

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI S.S.GODARA, JM  
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं. / ITA No.370/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

Rajarambapu Shetkari and  
Shetmajur Sahhaya Samiti  
Rajaramnagar Takari Road,  
Rajaramnagar, Taluka Walawa,  
Sangli - 454 414

PAN : AAAAR0892E

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO -2(5), Sangli

.....प्रत्यर्थी / Respondent

Assessee by : None  
Revenue by : Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing : 21.04.2022  
घोषणा की तारीख / Date of Pronouncement : 12.05.2022

**आदेश / ORDER**

**PER S. S. GODARA, JM :**

1. This assessee's appeal for A.Y. 2012-13 is directed against the CIT(A) - 1, Kolhapur's order dated 29/08/2016 passed in case No. SLI/52/2015-16 involving proceeding u/s. 143(3) of the Income Tax Act, 1961 ; in short "the Act.

Case called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte.

2. We note at the outset, that there is delay of 103 days in filing the present appeal. The assessee's condonation affidavit states that the delay in filing the present appeal is neither intentional nor deliberate on account of the circumstances beyond its control. The relevant part of the said affidavit is reproduced hereunder :-

*"The appellant is a trust/society formed for the benefit of small farm labour and transporters, who mainly use the bullock cart. The trust is carrying on the activity of assisting the sugarcane harvesting farmer/contractor in the District of Satara. **The trust was working as an intermediary between the farmers and the sugar mill in harvesting and transport sugar cane.** The appellant trust is not having any regular staff for carrying out legal and accounting activities. The trust was depending upon the staff of the Sugar Mill for all these services. The appellate order of Hon'ble CIT(A) was received on 03<sup>rd</sup> September 2016 whereas appeal was filed on 13<sup>th</sup> February 2017. The appellate order of Hon'ble CIT(A) has been received by the staff and kept at the trust office located at the sugar mill and no intimation was received by the trustees/chairman regarding the receipt of the order.*

*The time during which the appellate order received was non harvesting season of sugarcane (September 2016 to January 2017). Hence, trustees were visiting the office occasionally. There was a reasonable cause for non filing of an appeal in the present appeal in the present case. The appellant has not gained anything by not filing the appeal within the due date. If the delay is not condoned, it will cause genuine hardship to appellant, who is working for the benefit of unorganized workers of sugarcane industry who are already facing hard time due to Covid -19 pandemic."*

Considering the above condonation averments and due to no objection from the Revenue side, we find it as a fit case to condone the impugned delay of 103 days and admit the appeal for adjudication.

3. The assessee has pleaded the following sole issue in the instant appeal.

- “1. *The ld.CIT(A) erred in confirming addition of Rs.65,69,674/- of disallowance u/s 40(a)(ia) of the Income Tax Act, 1961.*
2. *The CIT(A) on facts and circumstances of was erred in confirming the addition of Rs.65,69,674/- without appreciating the documents and information produced by the assessee AOP that it is not carrying on any business activity.*
3. *The learned.CIT(A) on facts and circumstances of case erred in confirming the addition of Rs.65,69,674/- as even after non deduction of TDS there is no loss of revenue.*
4. *The learned.CIT(A) on facts and circumstances of case erred in confirming the addition of Rs.65,69,674/- as even though no tax is payable by deductees.”*

4. We next note that the CIT(A) has affirmed the Assessing Officer’s action invoking section 40(a)(ia) disallowance as follows;

- “7. *I have considered the arguments of appellant and also the order of the AO. The appellant AOP is constituted at the behest of Sugar Factory to relieve it from compliance of the provisions of TDS and shift its responsibilities on AOP with reference to harvesting and transportation contracts & consequent compliance of the related provisions. AOP has*

*stepped into the shoes of 'Sugar factory' for discharging the responsibilities of TDS related provisions.*

*7.1 AOP has entered into agreements with the contractors for carrying the contract works like harvesting and transportation of sugarcane. While executing the agreements it has exercised due diligence. It has incorporated such terms & conditions which a prudent businessman does while entering into the contracts. It has also anticipated the need for non-TDS certificates. It has also obtained 'authority letter' from the contractors to the effect that AOP will have all the rights to appoint the tax experts of its choice for obtaining the non TDS certificates for its contractors.*

*7.2 Appellant AOP is well aware of its responsibilities relating to TDS provisions. Moreover, it is constituted at the behest of Sugar Factory with the object to relieve the Sugar Factory from following the procedures of TDS and management of the harvesting work and transportation of sugar cane to the factory site. This fact could be seen from the observations of Ld. CIT while responding to assessee's application for grant of 12A registration. The assessee applied for registration u/s 12A & 80G of the Act, 1961 in the year 1998 before the CIT, Kolhapur. The Ld.CIT, Kolhapur vide his order dated 14-05-1999 rejected assessee's application. It has observed by the then CIT, Kolhapur that "instead of managing the work of harvesting and transportation of sugarcane by sugar factory itself, the sugar factory is getting it done through the Trust under the direct supervision and control of chairman/President/Directors of the said sugar factory and other co-operative bodies."*

*7.3 The income of the appellant AOP is computed as per the provisions applicable for computing 'Business Income'. The appellant itself has prepared its profit & loss account in respect of its business income. Sugar Factory has paid contract receipts to appellant after deducting TDS*

*as per the provisions of TDS. After arriving at the net profits, it has filed its return of income claiming income tax refund. The appellant has simply raised hue & cry that it is non-profit making appellant like a Trust. Once its profits are assessable as 'business income' the provisions of section 40(a)(ia) become applicable. Moreover, even a charitable trust is required to comply with the TDS provisions. In view of the above, the argument of the appellant to the effect that provisions of section 40(a)(ia) are not applicable in its case is incorrect.*

*7.4 Tax is one of the major sources of revenue for the government. One of the modes of collecting tax is TDS, by which a certain percentage of amounts is deducted by a person at the time of making/crediting certain nature of payment to the other person and deducted amount is remitted to the Government's account. The concept of TDS envisages the principle of "pay as you earn". It facilitates the sharing of responsibility of tax collection between the deductor and the tax administration. It ensures early and timely generation of revenue to the government and also acts as a powerful instrument to prevent tax evasion. Almost 37% of Tax collection comes through TDS. Moreover TDS is mechanism and source of the information to the government through which it can accelerate its revenue.*

*Section 40(a)(i) has been incorporated to augment compliance of TDS provisions in the case of residents and to curb bogus or non-genuine payments. Non-deduction or non-payment or even untimely deduction of tax results into disallowance or deferment of allowance of expenditure. The appellant AOP instead of looking positively at the provisions and subscribing to the views of government, it has put in its energy in making available the non-deduction TDS certificates to its contractors by engaging Tax experts. Thus, the attitude of AOP is negative compliance.*

*7.5 Appellant AOP had enough opportunity to regularize its default of not deducting tax. Its accounts are subjected to tax audit, presumably its Auditors must have pointed out the non-deduction of tax at source and also must have informed the likely disallowance of expenditure*

*Rs.65,69,674/- . It is aware that it has obtained certificates of no TDS for all its contractors which are effective from 01.05.2011. It should have taken care to deduct TDS on the payments which have escaped TDS even at the time of filing its Return of income. Thus, appellant has instead of curing the procedural lapses it has unnecessarily and knowingly defaulted the compliance of TDS.*

*7.6 In view of my discussion as above and considering the circumstances of default, purpose of its constitution at the behest of Sugar Factory, its involvement in arranging non-deduction of TDS certificates, I am inclined to uphold the disallowance made by AO.”*

5. Learned DR vehemently contended during the course of hearing that both the lower authorities have rightly invoked the impugned disallowance on account of assessee's failure in deducting TDS on contractual payments involving harvesting and sugarcane transportation.

6. It emerges in this factual background that the assessee's case all along before the lower authorities has been that it had indeed obtained section 197(1) approval for non deduction of TDS certificate regarding all the service providers/payees up to 31.03.2011 but the same could not hold good since the crushing season in issue stood extended upto the third week of April 2011. It was therefore pleaded that the impugned disallowance represents 1% TDS deduction of Rs.65,69,674/- for the said three weeks of April than the entire relevant previous year. Couple with this, we note that the assessee has also filed its petition(s) seeking admission of additional evidence to this effect including the list of its payees as well as their PAN numbers.

We find in this backdrop that the legislature has incorporated section 40(a)(ia) 2<sup>nd</sup> proviso vide the Finance Act 2012 with effect from 01.04.2013 that the impugned disallowance is not be made in case the assessee's concerned is not the assessee's default in the light of the corresponding proviso in section 201(1) of the Act. The Revenue fails to dispute that CIT vs. Ansal Landmark Township (P). Ltd (2015) 377 ITR 635 (Delhi) holds the same to be curative in nature having retrospective effect. And also that the assessee's forgoing additional evidence(s) contains its payees and their PAN details in light of the TDS non deduction which requires the Assessing Officer's factual verification . We thus restore the assessee's instant sole grievance back to the Assessing Officer in very terms .

7. This assessee's appeal is allowed for stastical purposes in above terms.  
Order pronounced in the Open Court on this 12<sup>th</sup> day of May, 2022.

**Sd/-**

**Sd/-**

**(DR.DIPAK P.RIPOTE)**

**(S.S. GODARA)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

न्यायिक सदस्य/**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 12<sup>th</sup> May, 2022.  
Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Kolhapur.
4. The CIT-1, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File. आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

S.No.	Details	Date	Initials
1	Draft dictated on	21.04.2022	
2	Draft placed before author	11.05.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		