

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'D' KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM & Shri S.S.Viswanethra Ravi, JM]

ITA No.1124/Kol/2016
Assessment Year : **2009-10**

M/s Shree Nursingsahay Mudungopal .-versus-
(P) Ltd, Kolkata
(PAN: CALSO5533C)
(Appellant)

I.T.O., Ward-59(3)(TDS)
Kolkata
(Respondent)

For the Appellant: Shri Sunil Surana, Advocate
For the Respondent: Smt. M.Ghosh, Sr.DR

Date of Hearing : 03.09.2018

Date of Pronouncement : 12.09.2018.

ORDER

PER J.SUDHAKAR REDDY, AM:

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax-(A)-24, Kolkata, dated 17.03.2016 passed u/s 250 of the Income Tax Act, 1961 (the 'Act ') relating to A.Y. 2009-10.

2. The facts of the case have been brought out by the AO at para-1 of his order and by the Id. CIT(A) at para-3 of his order.

3. After hearing rival contentions, we find that the only issue before us is, whether it is correct to treat the assessee, as an assessee in default u/s 201(1) of the Act, when the fact is, that the assessee has inadvertently made a mistake of depositing the tax deducted at source of Rs.4,76,140/- against PAN number of the deductee, instead of the TAN No. of the deductee. It is not a case where the assessee has retained any part of the tax deducted at source with it. This fact that the deposit was made against the PAN instead of the TAN is recorded by the AO.

4. The Jaipur Bench of ITAT in ITA Nos.222 & 223/JP/2013 order dated 09.10.2015, has in similar circumstances held that, the assessee cannot be treated as an assessee in default. Respectfully following the decision of the Coordinate Bench on the very same matter in the case of ITO vs TDS vs LIC of India (supra) we direct the AO to rectify the inadvertent mistake in this matter and pass a suitable order under the law. The order declaring the assessee as an assessee in default is hereby cancelled.

5. In the result the appeal of the assessee is allowed.

Order pronounced in the Court on 12.09.2018.

Sd/-
[S.S.Viswanethra Ravi]
Judicial Member

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Dated : 12.09.2018.
[RG Sr.PS]

Copy of the order forwarded to:

- 1.M/s Shree Nursingsahay Mudungopal Emgg. (P)Ltd., 55, Ezra Street, 1st Floor, Kolkata-700001.
2. I.T.O., Ward-59(3)(TDS), Kolkata.
3. C.I.T.(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