

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी.' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ SMC ” BENCH, AHMEDABAD

सर्वश्री महावीर प्रसाद, न्यायिक सदस्य एवं अमरजीत सिंह, लेखा सदस्य के समक्ष ।
(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)

आयकर अपील सं./I.T.A. No. 2194/Ahd/2016
(निर्धारण वर्ष / Assessment Year :2010-11)

The ACIT, TDS Circle, Ahmedabad - 380014	बनाम/ Vs.	M/s. Hakimchand D. & Sons G/4, Nityanand Apartments, Nr. Vakil Wadi, Maninagar, Ahmedabad - 380009
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHMH 00879 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Prajnu Paramita, Sr. D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Urvashi Sodhan, A.R.

सुनवाई की तारीख / Date of Hearing	22/09/2017
घोषणा की तारीख /Date of Pronouncement	27/09/2017

आदेश / ORDER

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the revenue against the order of the Commissioner of Income Tax (Appeals)-8, Ahmedabad, dated 14/06/2016 for the Assessment Year (AY) 2010-11, on the following Grounds:

- i. *The Ld. CIT(A) has erred on facts and in law in deleting the penalty levied u/s. 271C of the IT Act of Rs.21,01,154/- for A.Y.2010-11. In spite of the fact that the assess.ee made default in deducting TDS.*

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- ii. *The Ld. CIT(A) erred in not considering the fact that assesses in default for non deduction of tax at source on license fee paid to M/s Indian Railways Catering & Tourism Corporation (IRCTC), which fall within the purview of section 194J(1)(d) r.w.s. 28(va)(b) of the I.T. Act and liable for penalty u/s.271C of Act for failure to deduct tax at source.*
- iii. *The Ld. CIT(A) has also confirmed the order u/s.201(1)/201(1A) of the I.T. passed by the A.O. in Appeal No. CIT(A)-8/364/14-15 in the case of assessee company on the same issue.*
- iv. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary. On the facts and in the circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

2. We have heard rival submissions and gone through the relevant record. This appeal is directed against the decision of Ld. CIT(A), vide order dtd.14/03/2016 in respect of deleting the penalty levied u/s.271C of the I.T. Act for the asst. year under consideration. In this connection, we find that the Coordinate Bench of the ITAT, Ahmedabad, in ITA No.1206 to 1211/Ahd/2016 vide its order dtd.09/11/2016 for the Asst. Year 2006-07 to 2011-12 has deleted the quantum addition on the basis of which penalty was levied u/s.271C of the Act. The relevant Para of the order is reproduced as under:

"8. We have heard the rival contentions and perused the material on record. In our considered view, on merits, the assessee deserves to succeed on these counts in view of the following:-

a. *The impugned license fee is paid by assessee to IRCTC for awarding licensed rights. Payments cannot be construed for rendering any specialized services or passing on of any managerial or technical skill or services, much less even a service. The license fee payments are attributable to a set of legal obligations flowing from license. Viewing from the parameters laid down by Hon'ble Supreme Court in the cases of Kotak securities and Bharti Cellular, there is neither any element of service or rendering of technical services whatsoever. In our considered view sec. 194J is not applicable to assessee's case.*

b. *Similarly sec.194C is also not applicable since the basis of allotment of catering rights on license fee involves peculiar features. The IRCTC is the contractor who awards rights and assessee is the contractee obliged to pay license fee for availing those rights. Sec.194C fastens liability on contractor, when amount is paid to contractee and not vice versa. Therefore payment of license fee by contractee to contractor can by no stretch of imagination be assumed to come under the purview of sec.194C. There being no TDS liability either u/s.194C or 194J, license fee paid cannot be disallowed under sec.40(a)(ia) of Act under any circumstances.*

c. *The license fee payment is not covered u/s.28(va) also, which is specifically for payments to sharing any know how, patent, copy right, trade mark, license, franchise or any other business or commercial right of similar nature etc. the similar nature of great significance and the impugned license fee not being paid for sharing any know how, patent, copy right, trade mark, license, franchise cannot fall under its purview.*

d. *Apropos additional ground also respectfully Hon'ble Supreme court judgments Som Prakash Rekhi has laid down parameters as to when a corporation can be called a state for legal and practical purposes. Income Tax law provides some beneficial and relaxing provisions for Govt. local bodies etc. for ease of administration and flexibility. TDS is a mechanism to avoid nonpayment of taxes by payees. Legislature in its superior wisdom' has intended that Govt. Bodies will not venture into nonpayment of their income tax therefore they are exempted from TDS. It is more so as mostly they are Govt. funded, under strict regulatory*

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and financial control and are complimentary arms of Govt. to perform particular functions. Looking into all these necessities and practical difficulty the word 'STATE' has been interpreted to avoid the rigor of literal construction which was leading to unintended results, Hon'ble supreme court laid down these parameters. They have been deftly followed by Pune Bench in Kirloskar Bros. case. In our considered view, in the given facts and circumstances IRCTC falls within those parameters. Following Hon'ble Supreme Court in Som Prakash Rekhi and coordinate ITAT Pune Bench, we hold that IRCTC amounts to Govt. Therefore, assuming even there was any TDS liability; assessee was not liable to deduct any TDS from license fee paid to IRCTC.

e. The ITAT Special Bench in Bharati Auto Products and in Gujarat Pipavav Port Ltd (supra) has held that the proviso to section 201 is retrospective and if the payee has paid taxes (where payable) the payer cannot be deemed to be in default of TDS liability. Assessee by IRCTC dated 27.03.2014 and form no 26 has demonstrated that license fees paid by him for FY 2005-06 to 2010-11 has been included by IRCTC in its annual Profit & Loss account, Balance sheet and their returns of income. In view thereof we see no reason as to why the assessee shall be held to be liable for TDs and disallowance u/s 40(a)(ia).

8.1 In view of foregoing facts, circumstances and respectfully following the judicial precedents as mentioned above we hold that assessee's licence fee payments to IRCTC were not liable for TDS and cannot be disallowed u/s. 40(a)(ia). Thus we allow the assessee grounds on merits also in this behalf and dismiss relevant revenue grounds in the impugned years."

6. In view of the above facts, the quantum addition on the basis of which penalty was levied has been deleted by the Coordinate Bench of the ITAT. Therefore, we conclude in this case, there is no question of levying penalty u/s.271C of the Act.

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7. In view of the above, we do not find any reason to interfere in the findings of the Ld. CIT(A). Therefore, appeal of the revenue is dismissed.

8. In the result, appeal filed by the revenue is dismissed.

This Order pronounced in Open Court on 27/09/2017

Sd/-
अमरजीत सिंह
(लेखा सदस्य)
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad; Dated 27/09/2017

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-8, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad