

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA Nos.123 to 126/CTK/2015

(निर्धारण वर्ष / Assessment Years :2010-11,2011-12, 2012-13, 2013-14)

SR Breweries Pvt. Ltd., Plot No.S-3/53, Phase-II, New Industrial Estate, Jagatpur, Cuttack-754021	Vs.	ITO(TDS), Aayakar Bhawan, Shelter Square, Cuttack-753008
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AANCS 2800 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA Nos.127 to 129/CTK/2015

(निर्धारण वर्ष / Assessment Years :2011-12, 2012-13 & 2013-14)

SR Distillery Pvt. Ltd., Plot No.S-3/53, Phase-II, New Industrial Estate, Jagatpur, Cuttack-754021	Vs.	ITO(TDS), Aayakar Bhawan, Shelter Square, Cuttack-753008
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOCS 6449 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri G.Naik & Shri S.K.Saranghi,AR
राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : 29/06/2017

घोषणा की तारीख/Date of Pronouncement 30/06/2017

आदेश / O R D E R

Per Bench:

These are the appeals filed by two different assesseees against the common order dated 31.12.2014, passed by the CIT(A), Cuttack, u/s.201(1)/201(1A) of the Income Tax Act, for the assessment years 2010-2011, 2011-2012, 2012-2013 & 2013-2014, respectively.

2. Since the issues involved in all the appeals are identical, therefore, all the appeals have been heard and are being disposed off by this consolidated order *en masse*.
3. At the time of hearing, Id. AR submitted that He wants to withdraw the appeals i.e. ITA No.125&126/CTK/2015 (AY : 2012-2013 & 2013-2014) relating to assessee-SR Breweries Pvt. Ltd. Accordingly, the appeals filed in case of SR Breweries Pvt. Ltd. in ITA Nos.125&126/CTK/2015 are dismissed as withdrawn.
4. Now, we shall take up the appeals filed in case of assessee SR Breweries Pvt. Ltd. in ITA Nos.123&124/CTK/2015 (AY : 2010-2011 & 2011-2012). For the sake of convenience, we shall take into consideration the grounds and facts mentioned in ITA No.123/CTK/2015 (AY 2010-2011) for deciding all the appeals.
5. The centripetal issue to be decided in all the appeals is with regard to inaction on the part of the Id. CIT(A) in confirming the order of AO in raising demand of Rs.21,46,400/- u/s.201(1)/201(1A) of the Act and for non-deduction of TDS u/s.194C of the Act.
6. The facts in concise emanate from the orders of the authorities below are that the assessee is engaged in the business of manufacturing and selling of Beer in the brand name of 'Concord' to the Odisha State Beverages Corporation Ltd.. A survey operation was conducted u/s.133A in the office premises of assessee on 19.2.2013. During the course of survey, certain irregularities were found in respect of short deposit of TDS, which has been incorporated in the assessment order at page 2 & 3 and

also the assessee company has constructed a factory engaging another company for execution of project work and the amounts have been paid without deduction of tax at source. The Id. AO perused the agreement executed between the assessee company and M/s Brew Force Group of Companies. The assessee filed explanations vide letter dated 8.10.2013 contending therein that for non-deduction of TDS as the supply of machinery includes successful erection and commissioning. In commissioning there is only machinery supply bill and no service bills for erection and commissioning has been raised. Further, agreement was made to avail bank loans and bank guarantees which the Id. AO referred at para 3.2 of the assessment order. Ld. AO found the assessee has made the payments without deduction of TDS u/s.194C of the Act and raised demand of Rs.21,46,400/- for the assessment year 2010-2011 and passed a common order dated 01.11.2013, u/s.201(1)/201(1A)&206C/206C(7) of the Act,

7. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). In the appellate proceedings the Id. CIT(A) on the disputed issue in respect of the assessment year under consideration, found that the payments are made only for supply of machineries and equipments and there is no service bills payments made for erection and commissioning. But the Id. CIT(A) observed that the assessee has entered into an agreement with M/s Brew Force Technologies, Nazafgarh, New Delhi, for the work of supply of machineries, equipments and erection and commissioning. Since the agreement was entered with the

other company, therefore, any payments in the nature of composite contract supply of machinery, erection is liable for deduction of TDS and confirmed the demand raised by the AO and partly allowed the appeal of the assessee.

8. Aggrieved by the CIT(A)'s order, the assessee preferred an appeal before the Tribunal.

9. Before us, Id. AR of the assessee submitted statement of supply and payment of charges of machineries. The contention of Id. AR that the CIT(A) has erred in confirming the demand raised by the AO without considering the fact that the amounts were paid for purchase of machineries and also filed a letter of confirmation from M/s Brew Force Ltd., who has confirmed the supply of plant and machinery to the assessee company.

10. *Contra*, Id. DR objected to the additional evidence and supported the order of AO.

11. We heard the rival submissions and perused the material available on record. *Prima facie*, the disputed issue argued by Id. AR being non-deduction of TDS. The Id. AR submitted that the provisions of Section 194C shall not apply in respect of plant and machinery. Id. DR contested the letter of confirmation from the suppliers of plant and machinery, which according to the Id. DR being a fresh evidence filed for the first time before the Tribunal and the AO was deprived to verify and examine the genuineness. We found strength in the arguments of Id. DR. Accordingly, we are of the opinion that the AO shall verify and examine the disputed

issue and apply the provisions of Act. Accordingly, we remit the disputed issue to the file of AO along with the documents filed before us to verify the genuineness and examine the activities and assessee shall be provided adequate opportunity of hearing. Accordingly, the appeal of the assessee is allowed for statistical purposes.

12. In regard to ITA No.124/CTK/2016(AY : 2011-2012), as the facts and circumstances as well as the issue raised in the present appeal are identical to the ITA No.123/CTK/2016(AY : 2010-2011), therefore, the findings given by us in the Assessment year 2010-2011, will apply *mutatis mutandis* to this case also. Hence, this appeal of the assessee is also allowed for statistical purposes.

13. Now, we shall take up the appeals filed by the assessee –SR Distillery Pvt. Ltd. in ITA Nos.127 to 129/CTK/2015 (AY : 2011-12 to 2013-14), wherein in all the appeals the common issue raised by the assessee that the Id. CIT(A) erred in confirming the order of AO in raising demand u/s.201(1)/201(1A) of the Act and was not justified in holding the assessee liable to deduct tax u/s.194C of the Act.

14. We have decided the very same issue while considering the appeal in ITA No.123/CTK/2015 for the assessment year 2010-2011 in the case of another assessee(i.e. SR Breweries Pvt. Ltd.), wherein we have remitted the disputed issue to the file of AO to verify and examine and apply the provisions of Act. Accordingly, we, follow the findings given in the order referred at para 11 above and remit the disputed issue raised in the present appeals to the file of AO along with documents filed before us

to verify the genuineness and examine the activities and assessee shall be provided adequate opportunity of hearing. Accordingly, all the three appeals of the assessee are allowed for statistical purposes.

15. In the result, appeals filed by the assessee in ITA Nos.123 & 124/CTK/2015 and ITA Nos.127, 128 & 129/CTK/2015 are allowed for statistical purposes, whereas ITA Nos.125&126/CTK/2015 are dismissed.

Order pronounced in the open court on this 30/06/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 30/06/2017

प्र.कु.मि/PKM, Senior Private Secretary

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY

ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack