



ITA No.6693/Mum/2014
GAD Logistics (I) Private Limited
Assessment Year 2005-2006

आयकर अपीलिय अधिकरण “जी” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

श्री डी.टी. गरसिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 6693/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2005-06)

GAD Logistics (I) Pvt. Ltd. A/230/204 Shree Nand Dham Sector 11, CBD Belapur (W) Navi Mumbai 400 614	बनाम/ Vs.	Income Tax Officer (TDS) 1(4) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACP K-8068-J		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Bhupendra Shah, Ld. AR
प्रत्यर्थी की ओर से/Respondent by	:	Dr. Anupama Singla, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	12/04/2017
घोषणा की तारीख / Date of Pronouncement	:	12 /04/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2005-06 assails the order of Ld. Commissioner of Income Tax (Appeals)-14 [CIT(A)], Mumbai dated 01/08/2014 *qua* confirmation of certain additions for TDS default and interest thereupon u/s 201(1) & 201(1A).
2. Briefly stated, the assessee, being resident corporate assessee, having TAN MUMG04290G was engaged in the business of *handling and transporting containers*. The assessee was subjected to a survey u/s 133A for verification of deduction of TDS on 20/09/2007 and consequently saddled with a demand for TDS defaults on certain contractual payments, rental payments and professional fees u/s 201(1) & 201(1A) of the Income Tax Act, 1961 vide Assessing Officer [AO] order dated 28/03/2011. The total demand thus raised amounted to Rs.3,24,179/- which comprised of Rs.1,88,476/- for non-deduction of TDS and Rs.1,35,703/- as consequential interest thereupon. The same was assailed without any success before First Appellate Authority vide order dated 01/08/2014, against which the assessee is in appeal before us.
3. The Ld. Counsel for Assessee [AR], *Shri Bhupendra Shah*, while accepting the said demand, drew our attention to the fact that the assessee was saddled with the same demand for same default in AY 2004-2005 also and therefore, being penalized twice for the same default. It was further contended that the assessee has duly deposited the demand for AY 2004-05 as per the order of Ld. CIT(A) and therefore, the same addition is not warranted for in the impugned AY. Per *contra*, Ld. DR asserted that the facts may



be verified by the Ld. AO to find out whether the demand raised against the assessee for both the years was identical in all respect.

4. We have heard the rival contentions and perused relevant material on record. A perusal of orders of Ld. AO for 2004-05 & 2005-06 passed u/s 201(1)/201(1A) *prima facie* reveals that exactly the same demand has been raised and further the figures are also identical. Therefore, while holding that the assessee could not be penalized twice for the same default, we restore the matter back to the file of AO for limited purpose of verifying whether both the demand relates to same default and whether the assessee has settled demand for AY 2004-05. If so, the demand for impugned AY may be deleted. The Assessee, in turn, is also directed to substantiate the same before AO failing which the AO shall be at liberty to decide the matter after perusal of available material on record.

5. The assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open court on 12th April, 2017.

Sd/-

(D.T. Garasia)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated :12.04.2017

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. □ यकर □ युक्त(अपील) / The CIT(A)
4. □ यकर □ युक्त / CIT – concerned
5. विभागीय प्रतिनिधि, □ यकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**