

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Dr.Arjun Lal Saini, AM]

I.T.A No. 1524/Kol/2016

Financial Year : 2003-04

M/s Pawansut Management Ltd. (Merged with Tauman Infrastructure Ltd.) Kolkata [PAN : AACCP 9863 H] (Appellant)	-vs.-	I.T.O., Ward-58 (4) (TDS) Kolkata (Respondent)
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For the Appellant : Shri S.K.Tulsiyan, Advocate
For the Respondent : Shri Saurabh Kumar, Addl. CIT,Sr.DR

Date of Hearing : 06.02.2018.

Date of Pronouncement : 14.02.2018

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Assessee against the order dated 27.05.2016 of C.I.T.(A)-24, Kolkata relating to F.Y.2003-04.

2. The Assessee is a company. During the financial year 2003-04 the assessee made a payment of Rs.46,13,332/- towards truck hire charges to M/s_Himadri Chemicals & Industries Ltd. Under the provision of section 194C of the Income Tax Act, 1961 (Act) any person responsible for paying any sum to any resident for carrying out any work in pursuance of any contract shall at the time of payment deduct tax at source at the prescribed rate. The Assessee did not deduct tax at source at the time of making payment. Under section 201(1) of the Act if any person who is required to deduct tax in accordance with the provision of section 194C of the Act does not deduct tax at source, then such person shall be deemed to be an assessee in default in respect of such tax not deducted tax at source and is liable to pay sum equivalent to tax not

deducted at source. Under section 201(1A) of the Act the person who fails to deduct tax at source shall also be liable to pay interest at the specified percentage from the date on which such tax shall be deductible till the date on which the tax is deducted.

3. Since the assessee failed to deduct tax at source, proceedings u/s 201(1) and 201(1A) of the Act were initiated against the assessee. By an order dated 31.03.2011 the AO held that the assessee was to be treated an assessee in default u/s 201(1) of the Act and was also liable to pay interest u/s 201(1A) of the Act. The following were the final conclusion of the AO :

Tax and interest payable by the assessee is furnished as under :		
Tax U/s.201(1) @ 2.20% on Rs. 46,13,332/-		Rs.1,01,471/-
<u>Add : Interest U/s. 201(1A) for short deduction :</u>		
1. Average 6 months for F.Y. 2003-04 [in absence of payment details]	Rs. 7,610/-	
2. From 01.04.2004 to 31.03.2011 Total 84 months	<u>Rs.85,236/-</u>	<u>Rs. 92,846/-</u>
Total Payable by the assessee	:	<u>Rs.1,94,317/-</u>

4. Aggrieved by the order of the AO the assessee filed appeal before CIT(A). The CIT(A) decided the appeal exparte and confirmed the order of AO.

5. Aggrieved by the order of CIT(A) the assessee preferred the present appeal before the tribunal raising the following grounds of appeal:

“1) That, the orders passed by the Ld. Lower authorities to the extent they are prejudicial to the interests of the appellant are arbitrary, erroneous, without proper reasons, invalid and bad in law .

2) That, on the facts and in the circumstances of the case, the Ld. C.I.T.(A) erred in his supposition that there was an existing oral or written contract for hiring trucks on daily basis without there being any evidence of existence of such contract and hence his erroneous finding that the assessee was in default for not deducting TDS on such payments u/s.201(1) is beyond the scope of provisions of sec.194C and thus arbitrary, whimsical and bad in law.

3) That, the Ld. C.LT.(A) erred in not considering that payments made to truck owner per day has not exceeded the limit of Rs.20,000 so as to invoke provisions of sec.194C and as per CBDT Circular No.715 dated 08.08.1995 the various payments on different days in a year to truck provider do not pertain to a single contract but constitute independent GR and that being so, his action in treating the assessee as assessee in default u/s. 201(1) is arbitrary, erroneous and bad in law.

4) That, without any prejudice to the above, the Ld. C.I.T.(A) erred in not giving any effect to the certificate u/s.197 dated 29.05.2003 issued by the A.O. allowing to deduct tax at the lower rate of 0.5% on the alleged ground of non-compliance of hearing notices in spite of the fact that the same was already on record and hence his action in upholding the levy of tax of Rs.1,01,471/- u/s 201(1) and interest of Rs.92,846/- u/s. 201(1A) is arbitrary, whimsical, erroneous and bad in law.

5) That, in any case, as the determination of alleged default of non-deduction of tax at source was erroneous and uncalled for on the facts and in the circumstances of the case, the Ld. C.I.T.(A) erred in upholding interest of Rs.92,846/- u/s. 201(1A) for such alleged default.

6) That, as the order of the Ld. C.I.T.(A) on the above issues suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

7) That the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds.”

6. At the time of hearing of the appeal the Id. Counsel for the assessee filed the following additional grounds for consideration by the tribunal :

"8. That on the facts and circumstances of the case the Ld. CIT(A) erred in confirming the assessment order passed by the Ld. AO in the name of the erstwhile appellant without appreciating that assessment order passed in the name of a non existent company is invalid and void ab initio.

9. That the order passed by the Ld. CIT(A) confirming the assessment order passed by the Ld. AO is without jurisdiction. the erstwhile appellant on being already merged with Takshila Credit & Holding Pvt. Ltd. (later changed to Tauman Infrastructure Ltd.) on the date of passing the order u/s 201/201 (1A) of the Income Tax Act, 1961.

10. That the order passed by the Ld. AO and subsequently confirmed by the Ld. CIT(A) should accordingly be quashed and the appellant be given such relief(s) as prayed for. "

7. In the applicable for admitting the additional grounds the assessee has submitted that the assessee Pawansut Management Ltd., merged with Takshila Credit & Holding Pvt. Ltd., pursuant to an order dated 25.06.2008 of the Hon'ble Calcutta High Court in Company Petition No.150 of 2008. He also brought to our notice that as per the scheme of amalgamation approved by the Hon'ble High Court, the effective date of amalgamation was 01.04.2007. His submission was that the entity by name Pawasut Management Ltd ceased to exist w.e.f. 1.4.2007 on its amalgamation with Takshila Credit & Holding Pvt. Ltd. (whose name was subsequently changed to Tuaman Infrastructure Ltd w.e.f. 10.09.2009). Since the impugned orders and the proceedings were carried out in the name of a person who no longer exists, the orders u/s 201(1) and 201(1A) of the Act are a nullity in law and therefore they have to be annulled. It has also been submitted that since the factual details with regard to the amalgamation are in the public domain, the facts for deciding the additional grounds of appeal is available on record and no further investigation on facts is required to be made. It has been prayed that the additional grounds of appeal may be admitted.

8. The Id. Counsel for the assessee reiterated the stand of the assessee as set out in the earlier paragraphs on the admission of the additional ground.

9. We have considered the submission of the learned counsel for the Assessee. We are of the view that the plea for admitting the additional ground has to be accepted. In this regard we also notice that even in the order of CIT(A), the factum of merger of Pawansut Management Ltd with Takshila Credit & Holding Pvt.Ltd whose name was subsequently changed to Tauman Infrastructure Ltd has been noticed. Neither before the AO nor before the CIT(A), the plea regarding invalidity of the orders u/s 201(1) and

201(1A) of the Act on the ground that it was passed against a person not in existence was put forth. Since the contention in the additional ground is purely a legal ground the same is admitted for adjudication.

10. As far as the invalidity of the order u/s 201(1) and 201(1A) of the Act on the ground that it is passed against a non-existent person is concerned, it is not disputed before us that Pawansut Management Ltd. Merged with Takshila Credit & Holding Pvt.Ltd pursuant to a scheme of amalgamation. As per the scheme of amalgamation the appointed day for operation of the scheme of amalgamation was 01.04.2007. As per clause-3 of the scheme, with effect from the appointed date all debts and liabilities of Pawansut Management Ltd., will stand transferred to the transferee company Takshila Credit & Holding Pvt. Ltd now known as Tuaman Infrastructure Ltd. As per clause -15 of the scheme of amalgamation as on the effective date, the transferor company shall stand dissolved without winding up. The scheme, as we have already stated, has been approved by the Hon'ble Calcutta high Court by its order dated 25.06.2008 in Company Petition No.150 of 2008. It is thus clear that w.e.f 01.04.2007 Pawansut Management Ltd ceased to exist. The order u/s.201(1) & 201(1A) of the Act was passed by the AO on 31.3.2011 in the name of M/S.Pawansut Management Ltd., ceased to exist.

11. The law is well settled that the proceedings against a person who is not in existence is null and void and has no legal effect. The following decision cited by the ld. Counsel for the assessee supports the plea of the assessee in this regard :

01. The Hon'ble Supreme Court of India in the case of CIT vs. Spice Infotainment Ltd., Civil Appeal No. 285 of 2014.
02. The Hon'ble Delhi High Court in the case of Spice Infotainment Ltd. vs. CIT reported in (2012) 247 CTR 500
03. The Hon'ble Supreme Court of India in the case of Saraswati Industrial Syndicate Ltd. vs. Commissioner Of Income Tax reported in (1990) 186 ITR 0278 (SC)
04. The Hon'ble IT AT, Kolkata in the case of DCIT vs. Mani Square Ltd., ITA No. 1052-1053/Ko1/2015

05. The Hon'ble ITAT, Kolkata in the matter of B.K. Agencies vs. ITO, ITA No. 2551 & 2552/Ko1/2013
06. The Hon'ble ITAT, Kolkata in the case of Pampasar Distillery Ltd vs. Assistant Commissioner of Income Tax, Circle-5, Kolkata [2007] 15 SOT 331
07. The Hon'ble ITAT, Mumbai in the case of Makers Development Services Ltd vs DCIT (1991) 41 TTJ 301 (ITAT[Bom])
08. The Hon'ble ITAT, Delhi in the case of Modi Corporation Ltd vs JCIT Reported in [2006] 105 TTJ 303 (ITAT Delhi)
09. The Hon'ble Karnatak High Court in the case of CIT vs Intel Technology India Pvt. Ltd. Reported in [2016] 380 ITR 272 (Kar)

12. The proposition that emerges from the aforesaid decision is that He pointed out that under the Income Tax Act, 1961 an assessment can be made only against a person as defined u/s 2(31) of the Act. A company after it is dissolved cannot be said to be a person in terms of that section. On amalgamation, the amalgamating company stands dissolved without winding up. In other words, the amalgamating company ceases to exist in the eyes of the law. Though rules of abatement of suits under the Civil Procedure Code would not apply to assessment proceedings under the Income Tax Act, as the ITO was not a Court but the principle of representation applicable to regular suits and proceedings under the Civil Procedure Code would well apply to such proceedings. The existence of an assessee is essential for an assessment. There cannot be an assessment of a non-existent person.

13. In view of the legal position as set out above, we are of the view that the present proceedings u/s 201(1) and 201(1A) of the Act held to be invalid and hereby annulled.

14. In the result the appeal by the assessee is allowed.

Order pronounced in the Court on 14.02.2018

Sd/-

[Dr.Arjunlal Saini]
Accountant Member

Sd/-

[N.V.Vasudevan]
Judicial Member

Dated : 14.02.2018
[RG Sr.PS]

Copy of the order forwarded to:

1. M/s Pawansut Management Ltd. [Merged with tauman Infrastrucutre Ltd.],
23, N.S.Road, 8th Floor, Room No.15, Kolkata-700001.
2. I.T.O., Ward-58(4), Kolkata.
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