

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.3678/Del/2019
Assessment Year: 2010-11

Andalen Associates Pvt. Ltd., 39, Housing Society South Extension, Part-1, South Delhi, Delhi-110048	Vs.	ITO, Ward 2(4), New Delhi
PAN :AAACA1501F		
(Appellant)		(Respondent)

Appellant by	Shri Abhishek Mathur, Adv.
Assessee by	Shri Sanjay Kumar, SR. DR

Date of hearing	26.06.2022
Date of pronouncement	31.08.2022

ORDER

This is an appeal by the assessee against order dated 25.02.2019 of learned Commissioner of Income-Tax (Appeals)-32, New Delhi pertaining to assessment year 2010-11.

2. At the outset, learned counsel appearing for the assessee, on instructions, did not press ground nos. 1 and 5. Accordingly, ground nos. 1 and 5 are dismissed.

3. Rest of the grounds relate to addition of Rs.5,51,500.

4. Briefly, the facts are, assessee is a resident corporate entity. On receiving information available in the individual transaction statement (ITS) in the system of the department indicating that the assessee has received fee for professional/technical service amounting to Rs.5,51,500, which was not offered to income, the assessing officer reopened the assessment under Section 147 of the Act for the impugned assessment year. As alleged by the assessing officer, assessee neither complied with the notice issued under Section 148 of the Act nor notice issued under Section 142(1) of the Act. Accordingly, he proceeded to complete the assessment ex parte and while doing so, he added back the amount of Rs.5,51,500 as the income of the assessee.

5. Contesting the aforesaid addition, assessee filed an appeal before learned Commissioner (Appeals).

6. In course of proceedings before learned first appellate authority, assessee contended that while issuing the original Permanent Account Number (PAN), assessee's name was wrongly mentioned as Andalen Associates Pvt. Ltd. instead of Andleys Associates Pvt. Ltd. It was further submitted that subsequently, assessee made an application for

correction of name in PAN database and upon consideration of such application, a fresh PAN was issued correcting the name of assessee with a new PAN. It was submitted that the income of Rs.5,51,500 was duly offered to tax in the return of income filed for the impugned assessment in the correct name of Andleys Associates Pvt. Ltd. and tax deducted at source on such income in the old PAN was claimed. Learned Commissioner (Appeals), however, was not convinced with the submissions of the assessee, hence, sustained the addition made by the assessing officer.

7. Before me, learned counsel appearing for the assessee reiterated the stand taken before the learned first appellate authority. Whereas, learned Departmental Representative strongly relied upon the observation of learned Commissioner (Appeals).

8. I have considered rival submission and perused the material on record.

9. For deciding the controversy, the following observations of learned Commissioner (Appeals) would be relevant:

“8.3 I have carefully considered the observations of AO and submissions of appellant. Appellant has stated that the amount of Rs.5,51,500/- using the new PAN i.e. AAACA5432D was billed

by the assessee company to M/s. Gemscab Industries Ltd. for professional charges of Rs.5,00,000 and service tax on Rs.51,500/- vide bill dated 04.05.2009 and the said income has been duly accounted for in its income under the head professional receipts and reflected in the P & L account of the company. It has further been submitted that M/s. Gemscab Industries Ltd. has wrongly deducted TDS under old PAN AAACA1510F which can be observed from the TDS certificate issued in Form 16A dated 16.07.2009.

8.4 From the perusal of the PAN allotment letter dated 30.01.1996, it is seen that PAN- AAACA1510F has been allotted in the name of M/s. Andalen Associates Pvt. Ltd. Further, it is seen that PAN- AAACA5432D has been allotted to M/s. Andleys Associates Pvt. Ltd. However, date of allotment is not mentioned in the letter placed at page 4 of the enclosure filed along with written submissions. Therefore, it is not clear since when appellant has been using the PAN-AAACA5432D. AO in his remand report has stated that AR was asked to give the date of allotment of PAN-AAACA5432D but AR expressed his inability. AO has further stated that PAN AAACA5432D was allotted to appellant on 27.08.1996 and PAN-AAACA1501F was allotted to assessee on 06.12.1995 and it was using both PANs. From the perusal of bill raised by appellant, it is seen that appellant has raised the bill on M/s. Gemscab Industries Ltd. under the PAN-AAACA5432D but TDS has been deducted by M/s. Gemscab Industries Ltd. on PAN-AAACA1501F. It is not clear how M/s. Gemscab Industries Ltd. has deducted against PAN-AAACA1501F when appellant has raised the bill using PAN-AAACA5432D. Therefore, I am in agreement with A.O. has also stated that appellant has been using PAN-AAACA1501F by filing return up to A.AY. 2003-04 under this PAN where it has already been allotted another PAN-AAACA5432D. Further, it is seen that it is not clear whether the amount has been offered by appellant in its ITR for A.Y. 2010-11 as in the computation of income filed on page 6 of enclosure filed along with written submissions, it is seen that computation

of income is against PAN- AAACA1510F (copy enclosed). Therefore, it is crystal clear that appellant has also been using PAN- AAACA1510F and the income/receipt against that PAN has not been disclosed by appellant. Therefore, there is no basis in the claim of appellant. Accordingly, appeal is dismissed.”

10. As could be seen from the aforesaid observations of learned Commissioner (Appeals), the case of assessee is, the income of Rs.5,51,500 was offered to tax in the return of income filed for the assessment year 2010-11 in the name and Andleys Associates Pvt. Ltd., which is the correct name of the assessee. The observations of learned Commissioner (Appeals) further reveal that, though, the bill of Rs.5,51,500 raised on M/s. Gemscab Industries Ltd. was by Andalen Associates Pvt. Ltd. with PAN: AACCA5432D, however, M/s. Gemscab Ind. Ltd. deducted TDS against PAN: AAACA1501F claimed to be the PAN issued in the incorrect name of M/s. Andalen Associates Pvt. Ltd. From the material placed in the paper book, it is observed, upon consideration of an application filed by assessee requesting for correction/change in particulars of PAN Card, the department has issued a fresh PAN in the name of M/s. Andleys Associates Pvt. Ltd. with PAN: AAACA5432D. It is the claim of assessee before the learned first appellate authority as well as before

me that the income of Rs.5,51,500 has been offered to tax in the return of income filed by M/s. Andleys Associates Pvt. Ltd. having PAN: AAACA5432D.

11. Learned counsel appearing for the assessee has asserted before me that no other return of income has been filed in the name of M/s. Andalen Associates Pvt. Ltd. for the impugned assessment year either showing the income or claiming the TDS on the amount of Rs.5,51,500. It was further submitted that assessee is ready and willing to furnish an affidavit before the assessing officer to this effect.

12. Keeping in view the aforesaid submissions of the learned counsel appearing for the assessee, I restore the issue to the file of the assessing officer for reconsidering assessee's claim. Assessee is directed to furnish an affidavit along with other corroborative evidences to support its claim that the income of Rs.5,51,500 received from M/s. Gemscabs Industries Ltd. was actually offered to tax in the return of income filed for the impugned assessment year and further the TDS on such income was claimed only by M/s. Andleys Associates Pvt. Ltd. and no other return of income has been filed in

the name of Andalen Associates Pvt. Ltd. claiming credit for TDS on the income of Rs.5,51,500. Upon furnishing of such affidavit and evidences, the assessing officer shall make necessary inquiry and factually verify assessee's claim and decide the issue accordingly. Needless to mention, assessee must be afforded reasonable opportunity of being heard before deciding the issue.

13. With the aforesaid observations, grounds are allowed for statistical purposes.

14. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 31st August, 2022.

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 31st August, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	24.08.2022
2.	Date on which the draft of order is placed before the Dictating Member:	26.08.2022
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	31.08.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	31.08.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	31.08.2022
7.	Date on which the final order is uploaded on the website of ITAT:	31.08.2022
8.	Date on which the file goes to the Bench Clerk	31.08.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	