at by applying the rates in force for the financial year in which the payment is made on the estimated income of the person to whom salary is paid. Since, as explained above, in the case of members of crew of foreign-going Indian ships, who are not likely to be in India for a period or periods exceeding 182 days in a year, income which accrues or arises outside India and is also received outside India is not liable to tax in India, the shipping companies and other persons responsible for paying salary to such members of crew may take these factors into account while computing the amount to be deducted as tax and deduct only so much of tax as would be chargeable on the estimated income liable to tax in India. If the shipping company or other person responsible for paying to such members of crew subsequently finds that any person who was earlier considered as not likely to be resident in India and deduction of tax at source was made on that basis is now likely to be resident in India, the shipping company or the other person responsible for making the payment, may increase the deduction so as to adjust any*

deficiency arising out of an earlier short deduction or non-deduction during the same financial year.

19. The Ld. AR also relied upon the decision in the case of Coordinate Bench of the ITAT, Mumbai in the case of Vinsons Vs. ITO reported in [2004] 89 TDS 267 (Mum), wherein it was held as under:

4. We have carefully considered the rival submissions and perused the record. Section 192(1) of the Income-tax Act, 1961 speaks of deduction of tax at source on the amount payable at the average rate of income tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. The section no-where mandates that each installment of TDS recovered should be exactly 1/12 of the total tax deductible at source. A conjoint reading of sections 192(1) and 192(3) of the Income-tax Act, 1961 makes it further clear that TDS installments of each month need hot necessarily be accurate, as otherwise the expression or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous Increase deduction of failure to deduct during the financial year." will have no meaning. Let us take an example of a salaried employee, who is supposed to pay annual tax of Rs 30,000 based on the salary come earned in the month of April of the financial year. The employer has to deduct, according to the revenue authorities, tax at the rate of Rs. 2,500 per month. If, in the month of December the employee gets arrears of salary: bonus etc. which doubles the tax liability, the employer would be liable to deduct Rs. 5,000 towards tax every month as against Rs. 2,500 deducted earlier. Neither the assessee nor the employer could have anticipated this position in the month of April. The only recourse is to deduct higher tax from the month of December onwards so as to cover up the deficiency. Under these circumstances, can it be said that the employer is a defaulter and failed to deduct the tax, as to charge interest at the rate of 15% on the alleged short deduction, Rs. 2,500 per month? In our considered opinion, that could not have been the intention

of the Legislature To meet such eventualities sub-section (3) provides for adjustment of excess or deficiency arising out of any previous months or failure to deduct during the financial year. Any other interpretation would render section 192(3) nugatory and an employer would be put to undue burden of payment of interest for no fault of him. From this analysis, it is apparent that on mere short deduction of tax at source from the salaries paid to the employees, section 201(1A) cannot be invoked unless the total tax deducted by the end of the year is less than the tax deductible on the salary paid to the employee in that year. In the instant case, the assessee has reasonably estimated the income and in view of the workers insistence and other circumstances, there is a short deduction of tax at the beginning of the financial year which is adjusted in the later months.

5. Therefore, in our considered opinion, interest is not chargeable for mere short deduction in the initial months. In the result, the appeals filed by the assessee are allowed.

20. And also the decision of Uttarakhand High Court in the case of CIT VS. Enron Expat Services Inc. reported in [2010] 194 taxman 70. wherein it was held as under:

4. It is true that sub-section (1) of section 192 of the Act contemplates deduction of income-tax at the time of payment and at the same time, section 201(1A) deals with a situation when tax is not deducted, but sub- section (3) of section 192 is a part of section 192 required to be read with sub-section (1) thereof, for nothing has been expressed in the Act to treat sub-section (3) as a separate provision. The object and purpose of sub- section (3) is to permit the person obliged to deduct to make adjustments. Sub-section (3) does not stop while authorising adjustment in case of excess or deficient deduction, but also authorises adjustment in case of total failure to deduct during the financial year. Sub-section (3), therefore, makes it abundantly clear that if there is a failure to deduct in a financial year, the same can be deducted by way of adjustment during the financial year. In those circumstances, the obligation to deduct at the time of payment,

which is the mandate of sub-section (1) of section 192, stands extended up to the end of the financial year by virtue of the provisions contained in sub-section (3) of section 192 of the Act. The right to adjust, granted by sub-section (3) does not extend beyond the financial year.

5. The learned counsel for the appellants submitted that in view of the pronouncement as above, the provisions of section 201(1A) of the Act would become otiose. We do not think so. Section 201(1A) applies only when during the financial year whole or any part of the tax deductible has not been deducted. We accordingly, conclude the matter and answer the question, as above, in favour of the assessee, while dismissing the appeal.

21. After having considered the factual as well as legal proposition as discussed by us above, we are of the view that if there are bonafied reasons in deducting lower tax in the earlier months of financial year and the same is made good immediately after noticing such shortfall, then in that eventuality section 192 Sub-Clause (3) would save the employer from the liability of making payment of interest. As in the present case on ascertaining the financial status of the employer the entire TDS is duly deducted by the end of the financial year and the same was also deposited in time. Thus a co-joint reading of Sec. 192(1) and 192(3) of the Income Tax Act makes it further clear that TDS installments of each month need not necessarily be accurate, as otherwise the expression “increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or

failure to deduct during the financial year" will have no meaning.

22. In our view if there are bonafide reasons in deducting a lower tax in earlier months of financial year and the same is made get immediately after noticing such shortfall, then in the eventuality section 192 sub-section (3) would save the employer from the liability of making payment of interest. Thus, to meet such eventualities sub-section (3) provides for adjustment of excess or deficiency arising out of the any previous months or failure to deduct in the financial year. Any other interpretation would render Sec. 192(3) nugatory and an employer would be put to undue burden of payment of interest for no fault of him. From this analysis, it is apparent that on mere short deduction of tax at source from the salaries paid to the employees, Sec. 201(1A) cannot be invoked, unless the total tax deducted by the end of the year is less than the tax deductable from the salary paid to the employee in that year. Since, in the instance case the assessee has reasonably estimated the income and in view of the above circumstances there was a short deduction of tax at the beginning of financial year which is adjusted in the later months. Therefore in our considered view interest is not chargeable for mere short deduction in the initial months. Thus these grounds raised by the assessee are allowed.

Ground No.5

23 This ground raised by the assessee relates to challenging the in confirming the levy of interest u/s 220 sub-clause (2) of the Act.

24. We have heard the counsels of both the parties and perused the material placed on record and the orders passed by the revenue authorities. From the records, we noticed that AO has levied interest u/s 220 sub-clause (2) of the Act, whereas the provisions of Sec. 220 sub-clause (2) of the Act which reads as under:

> *"(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section amount is paid." It is respectfully submitted that Section 220(2) of the Act is applicable only where the amount specified in the notice of demand issued under Section 156 of the Act is not paid within the stipulated period. The provisions of Section 220(2) of the Act are not applicable to the Appellant as no order or notice of demand was issued in respect of the aforesaid Assessment Year. In view of what is stated in the foregoing, Appellant denies its liability to the levy of interest under Section 220(2) of the Act, and submits that the same be deleted.*

25. After having gone through the provisions of Sec. 220 sub-clause (2) of the Act, we are of the considered view that the same is applicable only where the amounts specified in the notice of demand issued u/s 156 of the Act is not paid within the stipulated period. But in the present case the provisions

of Sec. 220 sub-clause (2) of the Act are not applicable as no order or notice of demand was ever issued in respect of the aforesaid assessment year. Therefore, the assessee would not have any liability with regard to levy of interest u/s 220(2) of the Act and therefore the levy of interest u/s 220(2) of the Act stands deleted and this ground raised by the assessee stands allowed.

ITA Nos. 2772 to 2778/Mum/2024, A.Ys: 2013-14 to 2019-20

26. As the facts and circumstances in these appeals are identical to ITA No 2271/Mum/2024 for the A.Y 2012-13 (except variance in figures) and the decision rendered in above paragraph would apply mutatis mutandis for these appeals also. Accordingly, we allow the grounds of appeal of the assessee.

27. In the result, all the eight appeals filed by the assessee are allowed.

Order pronounced in the open court on 27.11.2024.

Sd/-	Sd/-
(PADMAVATHY S)	**(SANDEEP GOSAIN)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 27/11/2024

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai