

आयकर अपीलिय अधिकरण, कोलकाता

पीठ 'A' एसएमसी

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA
BENCH-A (SMC)

समक्ष : श्री मनीष बोरड, लेखा सदस्य

Before: SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं.य/
ITA No. 81/Kol/2022

निर्धारण वर्ष:

Assessment Year:2017-18

Kish Developers Pvt. Ltd 5A/1B Lord Sinha Road, Kolkata-700 071.	बनाम / V/s.	ADIT, CPC, Bangalore, Electronic City P.O, Bangalore-560500, Karnataka.
PAN: AAECK0436D		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant	Shri Rajat Agrawal, FCA, Ld.AR	
प्रत्यर्थी की ओर से/By Respondent	Shri Biswanath Das, CIT, Ld.DR	
सुनवाई की तारीख/Date of Hearing	24-08-2022	
घोषणा की तारीख/ Date of Pronouncement	17-10-2022	

आदेश / O R D E R

The above captioned appeal is directed at the instance of the assessee against the order dated 15-12-2021 of the Ld. Commissioner of Income-tax, Appeals [hereinafter referred to as 'CIT(A)'], National Faceless Appeal Centre, Delhi passed u/s. 250 of the Income-tax Act, 1961 hereinafter referred to as 'the Act' for the AY 2017-18.

2. The assessee has raised the following grounds of appeal :-

1. For that CIT (A) has erred both in law and the facts of the case in holding that a dead entity, M/s Kish Developers P. Ltd. cannot be expected to file it's return and therefore the return filed by M/s Kish Developers P. Ltd. itself for the period

01.04.2016 to 02.10.2016, is not valid. Assessee has correctly filed the return under section 139 of Act.

2. For that on the facts and in the circumstances of the case and in the law, CIT (A) had erred in passing the impugned order not providing rebuttal (speaking order) to our written submission dated 5th December 2021 filed by the appellant assessee company before the CIT(A) in the course of proceedings u/s.250 of the Act.

3. For that under the facts and circumstances of the case the Assistant Director of Income Tax, CPC, Bangalore (in short referred as AO) and CIT(A) had erred in not allowing TDS credit which is evidently reflecting in 26AS of Kish Developers Pvt Ltd in TAN(CALI01499B) of the Deductor (ICICI Bank) amounting to Rs. 42,351/-

4. For that under the facts and circumstances of the case AO & CIT(A) had erred in not allowing TDS credit which is evidently reflecting in 26AS of Kish Developers Pvt Ltd in TAN (MUMU05151G) of the Deductor (Axis Bank) to the extent of Rs. 2,09,487/-

5. For that the AO & CIT(A) had erred in not considering the principle of natural justice while passing 'rectification order under section 154 and 250 of Act, 1961 by not giving any opportunity of being heard.

6. For that your appellant assessee craves leave to add or alter and modify the grounds of appeal before or at the time of appeal hearing.

3. I have heard the rival contentions and perused the record placed before us. Facts observed by me are that the assessee is a private limited company. During FY 2016-17 on 3.10.2016 it converted into a limited liability partnership firm on 03-10-2016. Returns were filed for both the entities i.e, private limited company and limited liability partnership firm. TDS were deducted on the receipts under the respective two entities.

4. As regard to ground no. 1 raised by the assessee is concerned, I find that the Id. CIT(A) grossly erred in holding that entity, M/s Kish Developers P.Ltd cannot be expected to file the return and therefore, the return filed by M/s. Kish Developers P.Ltd for the period of 1.4.2016 to 02-10-2016 is not valid. I fail to understand how and on what basis this finding has been given. It is well settled rule of law provided under the Act that if a private limited company is active even for a day during a financial year than also it is required to file its IT Return. In the case before me the assessee company was actively working from 1.4.2016 to 2.10.2016. It earned income during this period and financial statements are duly audited and therefore, has correctly filed the return of income and for the remaining period 3-02-2016 to 31-3.2016 the limited liability partnership was actively working, which was converted from private limited company to limited liability to partnership firm for carrying on the business. It also prepared the books of account and rightly filed its income-tax return. I am, therefore, inclined to hold that the return filed by the assessee company for the period 1.4.2016 to 02-10-2016 is a valid return. Ground no. 1 raised by the assessee is allowed.

5. As ground nos. 2 to 5 of assessee's appeal are concerned, they are mainly focused for having not been allowed the credit of TDS deducted by ICICI Bank at Rs. 42,351/- and TDS deducted by Axis Bank at Rs. 2,09,487/-, it is contended by the Id. Counsel for the assessee that both the alleged amount of TDS are duly reflected in Form 26AS issued in the name of M/s. Kish Developers P.Ltd by the Income-tax authority on the e-portal. Ld. DR failed to controvert this fact. I am, therefore, of the considered view that it would be fair and in the interest of justice that this issue of verification of alleged TDS amounts needs to be restored to the file of the Jurisdictional AO, who shall examine the veracity of the claim of the

assessee and if the same is found to be correct and if the assessee has duly disclosed the income in its financial statement which have suffered alleged TDS deduction then the credit of TDS of Rs.42,351 and Rs.2,09,487 should be allowed to the assessee. Needless to mention that reasonable opportunity of hearing should be provided to the assessee for putting forth its claim. Thus, ground nos. 2 to 5 raised by the assessee are allowed for statistical purpose.

6. Ground no. 6 is general in nature, which requires no adjudication.

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

आदेश खुले न्यायपीठ में दिनांक 17-10-2022 को उद्घोषित।

Order pronounced in open court on 17-10-2022

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata/ कोलकाता Date/दिनांक:- 17/10/2022

**PP/Sr.PS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant- Kish Developers Pvt. Ltd, 5A/1B Lord Sinha Road, Kolkata-700 071.
2. प्रत्यर्थी/Respondent-ADIT, CPC, Bangalore, Electronic City P.O, Bangalore-560500, Karnataka.
- 3.. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,कोलकाता ।