

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT  
AND SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 100/Kol/2020  
Assessment Year: 2014-15

<b>Allied ICD Services Limited</b> 2, N.C. Dutta Saranai BBD Bag Kolkata - 700 001 PAN : AABCR6397K	Vs	<b>Asstt. Commissioner of Income Tax, Circle-4(1), Kolkata</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Purnendu Sekhar Bhandra, Adv.
Revenue by :	Smt. Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 11/07/2022  
घोषणा की तारीख /Date of Pronouncement: 13/07/2022

**आदेश/ORDER**

**PER SHRI RAJPAL YADAV, VICE PRESIDENT :**

Aggrieved with the order of the Learned Commissioner of Income Tax (Appeals) - 2, Kolkata, [hereinafter the "ld. CIT(A)"] dt. 03/09/2019, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2014-15, vide which penalty imposed u/s 271(1)(c) of the Act, has been confirmed, the assessee is in appeal before the Tribunal.

2. With the assistance of the ld. Representatives, we have gone through the record carefully. The brief facts of the case are that the assessee is a company engaged in the business of running and maintenance of Dry Port (popularly known as Inland Container Depot) at Durgapur. It filed its return of income for the Assessment Year under consideration on 29/11/2014 declaring total income of Rs.62,11,182/-. The case of the assessee was selected for scrutiny assessment and notice u/s 143(3) of the Act was issued and served upon the assessee. During the course of scrutiny assessment, it revealed to the Assessing Officer that there is mismatch in the TDS as per Form No. 26AS. The Assessing Officer found that TDS of Rs.29,295/- with corresponding income of Rs.14,64,762/- was not tallying with

the books. He accordingly added the income i.e., sum of Rs.14,64,762/-. This assessment order was not challenged by the assessee. It attained finality.

Further, the Assessing Officer initiated penalty u/s 271(1)(c) of the Act and issued a showcause notice u/s 274 of the Act inviting explanation of the assessee as to why the penalty should not be imposed upon the assessee. The assessee did not appear before the Assessing Officer in response to this notice and the Assessing Officer passed the impugned order vide which he imposed a penalty of Rs.4,52,612/- u/s 271(1)(c) of the Act.

3. Dissatisfied with this order the assessee carried the matter in appeal before the Id. CIT(A). It has raised specific contentions therein that it has no connection with the credit entry of Rs.14,64,762/-. It appears that the party Crescent Export Syndicate has mentioned wrong PAN No. and on account of that, this mismatch has happened. The assessee has also pleaded that it has not taken credit of the TDS amounting to Rs.29,295/-. The submissions made by the assessee has been reproduced by the Id. CIT(A) on page 2 of the impugned order, which reads as under:-

*"In connection with above Appeal case, our submissions are as follows:*

*1. The assessee is a Company engaged in the business of running and maintenance of a Dry Port(Popularly known as Inland Water Depot) at Durgapur with all facilities of customs checking and other facilities for Export. As per provisions of section 801A of the Income tax Act, 1961, the assessee is enjoying 100 percent deduction from Income for 10 Years from the date of commencement.*

*2. The assessee company filed Income tax return for the assessment Year 2014-15 on 29th November, 2014 showing Nil Income after deduction under section 801A as stated above. Since MAT is applicable, the assessee paid Income tax Rs.13,62,776/- on book profit under section 115JB of the Act.*

*3. As per general practice, the assessee also before finalizing Return of Income, referred 26AS statement and reconciled with Books. During reconciliation, the assessee found a wrong credit of Rs. 14,64,762/- with corresponding TDS Rs.29,295/ which was unrelated to the company and its business: It may had been due to wrong PAN mentioned by party Crescent Export Syndicate while filing TDS Return and the assessee had nothing to do with this. Since this was unrelated to the Company and its business, the Company ignored the TDS amount and had not claimed the TDS in the Income tax return filed.*

*4. The case was selected for scrutiny and the ITO completed the scrutiny case under section 143(3) of the Act. During the course of hearing of the case, the ITO raised the question for TDS Credit not being considered as Income."*

4. The Id. CIT(A) concurred with the Assessing Officer and rejected the explanation of the assessee simply for the reason that the assessee did not file any reply to the show cause notice issued by the Assessing Officer.

5. On due consideration of the above facts and circumstances, we deem it appropriate to take note of the specific plea contained therein that the assessee has no connection with the credit entry *vis-à-vis* the TDS amount. It has not claimed the TDS credit and, therefore, this factual fact ought to have been verified by the Assessing Officer before visiting the assessee with the penalty. When this plea was raised before the Id. First Appellate Authority, may be for the first time, then at least it should have been cross-verified instead of rejecting the same on the technical reason that, it should have been raised before the Assessing Officer. We note that if a plea was not raised during the original proceedings and if the same is raised for the first time during the appellate proceedings, its cognizance deserves to be taken.

6. Keeping in view the above facts and circumstances, we set aside both the orders of the lower authorities and relegate this issue to the file of the Assessing Officer for fresh adjudication, in accordance with law. The assessee will be at liberty to submit any further details in support of its contentions. Due opportunity shall be provided to the assessee before finalizing the issue. With the above observations, the appeal of the assessee is allowed for statistical purposes.

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

**Order pronounced in the Court on 13<sup>th</sup> July, 2022 at Kolkata.**

*Sd/-*

**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Kolkata, Dated 13/07/2022

*\*SC S.P.\**

*Sd/-*

**(RAJPAL YADAV)**  
**VICE-PRESIDENT**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata