

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 No.406/CTK/2015
(निर्धारण वर्ष / Assessment Year :2011-2012)

Edusys Services Private Limited M/s Suresh & Co., Chartered Accountants, #43/16, Srinidhi, 1 st Floor, Surveyor Street, Basavanagudi, Bangalore-560004	Vs.	DCIT, Circle-1(1), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCE 3423 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri D.S.Vivek, AR
राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, CITDR
सुनवाई की तारीख / Date of Hearing : **25/07/2017**
घोषणा की तारीख/Date of Pronouncement **27/07/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The assessee has filed an appeal against the order of CIT(A)-1, Bhubaneswar, passed in ITAppeal No.0022/2014-15, dated 10.06.2015, u/s.143(3) of the Income Tax Act.

2. The assessee has raised the following grounds of appeal :-

“1. The CIT(A) has erred in stating that there is no cause of grievance against the order of the Assessing Officer failing to note that even a non-action by the AO which was supposed to have done calls for review (as decided by Supreme Court in the case of CIT vs. Bhagat Construction Co. Pvt. Ltd.-Appeal No.1169 of 2006).

2. The CIT(A) has erred in upholding the order of the AO in considering the Dividend Distribution Tax applicable for the Assessment year 2012-13 in the Assessment year 2011-12 and also in computing and in levying Dividend Distribution Tax (DDT) liability over and above the tax actually due the basis along with Interest thereon.

2. The CIT(A) has erred in stating that the appellant should have got the challan rectified by filing revised return or by making data entry-correction failing to appreciate that the assessee had in fact made an application for Data Entry Correction in the Challan which was not acted upon by the respected officers.”

3. Brief facts of the case are that the assessee company engaged in the business of IT enabled services (Web based management and quality courses) and has two units, one STPI and the other non-STPI unit and the assessee claimed exemption u/s.10A of the Act and filed the return of income electronically on 29.11.2011 with total loss of Rs.87,59,221/- and the return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s.143(2) & 142(1) of the Act were issued. In compliance, the Id. AR of the assessee appeared from time to time and furnished the details and the AO accepted the returned income and passed order u/s.143(3) of the Act dated 12.3.2014 but the AO has raised the demand of Rs.2,37,531/- in respect of Dividend Distribution Tax (DDT) including interest.

4. Aggrieved by the order of the AO, the assessee has filed an appeal before the CIT(A). The Id. CIT(A) considered the grounds raised by the assessee and the submissions made in the course of appellate proceedings in respect of dividend declaration and the facts on payment of DDT. But the CIT(A) was not satisfied with the explanations and concord with the findings of AO in raising the demand and observed at page 2 & 3 of his order and dismissed the assessee's appeal.

5. Being aggrieved with the order of CIT(A), the assessee has filed appeal before the Tribunal.

6. Before us, Id. AR submitted that the assessee company has filed the return of income with total loss but paid the taxes as per the provisions of Section 115JB of the Act. During the financial year 2010-

2011 the assessee company has declared dividend and DDT was paid as per the calculations, whereas the final dividend for the financial year 2010-2011 was paid in the assessment year 2012-2013. The assessee has wrongly mentioned in the challan as assessment year 2011-2012 in respect of DDT paid on 15.10.2011 instead of assessment year 2012-2013. Further, the DDT was paid in the financial year 2011-2012 and the surcharge on DDT for A.Y.2012-2013 was 5% as against 7.5% applicable to assessment year 2011-2012, therefore, the AO has raised an additional demand considering the rate of surcharge at 7.5% and these facts were explained in the assessment proceedings. Further, the assessee company has filed an Application u/s.154 of the Act on 12.8.2014 considering the mistake apparent from record. The Id. AR filed paper book to substantiate his arguments with written submissions and prayed for allowing the appeal.

7. Contra, Id. DR relied on the order of the CIT(A).

8. We heard the rival submissions and perused the material on record. The Id. AR submitted that the AO has not considered the facts of rectification of mentioning the wrong assessment and also the assessee company has filed the explanation in the assessment proceedings. The Id. AR drew our attention to submissions made before the AO at page 24 of the paper book where the details of challans and payments of DDT and other details were furnished with the AO. We on perusal of the assessment order found that the AO has not dealt on this issue and raised the demand in the assessment order u/s.143(3) of the Act passed

on 12.3.2014. The Id. AR also drew our attention to the rectification petition u/s.154 of the Act and the financial statements and the correction of challans in the paper book and emphasised that no action was taken by the revenue till today on the rectification petition and relied on the judicial decisions and the CBDT Circular. We find strength in the arguments of the Id. AR and in the interest of justice, we remit the disputed issue to the file of AO for verification and examination of material filed and pass the orders. Nevertheless to say that the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information before passing the order and the grounds of appeal of the assessee are allowed for statistical purposes.

9. Thus, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 27/07/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 27/07/2017

प्र. कु. मि / PKM, Senior Private Secretary

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

1. अपीलार्थी / The Appellant-
Edusys Services Private Limited
M/s Suresh & Co., Chartered
Accountants, #43/16, Srinidhi,
1st Floor, Surveyor Street,
Basavanagudi, Bangalore-560004
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-1(1), Bhubaneswar
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//

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

आदेशानुसार / BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack