

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C' AT KOLKATA
[BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER &
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER]**

I.T.A. No. 1999/Kol/2017

Assessment Year: 2014-15

ITO, (International Taxation), Ward-KolkataAppellant

Vs

***M/s. Jamshedpur Continuous Annealing & Processing Co. (P) Ltd.Respondent
43, J.L. Nehru Raod, Kolkata - 700 071.
[PAN: AACCJ 5624 J]***

Appearances by:

*Shri Arun Chhabra & Shri Rahul Saha, CA appearing on behalf of the Assessee
Shri Manas Mondal, ACIT, DR appearing on behalf of the Revenue:*

Date of concluding the hearing : May 10, 2022

Date of pronouncing the order : June 23, 2022

ORDER

PER SONJOY SARMA, JM:

This is an appeal filed by the revenue against the order of Ld. CIT(A)-22, Kolkata dated 20.06.2017 for A.Y. 2014-15.

2. The revenue has raised the following issues which are enumerated as under:

"i. The Ld.CIT(A)-22, Kolkata has erred in law and facts by allowing the claim of the assessee for refund of Rs. 85,85,392/- deducted & deposited by the assessee as TDS u/s 195.

ii. The Ld. CIT(A)-22, Kolkata has erred in law and facts by accepting the plea of the assessee that it realised that withholding tax requirement was not there after deducting tax at source u/s 195 and sending the remittance.

iii. The Ld. CIT(A)-22, Kolkata has erred in law and facts by not forwarding the submissions of the assessee files in an appeal u/s 248 of Income Tax Act, 1961 and not giving any opportunity to the jurisdictional Assessing Officer i.e. Income Tax Officer

(international Taxation), Ward, Kolkata [O/o CIT (IT&TP), Aayakar Bhawan (Poorva), Kolkata] for examining the subject matter of appeal and deciding the issue ex-parte.

iv. In the facts & circumstances of the case, the Ld. CIT(A)-22, Kolkata has erred in law and facts by not following the due process laid down in Rule 46A of Income Tax Rules, 1962 in as much as there was no proceedings whatsoever before the Assessing Officer and whatever evidences admitted by him amounted to additional evidence.

v. Without prejudice to above grounds, the appellant craves leave to add and to alter, amend, rescind or modify the grounds raised herein above before or at the time of hearing of the appeal”

3. The brief fact of the case is that the respondent erred in depositing TDS on the amount of commission paid to Tata Limited, London. The view of the assessee was that the applicability of TDS provision did not attract upon the assessee and during pendency of this proceeding, the respondent assessee had erroneously deposited withholding tax on the buying commission paid outside India amount of Rs. 85,85,392/-. The respondent assessee preferred an appeal before the Ld. CIT(A) raising the grounds in their appeal and the appeal of the assessee was allowed.

4. After hearing the ld. DR and counsel of the assessee and perusing the material on records, we note that the assessee deducted tax u/s 195 of the Act and remitted the same to government treasury. After the payment of TDS it was found that there is not legal requirement of deduction of tax and the

TDS has been wrongly deducted and deposited. The Id. CIT(A) allowed the appeal of the assessee on this issue after accepting the submissions of the assessee which the revenue assailed before us on the ground that the AO was not given opportunity to have a look of these new records / evidences. After going through the facts and the provisions of the Act, we certainly agree with the findings of the Id. CIT(A) and do not find any infirmity therein. However, we are restoring the issue to AO examine the reply of the assessee after affording reasonable opportunity to the assessee. Needless to say that AO is to examine the records and allow the issue.

5. In the result, the appeal of the Revenue is allowed for statistical purpose.

Order Pronounced in the Open Court on 23rd June, 2022.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Dated: 23/06/2022

Biswajit, Sr. PS

Copy of order forwarded to:

1. Appellant: ITO (International Taxation), Ward-Kolkata.
2. Respondent: M/s. Jamshedpur Continuous Annealing & Processing Co. Pvt. Ltd.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar
ITAT Kolkata Benches, Kolkata