

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.1949/Del/2020

निर्धारणवर्ष/Assessment Year: 2017-18

M/s Sunrise Victuals P. Ltd. 16, HSIIDC, Phase-IV, Kundli, Distt. Sonapat, Haryana.	बनाम Vs.	ITO (TDS) Rohtak.
PAN No. AAQCS2057J		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Sh. Kailash Khemani, CA
राजस्वकीओरसे /Revenue by	Sh. Prakash Dubey, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	10.03.2021
उद्घोषणाकीतारीख/Pronouncement on	10.03.2021

आदेश /O R D E R

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(A)-Rohtak dated 22.01.2020 for AY 2017-18, challenging the demand arises u/s 201(1) and 201(1A) of the I.T. Act.

2. We have heard Ld. Representatives of both the parties and perused the material on record.

3. Briefly the facts of the case are that as per the information available with the AO, assessee PR has not filed quarterly e-TDS returns for assessment year under appeal and deposited nil TDS. On the basis of above information an inspection/survey u/s 133A(2A) was conducted and it was noticed that assessee company had not made tax deduction at

source on the payments of interest u/s 194A of the Act and commission (sales promotion/discount) u/s 194H of the I.T. Act. The AO further noted that assessee has credited/paid interest at Rs. 7,89,301/- to non banking finance companies mentioned in the assessment order. The AO noted that since no TDS was made on this payment, therefore, same is disallowable u/s 194A(1) of the I.T. Act. The AO, therefore, noted that assessee is deemed to be in default u/s 201(1) for an amount of Rs. 78,930/- and consequential interest of Rs. 18,936/- u/s 201(1A) of the I.T. Act for failure to deduct tax at source on payment of interest. The AO further noted that assessee has credited/paid Rs. 89,52,069/- on account of sales promotion and Rs. 27,13,341/- on account of discount respectively during assessment year under appeal. It was found that assessee has not made TDS. The AO, therefore, treated assessee to be deemed to be in default u/s 201(1) for an amount of Rs. 11,66,539/- and consequential interest thereon at Rs. 2,79,960/- u/s 201(1A) of the I.T. Act for failure to deduct tax at source on the payment of commission/suspension account u/s 194H(iv) of the I.T. Act. The AO, accordingly, passed the order. The Ld. CIT(A) in absence of any explanation or documentary evidence dismiss the appeal of the assessee.

4. After considering the rival submissions, we are of the view that matter requires reconsideration at the level of the AO.

5. Ld. Counsel for assessee submitted that during assessment year under appeal interest payment has been made to NBFCs which had duly filed their income tax returns u/s 139(1) and paid the taxes. The certificate of the accountant shall be submitted from the parties. He has further submitted that Ld. CIT(A) has wrongly treated assessee to be in default for not deducted TDS u/s 194H of the I.T. Act by treating the sales promotion and cash discount expenses as commission expenses without considering the fact that the assessee may not be considered as assessee in default u/s 201 of the I.T. Act. As per the settled law sales

promotion and cash discount expenses incurred on principal to principal basis do not meet the definition of commission or brokerage as per the provisions of section 194H of the I.T. Act. Ld. Counsel for assessee submitted that similar submissions made before Ld. CIT(A) and request for adjournment was also made. Therefore, in absence of the evidences the appeal of assessee stands dismissed. He has, therefore, submitted that one more chance may be given to assessee to file the documentary evidence before the Ld. CIT(A) to explain the above issue which may prove that assessee is not deemed to be in default on account of non deduction of TDS.

6. In view of the above explanation of assessee and that the explanation of the assessee filed before the authorities below have not been considered in proper perspective, we are of the view that the matter requires reconsideration at the level of the Ld. CIT(A). We, accordingly, set aside the order of the Ld. CIT(A) and restore the matter in issue to his file with direction to re-decide the appeal of assessee as per law by giving reasonable sufficient opportunity of being heard to the assessee. Assessee is directed to file relevant documentary evidences before the Ld. CIT(A) for final disposal of the appeal.

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

Order pronounced in the open court on 10/03/2021

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 10.03.2021
**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi