

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ITA No. 748/CHD/2019

निर्धारण वर्ष / Assessment Year : 2012-13

The Manager, Allahabad Bank, Bhagra Niwas, The Mall, Shimla.	बनाम VS	The ITO, Ward -TDS, Kasumpti, Shimla.
स्थायी लेखा सं./PAN No: PTLA10151B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Vishal Mohan, Advocate

राजस्व की ओर से/Revenue by : Shri Sandip Dahiya, CIT

सुनवाई की तारीख/Date of Hearing : 04.01.2021

उद्घोषणा की तारीख/Date of Pronouncement : 07.01.2021

Hearing conducted via Webex

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee wherein the correctness of the order dated 23.03.2019 of CIT(A) Shimla pertaining to Financial Year 2011-12 is assailed on the following grounds :

"1. That in the facts and circumstances of the case the Ld Commissioner of Income Tax (Appeals) is not justified in upholding that the tax was required to be deducted on the deposits of HIMURJA under section 194A of the Income Tax Act, 1961.

2. That in the facts and circumstances of the case the Ld Commissioner of Income Tax (Appeals) is not justified in upholding the charging of interest under section 201(1 A) of the Income Tax Act, 1961."

2. The ld. AR invited attention to specific page 8 of the order dated 30.11.2017 and submitted that the concerned tax authority have hauled up the assessee on account of the account maintained by the party shown as "HIMURJA" in the Financial Year 2011-12. It was his submission that in the very same year the assessee was also penalized on account of "H.P. Building and other constructions" mentioned in sub-para 2 of the said order of the Assessing Officer, however, on the said issue, there is no debate since the ld. Commissioner had granted relief to the assessee. As far as the party "HIMURJA" is concerned, attention was invited to the pleadings made before the ld. Commissioner addressed at page 13 of the impugned order wherein clearly the specific Notification No. 3489 dated 22.10.2017 in terms of the mandate of Section 194A(3)(iii)(f) was referred to which clearly exempted the assessee for deducting TDS for the specific party. The ld. Commissioner, it was submitted, refers to the specific provision of the Act and also reproduces the specific Notification, however, fails to give relief at page 16 holding that the letter of the CEO of "HIMURJA" making the claim that it is a registered under Societies Registration Act, 1860 which was wholly financed by the State and Central Government could not be taken as evidence. The ld. AR submitted that what more evidence can the assessee lead to demonstrate its claim. The specific letter dated 01.01.2020 at Paper Book page 1 of the Director-cum-Dy.CEO

available at Paper Book page 1 was relied upon. The ld. AR was required to address whether there was any past history qua the specific bank or any other bank in respect of non applicability of TDS due to the specific notification thereby accepting the stated claim that it was wholly financed by Central and State Government or any other evidence capable of being demonstrated from the books of account, balance sheet etc. The ld. AR requested for an opportunity to place the necessary documents on record and hence remand back to bring the evidences on record.

3. The ld. CIT-DR Mr. Dahiya, though did not oppose the request for remand and verification of documents etc, however, was of the view that ground No. 2 appears not to have been argued by the ld. AR.

4. Mr. Vishal Mohan in response thereto submitted that once the assessee is able to demonstrate that there was no necessity for withholding of tax qua "HIMURJA" then the occasion to levy interest will not arise, hence it was a consequential ground.

5. The ld. CIT-DR was of the view that since before the CIT(A) the assessee appears to have relied upon the decision of the Apex Court in the case of Hindustan Coca Cola Beverages P. Ltd. 293 ITR 226 (S.C.) and thus it appears that the said ground has to be decided against the assessee as the assessee cannot lead

evidence for arguing the alternate ground. The ld. AR strongly opposed the said argument.

6. We have heard the rival submissions and perused the material available on record. We find that the said claim of the Revenue cannot be allowed because the alternate prayer of the assessee relying upon the decision rendered by the Apex Court in the case of Hindustan Coca Cola Beverages P. Ltd. was in the context where the assessee could demonstrate that the deductees had paid tax thereon which evidences were required to be demonstrated and in some cases were available, however in the facts of the present case the foundational fact itself is to be established namely whether in the case of "HIMURJA" was there any legal mandate on facts in terms of the aforesaid notification in pursuance to Section 149A(3)(iii)(f) of the Act to deduct TDS. Once the foundational fact is established, the consequences as per law and facts shall follow. Accordingly, accepting the prayer of the parties before the Bench, the issues are restored back to the file of the AO with direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The assessee in its own interests is directed to ensure that full facts with supporting evidences are placed before the said authority to take a view. Said order was

pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

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

Order pronounced on 7th January,2021.

Sd/-

Sd/-

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)

(दिवा सिंह)
(DIVA SINGH)

लेखा सदस्य/ Accountant Member

न्यायिक सदस्य/ Judicial Member

पूनाम”

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

1. अपीलार्थी/ The Appellant –
2. प्रत्यर्थी/ The Respondent –
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar