

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.642/PUN/2020

निर्धारण वर्ष / Assessment Year: 2016-17

Karan Venkateshwara Associates, CTS No.1187/16, Kara Tej Bonita, 4 th Floor, Plot No.549/15, Off. Ghole Road, Deshmukh Path, Shivaji Nagar, Pune-411005. PAN : AACAK4483E	Vs.	ITO, Ward-7(3), Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri M. G. Jasnani
Date of hearing : 26.07.2022
Date of pronouncement : 26.07.2022

आदेश / ORDER

PER S. S. GODARA, JM:

This assessee’s appeal for assessment year 2016-17 arises against the CIT(A)-5, Pune’s order dated 27.12.2019 passed in case no.PN/CIT(A)-5/ITO, Ward 7(3), Pune/10345/2018-19 involving proceedings 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. Delay of 273 days is condoned since falling in Covid-19 Pandemic outbreak period.

3. The assessee raises the foregoing sole substantive grievance in the instant appeal :-

“1) In the facts and circumstances of the case and in law, the learned C.I.T. [A] has erred in confirming the addition of Rs.32,81,454/- wrongly made by the AO on account of 30% disallowances u/s 40(a)(ia) of the I T Act and added to the returned of income ignore the fact that, the appellant has already paid the entire TDS of Rs. 1,07,28,182/- and filed e-TDS return before the due date of filing of IT return u/s 139(1) of the I T Act and therefore said addition made by AO and confirmed by CIT(A) is not justified and the same may please be deleted.”

4. Mr. Jasnani invited my attention to the CIT(A)'s detailed discussion affirming the assessment findings as follows :-

“8. I have considered the facts of the case and the order passed by the Assessing Officer. The facts of TDS being deducted on A/c of Fees for Professional Technical Services and payments to Contractors of Rs. 1,07,28,182/- has been taken from the Audit Report filed in Form 3CD which clearly states that tax, though deducted from such payments has not been deposited in the Government A/c. The Appellant has not furnished any proof whatsoever that such TDS has been deposited within the specified time limit. In such circumstances, it is clear that the Assessing Officer has correctly disallowed 30% of such payment u/s. 40(a)(ia) of the I. T. Act. The action of the Assessing Officer, being correct, is upheld. The Ground of Appeal is thus dismissed.”

5. Suffice to say, it has come on record that there is no indication in the CIT(A)'s detailed discussion as to whether the assessee has deposited the TDS in issue at least before the date of filing of return u/s 139(1) so as to be recovered u/s 40(ia) first proviso of the Act. Face with this situation, I affirm the learned lower authorities' action in principle and restore the instant issue back to the

Assessing Officer to verify the clinching fact of the assessee having deposited the TDS amount before the due date u/s 139(1) of the Act in foregoing terms. Ordered accordingly.

6. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced on this 26th day of July, 2022.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th July, 2022.

Sujeet (DOC)

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

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

आदेशानुसार / BY ORDER,

// True Copy //

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