

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A Nos.1305 & 1306/Kol/2015

Assessment Years : 2011-12 & 2012-13

The Calcutta Tramways Company
(1978) Ltd.Kolkata
[PAN : AABCT 7674 D]
(Appellant)

-vs.-

D.C.I.T., Centralised Processing
Cell-TDS, Gaziabad.

(Respondent)

For the Appellant : Shri A.Biswas, FCA
For the Respondent : Shri Sallong Yaden, Addl.CIT, Sr.DR

Date of Hearing : 09.01.2018.

Date of Pronouncement : 02.02.2018.

ORDER

Per N.V.Vasudevan, JM

These are appeals by the Assessee against two orders both dated 28.07.2015 of C.I.T.(A)-24, Kolkata relating to A.Y.2011-12 & 2012-13.

ITA No.1305/Kol/2015 (A.Y.2011-12 :

2. The Assessee is a company. The assessee filed TDS returns for A.Y.2011-12 in respect of salary paid to employees and tax deducted at source on payment of salary . For A.Y.2011-12 the AO determined short deduction of tax at source at Rs.20,00,136/- and interest on short deduction amounting to Rs.6,58,812/-. The AO passed an order u/s 200A of the Income Tax Act, 1961 (Act) raising a demand for short deduction of tax at source and interest thereon as above dated 15.11.2013. Aggrieved by the order of AO the assessee. Before the CIT(A) the assessee pointed out that as per the copy of the TRACES dated 02.03.2015 the net demand payable by the assessee has been adjusted by the department in its records to Rs.3,62,680/- comprising of Rs.2,50,268/- towards

short deduction of TDS and Rs.1,12,410/- towards interest on short deduction of TDS. The assessee therefore prayed that the demand, if any, cannot exceed the aforesaid sum. The assessee also filed a break up of the outstanding demand and the reasons why the records of the department show short deduction of tax at source. The chart filed by the assessee is as follows :-

WEST BENGAL TRANSPORT CORPORATION (Earlier known as The Calcutta Tramways C. (1978) Ltd]					
Assessment Year 2011-2012 [Details to Ld. CIT(A)]					
Sl. No.	Name of the Employee	Taxable Total Income	Total Amount of TDS Deducted	TDS to be deducted @ 20% on cl. 3	Short Deduction
1	2	3	4	5	6
1	S. K. Buddhu	2,03,882.00	3,353.00	35,090.40	31,737.40
2	Shiv Murat Jaiswarn	1,83,661.00	9	31,858.20	31,849.20
3	Rajoo	1,84,242.00	2,591.00	32,046.40	29,455.40
4	Bisoon Ram	1,60,960.00	178	32,172.00	31,994.00
5	Dipankar Dutta	1,83,371.00	1,131.00	31,860.20	30,729.20
6	Tapan Kr. Sarkar	2,03,402.00	1,440.00	33,180.40	31,740.40
7	Xavier David	2,62,002.00	15,771.00	47,159.40	31,388.40
8	Sashibhusan Singh	1,81,121.00	500	31,873.20	31,373.20
Total					2,50,267.20
Interest on Short Deduction					1,12,410.00
Total (with Interest)					3,62,677.20
Demand R/Off					3,62,680.00

TDS CALCULATION BY APPELLANT			
Total Income After Basic Exemption of Rs.160000	TDS to be deducted @ 20%	89 Rebate as per Return	TDS Deductable
7	8	9	10
43,882.00	9,039.69	5,686.00	3,353.00
23,661.00	4,874.17	4,874.00	0.00
24,242.00	4,993.85	4,802.00	191.00
960.00	197.76	20.00	177.00
23,371.00	4,814.43	4,814.00	0.00
43,402.00	8,940.81	7,500.00	1,440.00
1,02,002.00	21,012.41	5,241.00	15,771.00
21,121.00	4,350.93	4,351.00	0.00

3. It can be seen from the aforesaid chart that the department has computed TDS at 20% of the figure shown in col.3. It is the case of the assessee that the aforesaid calculation is wrong because the department has not given basic exemption which is available to all the assessees. The assessee pointed out that in its calculation of TDS the assessee has given effect to the basic exemption and computed TDS as per col.7 and 8 of the above chart. If the computation is done so there would be no short deduction of tax at source.

4. The CIT(A) did not examine the correctness or otherwise of the aforesaid contention. He proceeded to hold that the outstanding demand of short deduction of tax

at source have to restricted only to TRACES as filed by the assessee viz. Rs.3,62,680/-.

