आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,

INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.491/Ind/2019

Assessment Year: 2011-12

M.P. Warehousing & Logistics Corporation, LRT Parisar, Aerodrum Road, Bada Ganapati, Indore	Vs.	ACIT (TDS) Indore
(Appellant)		(Revenue)
PAN No.AADCM7742B		

Appellant by	Shri Rajesh Mehta, CA
Revenue by	Shri K.G. Goyal, Sr.DR
Date of Hearing	12.03.2020
Date of Pronouncement	26.05.2020

O R D E R

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2011-12 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'], Indore dated 13.02.2019 which is arising out of the

penalty order u/s 201 of the Income Tax Act 1961(In short the 'Act') dated 27.10.2017 framed by DCIT/ACIT-TDS, Indore.

2. Assessee has raised following grounds of appeal;

1.Assessee is not an assessee in default by not deducting TDS on rent to Krishi Upaj Mandi :-

That the Ld. AO erred in raising the demand of Rs.83,565/- towards TDS and interest U/s 201(lA) on rent payment of Rs. 4,37,528/- on which TDS was not deducted and CIT(A) also erred in confirming the same ignoring the fact that income of the recipient Krishi Upaj Mandi Samiti is exempt under 10(26AAB) of the act. Therefore the assessee had bonafidely not deducted TDS on payment of rent and therefore assessee cannot be treated as assessee in default. Hence the said demand is illegal, against the facts of the case and bad in law hence needs to be deleted.

2.No Short deduction of TDS on payment to Co-owners and the payment made bv assessee is not covered under section 1941:-

That the Ld. AO erred in treating the share of money as rent liable to TDS and CITCA) also erred in conforming the same without appreciating the fact that there is agreement of "Joint partnership agreement scheme" between the assessee and recipient Sadhana Enterprises (co-owners). Therefore MP Warehousing & Logistics Corporation is not paying any rent to Sadhana Enterprises(co-owners), therefore section 1941 is not applicable, hence order itself is unlawful, against the facts of the case and bad in law hence needs to be deleted.

3.That the order u/s 201(l)/201(1A) of the act is arbitrary, illegal, wrong, unlawful, bad in law and on the facts of the case & therefore demand of Rs.1 ,37,110/- needs to be deleted.

4.That the appellant craves leave to add, amend or withdraw any of the grounds of appeal before or at the time of appeal.

3. Brief facts of the case as culled out from the records are that the assessee is a State Government undertaking and engaged in the

work of storage and maintenance of warehouse for food grains procured by Food Corporation of India and other local agencies. For the Financial Year 2010-11 relevant to Assessment Year 2011-12, the assessee had been treated as assessee in default, for non deduction of TDS on rent paid to Krishi Upaj Mandi Samiti, Dhamnod & Khandwa and for Short deduction of TDS on rent paid to M/s Sadhna Enterprises, u/s 201(1) and also leving interest u/s 201(1a) of the Act. Aggrieved assessee preferred appeal before Ld. CIT(A) but could not succeed.

4. Now the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee referred and relied on the written submissions and paper book bearing pages no.2 to 35 filed on 4th December 2019. In the written submission reliance has been placed on the various decisions and judgments.

6. Per contra Ld. Departmental Representative vehemently argued supporting the orders of both lower authorities.

7. We have heard rival contentions and perused the records placed before us and carefully gone through the decisions and judgments referred and relied by the Ld. Counsel for the assessee.

There are two effective grounds raised in this appeal by the assessee; Firstly, whether the assessee was rightly treated as assessee in default, for not-deducting TDS on rent paid to Krishi Upaj Mandi Samiti, Dhamnod & Khandwa and secondly, whether there was Short Deduction of TDS on rent paid to co-owners (M/s Sadhna Enterprises) and the applicability of the provisions of section 194I of the Act.

