

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA**

[Before Shri Veeravalli Durga Rao, JM and Shri Waseem Ahmed, AM]

**I.T.A. No. 602/Kol/2016
Assessment Year: 2010-11**

M/s. ESI Corporation.....Appellant
Panchdeep Bhawan,
5/1, Grand Lane,
Kolkata - 700012
[PAN : CALE00295B]

ITO, (TDS) Ward 57(1).....Respondent
10B, Middleton Row, 8th Floor,
Kolkata - 700071

Appearances by:

Shri Debabrata Saha, AR, appearing on behalf of the Assessee.

Shri Raj Kumar Agarwal, AR appearing on behalf of the Revenue.

Date of concluding the hearing : December 11, 2017

Date of pronouncing the order : December 15, 2017

ORDER

Per Veeravalli Durga Rao, JM

This appeal is preferred by the assessee against the order of Ld. CIT (Appeals) - 24, Kolkata dated 25.01.2016 for the F.Y. 2010-11.

2. The first ground of appeal raised by the assessee is in respect of Rs. 5,36,093/-. The assessee is a ESI Corporation and there is a survey conducted in the case of the assessee. In the course of the survey, it was noticed that out of Rs. 68,00,000/- appearing in the head of super speciality treatment Rs. 28,18,140/-, it was stated by the assessee before the A.O. the above amount is utilised for purchase of Pace Makers from Shree Coratomic. According to the A.O. the assessee could not clarify the balance amount of Rs. 39,41,860/- and therefore,

the liability against short deduction of 10% and interest thereon levied on the assessee and raised the demand. The assessee has filed details before the Ld. CIT(A) without considering the detailed filed by the assessee confirmed the order of the A.O. on the ground that the A.O. has given so many opportunities, the assessee is not able to make use. Before us, the assessee has submitted that he may be permitted to file the details before the A.O. in respect of an amount of Rs. 39,41,860/-, the A.O. may be directed to consider a fresh in accordance with law. The learned DR fairly submitted that the issue may be remitted matter back to the A.O. In view of the above and by considering the submissions of both the sides and also by following the principles of natural justice, we are of the opinion that one more opportunity should be given to the assessee to substantiate his case before the A.O. Accordingly, we set aside the order passed by the CIT(A). We remit the matter back to the A.O. to consider the details filed by the assessee in respect of Rs. 39,41,860/- and decide the issue fresh in accordance with law.

3. This ground appeal raised by the assessee is allowed for statistical purposes.

4. Next ground of appeal relating to short deduction. The Commissioner has observed that for F.Y. 2010-11 for Form 26Q were filed from which it appears that the said demand of Rs. 46,15,573/- has been reduced to Rs. 3,16,127/-. In the TRACES statement no amount beyond Rs. 3,16,127/- can be held payable by the assessee. In

respect of Rs. 3,16,127/- there is nothing in the submission dated 12.01.2016 which may require adjudication. It seems that the said liability is acceptable to the assessee and directed the A.O. to confirm the addition only of Rs. 3,16,127/-.

5. On appeal before us, the assessee has submitted that as per latest correction statement TRACES it is found the total outstanding demand status for F.Y. 2010-11 only Rs. 93,896/- submitted that direct the A.O. to consider the same and passed the orders. He also submitted that verify the latest TRACES statement of the same may be send it back to the A.O. for verification after verifying the same, the demand may be raised.

6. On the other hand, the learned DR fairly accepted that this may be remitted matter back to the A.O. to verify the latest TRACES statement.

7. In view of the above, we set aside the order passed by the CIT(A) remitted the matter back to file of the A.O. to considering the latest process statement of TRACES and raised the demand according to the law.

8. This ground of appeal raised by the assessee is allowed by statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order Pronounced in the Open Court on 15th December, 2017.

Sd/-

(Waseem Ahmed)
ACCOUNTANT MEMBER

Sd/-

(Veeravalli Durga Rao)
JUDICIAL MEMBER

Dated: 15/12/2017

Biswajit, Sr. PS

Copy of order forwarded to:

1. ESI Corporation, Panchdeep Bhawan, 5/1, Grand Lane, Kolkata – 700012.
2. ITO (TDS), Wd-57(1), 6th Floor, 10B, Middleton Row, Kolkata – 700071.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata