

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 438 of 2026**

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COMMISSIONER OF INCOME-TAX (INTERNATIONAL TAXATION AND
TRANSFER PRICING)

Versus

NIDRA HOSPITALITY GUJARAT PVT LTD

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Appearance:

MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 23/06/2026
ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel
Mr. Varun Patel for the appellant.
2. By this appeal under section 260A of the
Income Tax Act, 1961 [for short 'the Act'],
the appellant-Revenue has proposed the
following substantial question of law
arising out of the order dated 08.10.2025
passed by the Income Tax Appellate
Tribunal [for short 'the Tribunal'] in

ITAT/882/AHD/2025 for the Assessment Year 2017-18:

"(a) Whether, on the facts and circumstances of the case and in law, the learned ITAT has erred in allowing the appeal of the assessee without appreciating the analysis of facts and rebuttal of AO against the plea of the assessee on each transactions attracts provisions u/s. 201/201(1A) of the Act?"

3. The respondent-Assessee filed return of income on 31.10.2017 declaring loss of Rs. (-) 5,13,57,857/-. Assessment order dated 27.12.2019 was passed under section 143(3) of the Act assessing total loss at Rs. (-) 5,03,31,550/- by making disallowance under section 40(a)(i) read with section 195 of the Act amounting to Rs. 7,05,738/- being 30% of Rs. 23,52,460/- on the ground that as per Schedule 26 to the Annual

Report being Balance Sheet comprising the Notes to Accounts (Profit and Loss Account), the commission expenses at Rs. 24,00,460/- out of commission payment of Rs. 23,52,460/- which included certain non-residents without deducting TDS under section 195 of the Act.

3.1 The Assessing Officer treated the respondent-assessee as an assessee-in-default for failing to deduct TDS on commission paid to non-residents and passed order under sections 201(1) and 201(1A) of the Act on 30.07.2025.

3.2 Being aggrieved by the said order, the assessee preferred an appeal before the CIT(A) which was dismissed.

3.3 The Respondent-Assessee therefore, preferred an appeal before the Tribunal contending *inter alia* that the assessee had submitted all supporting documents including item-wise details of commission expenses amounting to Rs. 23,52,460/- for the year under consideration and clarified that the TDS, wherever applicable, had been duly deducted by the assessee-company in the relevant Assessment Year by filing TDS return on time.

3.4 The assessee also referred to the acknowledgments of the TDS returns filed along with copies of Form 27Q for the year under consideration.

3.5 It was contended by the respondent-Assessee that the TDS was deducted in accordance with the provisions

of the Act and on the basis of Double Taxation Avoidance Agreement [‘DTAA” for short] executed with the countries of residence of the parties concerned and Forms 15CB was also obtained for each transaction involving payment to a non-resident taxation at source advised by the Chartered Accountant and the same was duly submitted.

3.6 It was also pointed out from clause 24(b) of Form 3CD of audit report issued by the tax auditor that there is no non-compliance on the part of the assessee with respect to deduction at source which was reported in the audit report.

3.7 It was, therefore, prayed that the assessee cannot be considered as the

assessee in default as per provisions of section 201 of the Act.

3.8 The Tribunal, after considering the above contentions, allowed the appeal of the assessee observing as under:

"7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the payment was made to the non-resident and the assessee has submitted Form 15CB related to each transaction involving payment to non-resident and tax at source which was duly deposited by the assessee. The assessee at no point of time has defaulted as per TDS and the same was deducted in accordance with the provisions of the Income Tax Act as well as on the basis of DTAA with countries of residents of the parties concerned. Since the party was non-resident, the assessee has not deducted the tax at source and adhered to DTAA which is applicable in present case. Therefore, the Assessing Officer as well as CIT(A) was not right in treating the assessee as defaulter u/s. 201(1)

r.w.s. 201(1A) of the Act. Thus, the appeal of the assessee is allowed."

4. Learned Senior Standing Counsel Mr. Varun Patel for the appellant-Revenue submitted that the Assessing Officer, in the order passed under section 201 of the Act, had narrated in detail non-compliance of the provisions of section 195 of the Act, which the Tribunal has not considered. It was also pointed out that the assessee has not appeared before the CIT(A) except for filing written submissions and therefore, CIT(A) has dismissed the appeal of the assessee.

4.1 It was also pointed out that the Tribunal had ignored the facts which were considered by the Assessing Officer to hold the assessee as an assessee-in-

default as per provision of section 201(1) of the Act.

5. Having heard learned counsel for the appellant-Revenue, it would be germane to refer to the provision of section 201 of the Act which reads as under:

"Consequences of failure to deduct or pay.

201. (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) referred to in sub-section (1A) of [section 192](#), being an employer, 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 payee or on the sum credited to the account of a payee 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]."

6. On perusal of the above provision, it is clear that if a the person, including the Principal Officer of a company, who is required to deduct any sum in accordance with the provisions of this Act, 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. On perusal of the findings of facts arrived at by the Tribunal, it appears that the respondent-assessee had submitted Form 15CB related to each transaction involving payment to non-resident and tax at source which was duly deposited by the assessee. The Assessing Officer has considered

various transactions of commission paid by the assessee to the banks and the credit card companies as well as travel agent and the commission which, according to the assessee, was not liable for TDS, as such payments were made for booking of the hotel rooms through websites as well as the subsidiary of company which provided such travel agent services.

7. The Tribunal, therefore, took into consideration the fact that the assessee had, at no point of time, defaulted as TDS was deducted in accordance with the provisions of the Act as well as on the basis of the DTAA with the countries of the residence of the parties concerned.

8. In view of the findings of fact arrived at by the Tribunal and considering the fact

that the Assessing Officer only has considered the payment made for commission for booking of hotel rooms and the payment made to travel agents, we are of the opinion that the same would not be covered by the provisions of section 195 of the Act which reads as under:

"Other sums

195. (1) Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in [section 194LB](#) or [section 194LC](#)) or [section 194LD](#) or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

Provided that in the case of interest payable by the Government or a public sector bank within the meaning of

clause (23D) of section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.

Explanation 1.—For the purposes of this section, where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, 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.

Explanation 2.—For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

(i) a residence or place of business or business connection in India; or

(ii)any other presence in any manner whatsoever in India."

9. On perusal of the above provision, it is clear from the classificatory Explanation-2 that obligation to comply with subsection (1) and to make a deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has a residence or place of business or business connection in India; or any other presence in any manner whatsoever in India. Similarly, Explanation-1 also provides that the liability to deduct tax on other sums chargeable under the provisions of this Act (not being income chargeable under the head 'Salaries") shall, at the

time of credit of such income or income to the account of the payee and the provisions of this section shall apply only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode whichever is earlier, deduct income-tax thereon at the rates in force. Therefore, considering the above provisions, it is clear that the commission paid to travel agents on the hotel bookings on the websites as well as subsidiaries of the travel agents would not be covered under the provision of other sums liable for TDS as per the provisions of section 195 of the Act. The Tribunal, therefore, has rightly considered that once the assessee has discharged its obligation to deduct tax by filing the TDS return and Form 15CB i.e.

the certificate from a Chartered Accountant for liability of deduction of tax under Chapter-XVIIIB as per Rule 37BB of the Income Tax Rules, 1962, is submitted by the assessee which is not disputed by the Assessing Officer, the assessee cannot be considered as assessee in default under section 201 of the Act. Moreover, there is no reporting by the tax auditor in Column 24b of the Form 3CD stating that there is non-compliance of the provisions of non-deduction of TDS by the assessee. The Tribunal, after considering such facts, has concluded that there is no default on the part of the respondent-assessee.

10. In view of the foregoing reasons, we are of the opinion that no question of law, much less any substantial question of law

arises from the impugned order of the Tribunal.

11. The Appeal, therefore being devoid of any merit, is accordingly disposed of. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

JYOTI V. JANI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: JYOTIBEN VINODKUMAR JANI(HC00213), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 01/07/2026 16:05:41