The following were the relevant observations of the CIT(A) :-

“5. The submission of the appellant is vague. TRACES must be ,specific as to how the shortage was computed. In other words the details of short deduction and interest has been given, under summary of, PAN errors wherein 'deductees without PAN' are shown 11 in Number. The deductees without PAN must be known to the appellant deductor. It should .be possible tor the appellant to work out how short deduction has been reached at 2,50,268/- .As the appellant is only vaguely trying to explain without specifically pointing out the error in the working of short deduction of tax, I see no basis to vary the short deduction as computed in the latest TRACES statement enclosed to the submission of the appellant. As a result I direct the A.O. to verify the claims made in the form of the copy of the TRACES dt. 2nd March, 2015 and restrict the demand on tax and Interest. A/c to Rs. 3,62,680/-. In other words the demand is confirmed up to 3,62,680/- and the balance demand as originally computed in terms of the impugned order u/s 200A dt. 15.11.2013 of the Act is deleted. The grounds are allowed accordingly.”

5. Aggrieved by the order of the CIT(A) the assessee has preferred the present appeal before the Tribunal. The limited prayer of the ld. Counsel for the assessee before us is to direct the AO to examine the claim of the assessee that if basic exemption is given then the short deduction of TDS would be Nil. The next submission was that as per the latest TRACES the short deduction is only at Rs.29,740.40 and interest on short deduction is Rs.20,196/- making the outstanding demand of Rs.49,436.40.

6. At the time of hearing it was agreed by the parties that both the aforesaid issues require verification by the AO. Accordingly we set aside the order of the CIT(A) and remand the issue with regard to the determination of short deduction of tax at source as determined by the revenue on the basis of the chart extracted in the earlier part of the order. The AO is directed o examine the claim of the assessee that if basic exemption is given then there will be o short deduction of tax at source. The AO is also directed to examine the claim of the assessee with regard to the latest position of TDS as per the TRACES filed before the Tribunal showing the outstanding demand of only Rs.49,936.40. The ld. Counsel for the assessee has also filed before us a copy of the

order of ITAT, Visakhapatnam Bench in ITA Nos. 115 to 117/Vizag/2015 order dated 22.01.2016. The Hon'ble ITAT accepted the plea of the assessee that TDS on salary shall be computed in the manner specified u/s 192 of the Act after allowing basic exemption limit and deductions towards investments in savings scheme etc. The Tribunal held that unlike other provisions of TDS, TDS on salary cannot be deducted by applying flat rate of tax on gross payment. The AO is also directed to consider the claim of the assessee in the set aside proceedings in the light of the judicial pronouncement of ITAT, Visakhapatnam bench referred to above. For statistical purposes the appeal of the assessee is treated as allowed.

ITA No.1306/Kol/2015 (.Y.2012-13)

7. As far as this appeal relates to A.Y.2012-13 is concerned the facts are almost identical. The original demand of the AO towards short deduction of tax at source and interest thereon was a sum of Rs.17,47,130/- comprising of short deduction of tax of Rs.14,44,455/- and interest on short deduction of tax at Rs.3,02,673/-.

8. Before CIT(A) the TRACES statement dated 02.03.2015 showing the demand payable by the assessee was only at Rs.1,37,550/- comprising of Rs.1,07,482/- on account of short deduction and Rs.3,00,072/- towards interest on short deduction. The CIT(A) in his order directed that the demand against the assessee should be restricted only to outstanding as shown in TRACES statement dated 02.03.2015.

9. In this appeal before the Tribunal the Id. Counsel for the assessee has filed a copy of the TRACES statement dated 18.1.2017 which shows that the outstanding demand on account of TDS against the assessee is Nil. The order of CIT(A) is therefore set aside and the AO is directed to examine the claim of the assessee with regard to nil outstanding demand for A.Y. 2012-13. The AO will afford opportunity of being heard to the assessee for deciding the issue in both the A.Y.2011-12 and 2012-13. For statistical purposes the appeal of the assessee ITA No.1306/Kol/2015 is allowed.

10. In the result both the appeals are treated as allowed for statistical purposes.

Order pronounced in the Court on 02.02.2018.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 02.02.2018.
[RG Sr.PS]

Copy of the order forwarded to:

1. The Calcutta Tramways Company (1978) Ltd., 12, R.N.Mukherjee Road, Kolkata-700001.
2. D.C.I.T., Centralised Processing Cell-TDS, Gaziabad.
3. CIT(A)-24, Kolkata
4. C.I.T.-TDS, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head Of Office/ D.D.O., ITAT Kolkata Benches