

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.273 & 274/CTK/2019

(AY:2007-2008)(1st Quarter) 26Q

(AY:2007-2008)(2nd Quarter) 26Q

Branch Manager, LIC of India, Bhadrak Branch, Bhadrak	Vs.	ACIT (TDS-II), Bhubaneswar
स्थायी लेखा सं./PAN No. : AAACL 0582 H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Sunakar Mohanty, Adv.
राजस्व की ओर से /Revenue by	:	Shri Subhendu Datta, DR

सुनवाई की तारीख / Date of Hearing	:	27/01/2020
घोषणा की तारीख/Date of Pronouncement	:	28/01/2020

आदेश / O R D E R

Per L.P.Sahu, AM:

These two appeals have been filed by the assessee against separate order passed by the CIT(A), Sambalpur, both dated 09.05.2019 for the assessment year 2007-2008 (1st Quarter & 2nd Quarter).

2. The common ground raised by the assessee in both the appeals are as under :-

1. *For that the orders passed by the learned forums below are illegal arbitrary, excessive and unjust in the facts and circumstances of the case,*
2. *For that there should not be any penalty which, is against the principle natural Justice and thus the order passed liable to be quashed I appeal.*

3. *For that forum before failed to appreciate that there was no short deduction of Tax at source u/s 201(1) of foe Act, hence the interest charged U/s 201 (A) is baseless and liable to be quashed in appeal*
- 4 *For that the learned AO has imposed penal interest without proper verification of records'.*
5. *For that other grounds, if any, will be urged at the time of hearing of appeal.*

3. Brief facts of the case are that the assessee company is a public sector undertaking and filed its quarterly e-TDS statement in Form No.26Q for the 1st quarter and 2nd quarter, respectively. The AO after analyzing of the TDS statement on the basis of entries reported by the deductor(assessee) and the information available as per the bank challan details, found that the assessee is in default for non-payment of TDS amount deducted. Accordingly, the AO issued show cause notice to the assessee and it was advised to file the correction statement to rectify the data entry errors, however, the assessee did not avail the opportunity within the prescribed period provided in the show cause notice. Accordingly, the demand was raised and order was passed u/s.201(1)/201(1A) of the Act, 1961 for both the quarters as mentioned above.

4. Feeling aggrieved from the order of AO, the assessee appealed before the CIT(A) and the CIT(A) after considering the submission of the assessee, upheld the order passed by the AO(ACIT-TDS).

5. Aggrieved from the order of CIT(A), the assessee is in further appeals before the Income Tax Appellate Tribunal.

6. Ld. AR submitted that there was no short deduction of Tax at source u/s.201(1) of the Act and, therefore, the interest charged u/s.201(1A) of the Act is baseless and liable to be deleted. It was further contended by ld. AR that all the tax dues have been paid by the assessee. Ld. AR also submitted that considering the submissions of the assessee that all the taxes have been paid to the Revenue and there is no loss of Revenue, therefore, matter may be restored to the file of AO for verification.

7. Ld.DR, on the other hand, relied on the order of both the authorities below and submitted that he has no objection if the assessee shows before the lower authorities that the correct amount of TDS has been paid and there is no any loss to the Revenue.

8. After considering both the sides and perusing the entire material available on record as well as the request of the ld. AR of the assessee during the course of hearing that the assessee has already paid all the due taxes and there is no loss of Revenue, we are of the view that the matter needs verification at the level of AO(ACIT-TDS) for which ld. DR has no objection. Accordingly, we remit the issue to the file of AO(ACIT-TDS) for the limited purpose to verify as to whether the assessee has paid all the due taxes. If there is no short deduction of Tax at source, the assessee cannot be held at assessee-in-default u/s.201(1) of the Act and consequently interest charged thereon u/s.201(1A) of the Act

cannot be levied. Needless to say, the assessee shall be given reasonable opportunity of being heard. The assessee is also directed to file the documents before the AO with regard to payment of TDS as submitted by the Id. AR before us during the course of hearing and shall not seek any unnecessary adjournments. Thus, grounds of appeal of the assessee in both the appeals are allowed for statistical purposes.

9. In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 28/01/2020.

**Sd/-
(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 28/01/2020

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Branch Manager,
LIC of India, Bhadrak Branch,
Bhadrak
2. प्रत्यर्थी / The Respondent-
ACIT (TDS-II), 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//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
ITAT Cuttack Bench, Cuttack