8. We observe that the assessee deductor is a M.P. State Government undertaking and mainly engaged in the work of storage and maintenance of warehouse for food grains procured by Food Corporation of India and other local agencies. A survey u/s 133A of the Income Tax Act, 1961 was conducted on 29.11.2016 to verify the tax deducted at source (TDS) compliance by the assessee. During the course of survey proceedings, it was observed that the assessee paid rent on various dates totalling to Rs.2,16,840/- and Rs.2,20,688/- to Krishi Upaj Mandi Samiti, Dhamnod & Khandwa but no TDS has been deducted on the rent payments. In one other instance, the revenue authorities observed that the rent of Rs.32,61,989/- was paid to M/s. Sadhana Enterprises and tax of

Rs.2.98.163/- was deducted as against Rs.3,26,198/- which was to be deducted as TDS in the view of Revenue Authorities.

9.During the course of survey proceeding and the appellate proceeding, regarding non-deduction of tax on the rent paid to Krishi Upaj Mandi Samiti it was submitted that the assessee should not be treated as assessee in default since the payee i.e. Krishi Upaj Mandi Samiti is autonomous body and its income is exempt as per the provisions of section 10(26AAB) of the Act. Reference was made to the CBDT, vide Circular No.4 of 2002 which was subsequently, modified by CBDT, circular No.18/2017. Before the first appellate proceedings, the assessee also filed the certificate from Chartered Accountant in order to prove that the income of Krishi Upaj Mandi Samiti is exempt.

10. As regards, the short deduction of tax on rent paid to M/s. Sadhana Enterprises, it was submitted that a Joint partnership agreement was entered between the assessee and co-owners of the warehouse, who jointly agreed to provide the immovable property hold in joint name on rent, under a common name, M/s. Sadhana Enterprises. The rent was not paid specifically to Sadhana

Enterprises but was paid to each of the co-owners and the TDS liability was calculated for each of the co-owners separately and tax deducted at source on the payment to particular owner which was filing within the ambit of provisions of section 194I of the Act. However, Ld. CIT(A) did not find any merit in the contentions and confirmations and confirmed the view of the assessing officer observing as follows:

> *3. **Ground** Nos. **1 to** 6.: All these grounds of appeal have been raised against non deduction of TDS on rent paid to Krishi Upaj Mandi and M/ s Sadhna Enterprises. The amount pertaining to Krishi Upaj Mandi including interest u/s 201(1A) of the Income Tax Act, 1961 has been worked out at Rs.83,565/ - and the amount pertaining to M/ s Sadhana Enterprises is Rs.53,540/- regarding non deduction of TDS on rent paid to Krishi Upaj Mandi, the appellant has contended that since the income of the payee is exempt u/s 10(26AAB) of the Income Tax Act, 1961, therefore, the tax is not required to be allowed. Similarly, regarding non deduction of taxes at source on the rent paid to M/ s Sadhana Enterprises, the appellant has taken the plea that the payment has been made to M/ s Sadhna Enterprises as co-owner under joint partnership under scheme. I have gone through the reply of the appellant and also various case laws. I have also perused the relevant section 1941 of the Income Tax Act, 1961. In my considered opinion, the appellant was mandated to deduct TDS on the rent paid to Krishi Upaj Mandi as there is no exception provided in Income Tax Act, not to deduct tax at source in case of parties having exempt income. The exemption of income is subject to verity of conditions whereas, the TDS provisions are express provisions without any ambiguity requiring no further interpretation. In normal circumstances, the question of interpretation of provisions and the words arise if there is ambiguity in the language. In the instant case, the provision is very clear which specifically says that TDS has to be made by responsible person paying to resident any income by way of rent. The question of exempt*

income does not arise as the same has not been made part of express provisions. Moreover, the eligibility of exemption is subject to various conditions which could be possible to determine at the time of assessments.

3.1 *Hon'ble Supreme Court, in the case of Pan dian Chemical Vs. CIT 262 ITR 278 has clearly laid down that the rules of interpretation will come into play only if there is any doubt with regard to the express language used in the provision. Where the words are unequivocal, there is no scope for importing the rule of liberal interpretation of an incentive provision. Similarly, Hon'ble Apex Court in the case of CIT Vs. Budda Raja & Company 204 ITR 412 has held that liberal interpretation of provision should not do violence to plain language. The object of enactment should be gathered from a reasonable interpretation of language used therein. The similar view has been taken by Hon'ble Apex Court in the case of IPCA Laboratories Vs. DCIT 266 ITR 321 wherein it has been clearly brought out that if the wording of the provisions are clear, then the benefits, which are not available under the provision cannot be conferred by ignoring or misinterpreting the words in the provision. Therefore, in view of the above discussion, I am very clear in my mind that the wording of the Act is very clear which requires no interpretation in the favor of assessee.*

3.2 *Further, reliance is placed on the decision of Hon'ble ITAT, Chandigarh Bench in the case of M/s Ambuja Cement Ltd. ITA Nos. 648 & 649/Chd./2014 dated 04/02/2016. In this case the payment was made by M/s Ambuja Cement to HRTC (Himachal Road Transport Corporation) which claimed exemption u/s 11 & 13 of the Income Tax Act, 1961. The Hon'ble ITAT, confirmed the view of the CITIA) that in the absence of any exception provided on exempt income of payee, the deductor cannot omit to d~ taxes at Source as provided in various TDS provisions. Similarly, there is no provision regarding non deduction of taxes in case of co-owners of parties in Joint Partnership Agreement Scheme. The TDS has to deducted keeping in view the partnership firm as a whole. The same cannot be spread over to various partners or co-owners of the firm. This explanation of the appellant cannot be accepted. In view of the above discussion, I do not find any reason to interfere with the order of AO. Therefore, all the grounds of appeal are dismissed."*

11. Before us Ld. Counsel for the assessee has referred and relied

in the written submission therein.

12. As regards, the **First ground** of appeal that whether the assessee was rightly treated as assessee in default for non deduction of TDS on rent paid to Krishi Upaj Mandi Samiti we find that the payee i.e. Krishi Upaj Mandi Samiti is State Government undertaking and it income is exempt u/s 10(26AAB) of the Act. CBDT, vide its circular No.04 of 2002 on 16.07.2003 states *"Boards or Bodies whose income is unconditionally exempt u/s 10 of the Act and who are statutorily not required to file return of income as per section 139, there would be no requirement for tax deduction at source since their income is anyway exempt under the Income Tax Act.* The CBDT, Circular was further modified on 29.05.2017 vide circular No.18/2017 stating that *"Accordingly, it has been decided that in case of below mentioned funds or authorities or Board or bodies, by whatever name called, referred to in section 10 of the Income Tax Act, whose income is unconditionally exempt under that section and who are also statutorily not required to file return of income as per section 139 of the Income Tax Act, there would be no requirement for tax deduction at source, since their income is anyway*

exempt under the Income Tax Act-

(xiii) Agricultural Produce Marketing Committee referred to in clause(26AAB)"

13. A certificate of the Chartered Accountant under first proviso to section 201(1) of the Act dated 3rd June, 2016 states about the amount of rent paid by the assessee to the payee and certifies that the rental income received from the assessee has been accounted for in the financial statements and the taxable income of the 'payee' is nil. This fact proves that there was no liability to pay income tax on the payee as taxable income was nil.

14. Thus, in view of the CBDT, circular referred above and the certificate of Chartered Accountant dated 03.06.2016 we are of the considered view that the assessee should not have been treated as assessee in default for non-deduction of tax at source on the rent payment of Rs. 4,37,528/- to Krishi Upaj Mandi Samiti.

15. Our this view finds support by the decision of Co-ordinate Bench, Jaipur in the case of *ITO, Ward TDS-2 vs. Branch Manager, State Bank of Bikaner & Jaipur(2012) 19 taxmann.com 221(JP)* wherein it was held that *"there was no question of deducting TDS by*

the assessee u/s 194A of the Act on the interest paid to Rajasthan Rural Road Development Agency (RRRDA) which is a society registered under Societies Act, 1958 and was wholly financed by the Stated Government. Similar view was also taken by the Coordinate Bench Jaipur in the case of *ITO (TDS) vs. the Secretary, Krishi Upaj Mandi Samiti (ITANO.342,343 & 344/JP/2013)* on 20.07.2015 wherein it was held that *" there is no loss to the revenue as the deductee (RSAMB) was not liable to pay tax (the income being loss and RSAMB being registered u/s 12A). In view of the above, it is held that assessee cannot be treated as an assessee in default. The Assessing Officer is directed to delete the demand raised u/s 201(1) & 201(1A) of the Act.*

16. Respectfully, following the above decisions and in view of the CBDT Circular No.4 of 2002 dated 16.07.2013 and circular No.18/2017 on 29.05.2017, are of the considered view that the assessee should not treated as assessee in default for non-deducting tax on rent of Rs.4,37,528/- paid to Krishi Upaj Mandi Samiti. Thus, ground no.1 of the assessee's appeal stands allowed.

17. **Apropos to ground No.2;** We find that under a "Joint partnership agreement scheme" between the assessee and Sadhana Enterprises (Co-owners), rent of Rs.32,61,989/- was paid during the year. The payment was not made to the Sadhana Enterprises since it was a name used by the co-owners to enter into the agreement but the actual rent was paid to each owners separately as per its ownership share in the immovable property. The joint partnership agreement specifies the responsibilities of the parties to the agreement and also specifies the other amenities to be provided along with a space to the persons who will use this warehouse. This joint partnership agreement further specifies that warehousing charges received by them from the public shall be shared in the ratio of 35:65. Therefore, the assessee is not paying any rent to Sadhana Enterprises(Co-owners) as it is not using the warehouse. The agreement is not a rent agreement but a joint partnership agreement. Riding on these arguments Ld. Counsel for the assessee has taken an alternate plea that since the assessee is not paying any rent to Sadhana Enterprises (Co-owners), therefore, provisions of section 194I is not applicable and the assessee is not an assessee in default.

18. However, on observing the records, we find that the assessee had paid the amount to each of the co-owners as per their share and deducted and paid the tax at source as whether applicable. The details are summarized in the following table:

Name of Co-owners	Share	Amount Paid	TDS Deductible	Tax deducted
Sadhana Agrawal	20	*6,52,397/-*	*65,240/-*	65,241/-
Satishchandra Arya	17	*5,54,538/-*	*55,454/-*	*55,454/-*
Aruna Arya	17	*5,54,538/-*	*55,454/-*	*55,453/-*
Sandhya Gupta	10	*3,26,198/-*	*32,620/-*	*32,618/-*
R.M. Gupta	10	*3,26,198/-*	*32,620/-*	*32,618/-*
HC Agrawal HUF	10	*3,26,1991-*	*32,620/-*	*32,618/-*
SC AryaHUF	6	*1,95,721/-*	*1,95,72/-*	*19,573/-*
Harish Agrawal	5	*1,63,100/-*	Below Limit	*2,2941-*
V.M. Gupta	5	*1,63,100/-*	Below Limit	*2,2941-*
		32,61,989/-	*2,93,579/--*	*2,98,163/-*

19. From perusal of the above details which stands un-rebutted, we find that the assessee had duly deducted the tax at source on the rent paid to the co-owners where the amount of rent exceeded the limit of Rs.1,80,000/- and in two cases where the amount was below the limit of Rs.1,80,000/- tax was not deducted. On the basis of the above details and discussions made hereinabove, we are of the considered view that assessee should not be treated as assessee in default for short deduction of tax on rent payment to M/s. Sadhana Enterprises since the assessee has rightly deducted,

collected and paid the tax on share of the rent paid to each of the co-owners. Revenue authorities failed to bring any contrary material to prove that the total rent was paid to M/s Sadhana Enterprises. Since the rent have been paid to each of the co-owners, tax deductible at source as per the provisions of section 194I of the Act, has been complied by the assessee. We, thus, set aside the finding of Ld. CIT(A) and allow ground no.2 of the assessee.

20. Ground No.3 is general in nature which needs no adjudication.

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

The order pronounced in the open Court on 26.05.2020.

Sd/-	Sd/-
(KUL BHARAT)	**(MANISH BORAD)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

नांक /Dated : 26th May, 2020

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore