

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
“C” BENCH, AHMEDABAD

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.1013/AHD/2019
Assessment Year:2013-14

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| M/s. Prithvi Outdoor Publicity LLP, 5, Shweta Park Society, Near Makekbuag Hall, Ambawadi, Ahmedabad-380015. PAN : AABFP 0834 A | Vs | The CIT(A)-5, 5 th Floor, Aayakar Bhavan, Vejalpur, Ahmedabad-3800051 |
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| (Applicant) | | (Responent) |
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| Assessee by : | Shri Bandish Soparkar, Advocate |
| Revenue by : | Shri V. K. Singh, Sr. DR |

सुनवाईकीतारीख/**Date of Hearing** : **21/04/2022**

घोषणाकीतारीख/**Date of Pronouncement**: **29/06/2022**

आदेश/O R D E R

PER Bench:

Captioned appeal filed by the Assessee, pertaining to Assessment Year (AY) 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-5, Ahmedabad [in short “the Id.CIT(A)”]in Appeal No. CIT(A)-5/DCIT Cir.5(2)/10603/2018-19dated 20.05.2019, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) r.w.s. 263of the Income Tax Act, 1961 [hereinafter referred to as the “Act”], dated 26.12.2018.

2.The grounds of appeal raised by the assessee are as follows:

“1. The Commissioner of Income Tax (Appeals)-5, Ahmedabad has erred in law and on facts by disallowing payment of Rs.10,48,125/- to Andhra Pradesh Road Transport Corporation (APSRTC) towards recovery of damages, late payment charges etc. u/s 40(a)(ia) of the Act on account of non-deduction of TDS.

2. Your assessee state that, the demand of Rs.15,55,320/- has been wrongly raised against the disallowance of Rs.10,48,124/-.

3. The assessee craves leave to amend or alter any ground or add a new ground, which may be necessary.”

3.Succinct facts are that during the assessment proceedings, Assessing Officer observed that assessee did not deduct the TDS on advertising expenses of Rs.10,48,125/-. The assessee made the payment to M/s Andhra Pradesh Road Transport Corporation (APSRTC) to the tune of Rs.10,48,125/- and the assessee has not deducted the TDS on the same, therefore Assessing Officer asked the assessee as to why the claim of the assessee should not be disallowed. In response, the assessee submitted that amount of Rs.10,48,125 /- consists of late fee to the tune of Rs.9,77,429/- and service tax to the tune of Rs.1,16,155/-.Therefore, it was contended that there is no provision under the Act to deduct TDS on late fee and service tax, hence no addition should be made. However, Assessing Officer has rejected the contention of the assessee and made addition to the tune of Rs.10,48,125/-.

4.Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has confirmed the action of Assessing Officer. Aggrieved, the assessee is in further appeal before us.

5. Learned Counsel for the assessee argues before the Bench that amount disallowed by Assessing Officer to the tune of Rs.10,48,125/- relates to late fee and service tax and there is no provision in the Act to levy the TDS on late fees and service tax, hence Assessing officer has wrongly made the addition under section 40(a)(ia) of the Act, therefore, addition made by the Assessing Officer should be deleted.

6.On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7.We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id.

CIT(A) and other material brought on record. We have carefully considered the facts of the case. The Id Counsel submitted that assessee had paid Rs.2,27,56,222/- to APSRTC and out of this, the TDS on payment of Rs.2,17,08,097/- was deducted and balance amount of Rs.10,48,125/- (Rs.2,27,56,222-Rs.2,17,08,097) was adjusted by APSRTC towards recovery of late payment charges, service tax etc. and therefore assessee did not deduct TDS on the same, being penal in nature. Apart from this, Id Counsel also submitted that payee has included the sum of Rs.10,48,125/- in its income and offered for tax. Since, the said amount pertains to late fee and service tax, therefore the provisions of TDS does not apply to the late fee and service tax, hence we delete the addition of Rs.10,48,125/-, made by the Assessing Officer.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 29th June, 2022 at Ahmedabad.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(Dr. A. L. SAINI)
ACCOUNTNAT MEMBER

TRUE COPY

Ahmedabad, dated 29/06/2022

SAMANTA/TANMAY

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad

1. Date of dictation- 21-4-2022
2. Date on which the typed draft is placed before the Dictating Member
3. Date on which the approved draft comes to the Sr.P.S./P.S. -
4. Date on which the fair order is placed before the Dictating Member for Pronouncement
5. Date on which the file goes to the Bench Clerk .. **29 -06-2022**
6. Date on which the file goes to the Head Clerk.....
7. The date on which the file goes to the Assistant Registrar for signature on the order.....
Date of Despatch of the Order.....