

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Ramlal Negi (JM)

I.T.A. No. 4668/Mum/2015  
(Assessment Year 2009-10)

M/s. Jigri Dost Production Pvt. Limited Kalyaniwalla & Mistry, CAs Army Navy Building 3 <sup>rd</sup> Floor, 148, M.G. Road Fort, Mumbai-400 001. (Appellant)	Vs.	ITO 5(2)(2) Room No. 567 5 <sup>th</sup> Floor Aaykar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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PAN No.

Assessee by	Shri Akram Khan
Department by	Shri Nitin Waghmode
Date of Hearing	21.7.2016
Date of Pronouncement	21.7.2016

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 4.6.2015 passed by learned CIT(A)-10, Mumbai and it relates to A.Y. 2009-10.

2. The assessee is aggrieved for non-granting TDS of ₹ 96,320/- on the basis of TDS certificate.

3. Learned counsel appearing for the assessee submitted that the assessee has filed its return of income for the year under consideration declaring a total income of ₹ 15,82,755/-; wherein it also claimed TDS credit of ₹ 12,01,691/-. However, the Assessing Officer allowed credit of ₹ 2,83,250/- only in the intimation issued u/s. 143(1) of the Act on the basis of 26AS statement relating to the year under consideration. Thereafter the assessee filed a

rectification petition u/s. 154 of the Act, wherein the assessee submitted that it was engaged in production of films and it took about three years for completing a film. The payees deducted TDS as and when the payments were made to them and hence the TDS claim of Rs.12,01,691/- is aggregate amount of TDS deducted by the payees over a period of three years. Since the income was offered by the assessee during the year under consideration when the film was finally finished, it claimed entire TDS amount of Rs.12,01,691/- during the year under consideration. Accordingly the assessee prayed in the rectification petition that tax deducted in the earlier years should also be allowed credit during the year under consideration since the income from the film has been offered during the same year.

4. Based on the rectification petition filed by the assessee, the Assessing Officer gave further credit of ₹ 4,31,236/- by considering the 26AS statement relating to A.Y. 2008-09. Subsequently, another credit of ₹ 3,90,885/- was given on the basis of 26AS statement relating to A.Y. 2008-09, after passing of order by learned CIT(A). Thus, the assessee was given credit of ₹ 11,05,371/- as against claim of ₹ 12,01,691/-. Thus, there was short credit of ₹ 96,320/-, which pertains to tax deducted by the concerned name Studio 18A Division of Network FinCap Pvt. Ltd.

5. The Ld A.R submitted that the AO did not give credit for Rs.96,320/-, since the same did not find place in 26AS statement. Learned AR submitted that learned CIT(A) has given direction to the Assessing Officer to make inquiries about the authenticity of the claim and find out as to whether tax deductor has actually paid tax to the Government Account. He submitted that the direction so given by learned CIT(A) would mean that the Assessing Officer should give credit of TDS, only if it is proved that the deductor has remitted the tax amount to the credit of the Government.

6. Learned AR submitted that the assessee, being receiver of TDS certificate, does not have control over the payees and hence it cannot be subjected to suffering on the reasoning that the payees have not paid the TDS to the credit of the Government. He submitted that the payees have given TDS certificates in the prescribed form and hence the AO should be directed to give credit of TDS amount on the basis of TDS certificates. He submitted that the Hon'ble Gujarat High Court has considered the identical issue in the case of Sumit Devendra Rajani Vs. ACIT (2014) 369 ITR 673 and held that the tax cannot be recovered from the deductee, if deductor has failed to deposit the TDS amount in the Government Treasury. In this regard the assessee also placed reliance on the following case laws :-

- Sumit Devendra Rajani Vs. ACIT (2014) 369 ITR 673
- Yashpal Sahani Vs. ACIT (2007) 293 ITR 539
- Rakesh Kumar Gupta Vs. UOI (2014) 365 ITR 143
- Citicorp Finance (India) Ltd. Vs. ACIT (ITA 8532/M/11)
- 3I Infotech Ltd Vs. DCIT (2013) 35 CCH 0127

7. We have heard Ld D.R and also perused the record. The assessee has furnished copies of TDS certificates relating to Rs.96,320/-. The assessee has also placed reliance on various case laws, wherein it has been held that the TDS credit should be given on the basis of TDS certificates. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to re-examine this afresh in the light of the decisions relied upon by the assessee and take appropriate decision in accordance with the law after affording adequate opportunity of being heard.

8. In the result, the appeal filed by the assessee is treated as allowed.

Order has been pronounced in the Court on 21.7.2016

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 21/7/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS