

आयकर अपीलअथ अधकरण, राजकोट ँयायपीठ, राजकोट ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**
पी राजपाल यादव, ँयायक सदंय एवं पी वसीम अहमद, लेखा सदंय के समं ।
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos.170-172/Rjt/2017
(नधाण वषं Assessment Years : 2006-07, 2008-09 & 2009-10)

Jayshri Silk Processing Mills Pvt. Ltd., Pedhla, Jetpur	बनाम/ Vs.	A.C.I.T, Central Circle-1, Rajkot.
थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFJ5033F		
(अपीलाथं /Appellant)	..	(ंयथं / Respondent)

अपीलाथं ओर से / Appellant by :	None
ंयथं कं ओर से / Respondent by :	Shri Jitender Kumar, DR.

सुनवाई कं ताराख / Date of Hearing	17/09/2019
घोषणा कं ताराख / Date of Pronouncement	18/09/2019

आदेश / ORDER

PER WASEEM AHMED ACCOUNTANT MEMBER:

The captioned appeals have been filed at the instance of the Assessee against the separate orders of Learned Commissioner of Income Tax (Appeals)-11, Ahmedabad [Ld. CIT(A) in short] of even dated 17/03/2017, arising in the matter of assessment order passed under s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to Assessment Years (A.Ys) 2006-07, 2008-09 & 2009-10.

At the outset, we note that the assessee has filed the adjournment application but we rejected the same as the issue was covered. Hence, we proceed to hear the appeal ex-party qua the assessee.

First, we take up ITA number 170/RJT/2017 for A.Y. 2006-07

The assessee has raised the following grounds of appeal:

- 1. The grounds raised in this appeal are without prejudice to one another.*
- 2. The ld.CIT(A) erred in law and on facts in retiring disallowance of Rs.185338/-out of interest expense though the same was not warranted on the facts of the case and was not in accordance with law.*
- 3. That on the facts of the case and material on record the disallowance made deserves to be deleted.*
- 4. The ld.CIT(A) erred in law and on facts in ignoring the cogent evidences the material filed with him and further erred in not accepting the additional material as additional evidence for which the prayer u/s.46A was made in appeal proceedings.*
- 5. The ld.CIT(A) in this regard proceeded on erroneous presumption & premises and erred in ignoring the cogent material put forth before him. On the facts of the case it is contended that the disallowance made deserves to be deleted.*
- 6. Your appellant craves leave to add, alter, amend or withdraw any of the grounds stated here above.*

2. The first issue raised by the assessee is that the learned CIT (A) erred upholding the order of the AO for disallowing the expenses on account of non-deduction of the expenses.

3. Briefly stated facts are that the assessee is a private limited company and engaged in the business of manufacturing of garments. The assessee in the year under consideration has incurred an expense of

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1,94,492.00 as supervision charges which was subject to TDS at the rate of 2.24% on such expenses. As such the assessee was liable to deduct the TDS of Rs. 4356.00 only whereas it claimed to have deducted TDS only for 205 as per the lower TDS certificate issued by the concerned officer/AO of the party. But the assessee has not furnished such certificate. Therefore, the AO has disallowed the proportionate expenditure of 1,85,338 under section 40(a)(ia) of the Act and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the learned CIT-A who has also confirmed the order of the AO by observing as under:

6. Facts of the case, findings of the Assessing Officer and submissions of the appellant have been gone through. It was an admitted fact that the assessee did not submit any proof of no deduction of tax or lower deduction of tax to the Assessing Officer in support of his contention that the assessee was not liable to deduct tax on payment of supervision charges to Jayprakash and Printing Works. In the appeal proceedings he did not rebut the findings of the Assessing Officer. In view of the given facts and circumstances of the case, the ground of appeal is dismissed.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

5. The learned DR before us vehemently supported the order of the authorities below.

6. We have heard the learned DR and perused the materials available on record. From the preceding discussion we note that the assessee has deducted TDS on the expenditure incurred under the head supervisory charges in the name of M/s Jayprakash Dyeing & Printing Works at the

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rate of 0.10 percent amounting to Rs. 205.00. This fact was duly admitted by the AO in his assessment order. The relevant extract of the assessment order is reproduced as under:

3. *On verification of the details filed by the assessee during course of assessment proceedings, it is noticed that, the assessee had deducted TDS @ 0.10% on supervision charges made by it to M/s.Jayprakash Dyeing & Printing Works, to whom payment of Rs.1,94,490/- was made.*

From the above, admittedly the assessee has not deducted TDS at the rate prescribed under the provisions of law. Moreover, the assessee has also not produced the lower TDS certificate. Now the issue arises whether the proportionate amount of expenditure incurred by the assessee can be disallowed in the event TDS was deducted but less than the rate prescribed under the provisions of law.

6.1 At this juncture, we find important to refer the provisions of section 194C of the Act which reads as under:

¹⁴[*Payments to contractors.*

¹⁵**194C.** (1) *Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor¹⁶) for carrying out any work¹⁶ (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—*

(i) *one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;*

(ii) *two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,*

of such sum as income-tax on income comprised therein.

On perusal of the above provisions of section, we note that the law requires deducting the tax at the appropriate rate as prescribed. But it

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does not propose to make any proportionate disallowance in the event of deduction of TDS at the lower rate. Therefore we are of the view, there cannot be any disallowance of the impugned expenses on account of TDS deduction at the lower rate under the provision of section 40(a)(ia) of the Act. Hence, the ground of appeal of the assessee is allowed.

6.2 As we have decided the main issue in favour of the assessee, we are not inclined to adjudicate the connected grounds of appeal raised by the assessee in the memo of appeal. As such, the other grounds of appeal do not require any separate adjudication. Hence we dismiss them.

In the result, the appeal of the assessee is partly allowed.

Coming to the ITA No. 171/Rjt/2017 for A.Y.2008-09

The assessee has raised the following grounds of appeal:

- 1. The grounds raised in this appeal are without prejudice to one another.*
- 2. The ld.CIT(A) erred in law and on facts in retiring disallowance of Rs.522000/-out of interest expense though the same was not warranted on the facts of the case and was not in accordance with law.*
- 3. That on the facts of the case and material on record the disallowance made deserves to be deleted.*
- 4. The ld.CIT(A) erred in law and on facts in ignoring the cogent evidences the material filed with him and further erred in not accepting the additional material as additional evidence for which the prayer u/s.46A was made in appeal proceedings.*
- 5. The ld.CIT(A) in this regard proceeded on erroneous presumption & premises and erred in ignoring the cogent material put forth before him. On the facts of the case it is contended that the disallowance made deserves to be deleted.*

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6. *Your appellant craves leave to add, alter, amend or withdraw any of the grounds stated here above.*

7. The issue raised by the assessee in ground No. 4 is that the learned CIT (A) erred in not accepting the additional evidences filed under rule 46A of Income Tax Rule.

8. The AO during the assessment proceedings observed that the assessee has diverted its interest-bearing fund by giving advances to its sister concern without interest. Therefore the AO worked out the proportionate amount of interest of 5,22,000.00 and added back to the total income of the assessee.

9. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing as under:

6. Facts of the case, findings of the Assessing Officer and submissions of the appellant have been gone through. It was an admitted fact that the assessee did not submit any proof of no deduction of tax or lower deduction of tax to the Assessing Officer in support of his contention that the assessee was not liable to deduct tax on payment of supervision charges to Jayprakash and Printing Works. In the appeal proceedings he did not rebut the findings of the Assessing Officer. In view of the given facts and circumstances of the case, the ground of appeal is dismissed.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

10. The learned DR vehemently supported the order of the authorities below.

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11. We have heard the learned DR and perused the materials available on record. From the ground of appeal raised by the assessee we note that the assessee claimed to have furnished additional materials under the provisions of rule 46A of Income Tax Rule which were not accepted by the learned CIT (A) during the appellate proceedings. A specific query was raised to the learned DR to restore the matter to the file of the learned CIT (A) for fresh adjudication in the light of the additional evidences.

11.1 The learned DR was unable to advance any argument against the plea taken by the assessee in the ground of appeal.

11.2 Besides the above, we also note that the law is fairly settled now that there cannot be any disallowance of the interest expenses on account of diversion of interest-bearing fund provided the own fund of the assessee exceeds such amount of interest free advances/loan. Therefore in the interest of justice and fair play, we are inclined to refer the matter to the file of the AO for the fresh adjudication as per the provisions of law. The assessee would be at liberty to file the necessary evidences in support of its contention. However, it is needless to mention that the assessee shall cooperate during the proceedings before the AO and shall not seek any adjournment without cause. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

11.3 As we have restored back the main issue to the file of the AO for fresh adjudication as per the provisions of law, we are not inclined to adjudicate the connected grounds of appeal raised by the assessee in the

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memo of appeal. As such, the other grounds of appeal do not require any separate adjudication. Hence we dismiss them.

In the result, the appeal of the assessee is partly allowed for the statistical purposes.

Now coming to the ITA No.172/ Rjt/2017 for A.Y.2009-10

The assessee has raised the following grounds of appeal:

- 1. The grounds raised in this appeal are without prejudice to one another.*
- 2. The Ld.CIT(A) erred in law and on facts in retaining disallowance of Rs.121366/- u/sAO(a)(ia) though the same was not warranted on the facts of the case and not in accordance with law.*
- 3. The grounds on the basis of which the disallowance has been retained by the Ld.CIT(A) are factually incorrect and not in accordance with law and the disallowance made in the assessment order, retained in the appeal, deserves to be deleted.*
- 4. The Ld.CIT(A) erred in law and on facts in ignoring the material on record and proceeded on erroneous presumptions and premises while retaining disallowance.*
- 5. On the facts and circumstances of the case and as per law the disallowance made in assessment order and retained the appeal deserves to be deleted.*
- 6. Assuming without admitting that there was a short deduction of TOS, the same would not call for disallowance u/s. 40(a)(ia) as the said proviso applies for non-deduction of TOS and not for short deduction of TOS.*
- 7. Without prejudice the Ld.CIT(A) failed to appreciate the fact that recipient of job charges had shown the same in its return of income and therefore no disallowance in the case of the appellant was called for.*
- 8. Your appellant craves leave to add, alter, amend or withdraw any of the grounds stated here above.*

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12. The assessee has raised as many as 8 grounds of appeal but the effective issue is that the learned CIT (A) erred in confirming the order of the AO by disallowing the expenses of 1,21,366 on account of non-deduction of TDS.

13. At the outset we note that, we have decided the identical issue in the own case of the assessee in its favour bearing ITA No. 170/RJT/2017 pertaining to the assessment 2006-07. For the detailed discussion, please refer to the relevant paragraph No. 6 of this order. Respectfully following the same, we do not want to uphold the finding of the authorities below. Hence the ground of appeal of the assessee is allowed.

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

14. In the combined results, the appeals of the assessee bearing ITA No.170/Rjt/2017 and 172/Rjt/2017 are partly allowed and ITANo.171/Rjt/2017 for A.Y.2008-09 is partly allowed for statistical purpose.

This Order pronounced in Open Court on 18/09/2019

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(राजपाल यादव)

ऀयाऀयक सदऀय

(RAJPAL YADAV)
JUDICIAL MEMBER

Dated 18/09 /2019
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(True Copy)

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(वसीम अहमद)

लेखा सदऀय

(WASEEM AHMED)
ACCOUNTANT MEMBER