

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 72/Rjt/2020
निर्धारण वर्ष/Asstt. Years: 2009-2010

Vipul H. Popat, Prop. Mathav Agro Industri, Nilkanthkhandskampound, Dhoraji Road, Upleta, Rajkot. C/O D.R ADHIA "OM SHRI PADAMLAYA", Nr. Trikamrayji Haweli, 16-Jagnath Plot, Dr.Yagnik Road, Opp. Imperial Hotel, Rajkot-360001, PAN: APGPP3103E	Vs.	I.T.O., TDS-1, Rajkot.
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Assessee by :	Written Submission
Revenue by :	Shri BD Gupta, CIT. D.R

सुनवाई की तारीख / **Date of Hearing** : **20/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **23/11/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-1, Rajkot, dated 25/02/2020 arising in the matter of assessment order passed under s. 201(1) and 201(1A) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2009-10.

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

1. *The Ld. CIT(A) has erred in law and facts in confirming the assessee in default for making no TDS and charging interest thereon in respect of payment of Rs. 19,59,975/- and passing order U/s,201(1)/201(IA) and raising demand of Rs. 59,3537- The same needs cancellation.*
2. *The Ld. CIT(A) has erred in law and facts in confirming the assessee in default making no TDS in respect of payment of Rs. 19,59,975/- and passing order U/s.201(1) and raising demand of Rs. 39.200/-. The same needs cancellation.*
3. *The Ld. CIT(A) has erred in law and facts in confirming the assessee in default for TDS in respect of various payment and passing order U/s.201(IA) raising demand charging interest of Rs. 18,9777-. The same needs cancellation.*
4. *Taking into consideration the legal, statutory, factual and administrative aspects, no order U/s 201 (1) and 201(1A) of each of the above items mentioned at paragraphs 1 to 3 ought have been made. The same need deletion.*
5. *Without prejudice, the orders passed U/s 201 (1) and 201(1A) are bad in law and deserves annulment.*
6. *Without prejudice, the Ld. CIT(A) has erred in not considering no adequate, sufficient and reasonable opportunity has been provided by the Ld. A.O. The orders passed U/s 201(1) and 201(1 A) needs annulment.*
7. *Without prejudice the order passed by the Ld. CIT(A) being vague without speaking order and without considering CBDT's instruction is bad in law deserves annulment.*

3. The only effective issue raised by the assessee is that the learned CIT(A) erred in holding the assessee as assessee in default under section 201(1) of the Act and sustaining the demand of Rs. 39,200/- u/s 201(1) and the interest on the same for Rs. 18,997.00 u/s 201(1A) of the Act.

4. The ITO-TDS from the assessment record noticed that the assessee has made payment for truck hiring charges in excess of Rs. 50,000/- on several occasions without deducting the tax at source under the provision of section 194C of the Act. The aggregate payment on which the provisions of section 194C attracted was worked out at Rs. 19,59,975/- by the AO in the assessment framed under section 143(3) of the Act. Thus, the ITO-TDS issued show cause notice proposing

to hold the assessee in default under section 201(1) of the Act, but no reply from the assessee was received. Therefore, the ITO-TDS in the absence of any explanation held the assessee as assessee in default under section 201(1) of the Act and worked the TDS liability on the assessee at Rs. 39,200/- only. The ITO-TDS also worked the interest liability under section 201(1A) of the Act at Rs. 18,977/- only.

5. The aggrieved assessee preferred an appeal to the learned CIT (A).

6. The assessee before the learned CIT (A) submitted that the ITO-TDS raised demand under section 201(1) and 201(1A) of the Act for not deducting tax at source under the provisions of section 194C of the Act without considering the fact that there was no relationship of contractor and contractee between the assessee and truck owner. The assessee claimed the trucks were merely hired on need basis without the element of contract. The assessee further claimed that the Hon'ble Gujarat High Court in identical fact & circumstances in the case of Katariya Logistics held the issue in favour of the assessee. The assessee also referred the CBDT circular No. 715 dated 08-08-1995 in his support. Accordingly, the assessee contended that the liability to deduct tax at source under the provisions of section 194C does not arise in the absence of any relationship of being contractor and contractee.

7. The learned CIT(A) after considering the submission of the assessee confirmed the demand raised by the ITO-TDS by observing as under:

The assessee has contended that the AO has failed to establish a relationship of contractor and contractee between assessee and the truck owners. The assessee had merely hired the trucks for transportation on need basis and. such payment did not attract TDS. The assessee has also placed reliance upon decision of Gujarat High Court in the case of Katariya Logistic Service (Supra) in support of this contention.

Having considered the facts and circumstances of the case I find that before raising impugned demand the AO had issued a show cause notice to the assessee which the

assessee had not responded too. The onus to prove that the assessee was not liable to make TDS lay on the assessee. The assessee failed to discharge his onus despite these being specific show cause notice. The contentions raised by assessee are therefore in the nature of additional evidence for which conditions laid down under Rule 46A need to be satisfied. In the case of assessee no such petition under rule 46A has been furnished. The assessee has failed to show how the decision of Hon'ble Gujarat High Court is applicable to his case.

The contentions of the assessee are therefore rejected. The action of AO, calls for no interference. Grounds of appeal are rejected.

8. Being aggrieved by the order of learned CIT(A) the assessee is in appeal before us.

9. The learned AR before us filed a written submission wherein it was contended that the AO in the own case of the assessee has made the disallowance on account of non-deduction of TDS under the provisions of section 40(a)(ia) of the Act. Therefore, there cannot be raised any further demand on account of non-deduction of TDS under the provisions of section 201(1)/201(1A) of the Act.

10. On the other hand, the learned DR vehemently supported the order of the authorities below.

11. We have heard the learned DR and perused the materials available on record. From the preceding discussion, we note that learned AR in his written submission filed before us has contended that the disallowance was made by the lower authorities on account of non-deduction of TDS under the provisions of section 194C read with section 40(a)(ia) of the Act in the own case of the assessee for the same assessment year under consideration in the proceedings carried out under the provisions of section 143(3) of the Act which was confirmed by the ITAT. Therefore, there cannot be raised any demand for any amount representing the TDS and interest thereon by invoking the provisions of section 201(1) and 201(1A) of the Act.

11.1 We find force in the argument of the learned AR of the assessee filed in the written submission. In this regard, we find that the Hon'ble Mumbai Tribunal in the case of Pfizer Ltd vs. ITO-TDS bearing ITA No. 1667/Mum/2010 has held as under:

12. As already explained and evidenced from the computation of income as well as the orders of AO in the assessment proceedings, the entire provision has been disallowed under section 40(a)(ia) and section 40(a)(i). Once the amount has been disallowed under the provisions of section 40(a)(i) on the reason that tax has not been deducted, it is surprising that AO holds that the said amounts are subject to TDS provisions again so as to demand the tax under the provisions of section 201 and also levy interest under section 201(1A). We are unable to understand the logic of AO in considering the same as covered by the provisions of section 194C to 194J. Assessee as stated has already disallowed the entire amount in the computation of income as no TDS has been made. Once an amount was disallowed under section 40(a)(i)/(ia) on the basis of the audit report of the Chartered Accountant, the same amount cannot be subject to the provisions of TDS under section 201(1) on the reason that assessee should have deducted the tax. If the order of AO were to be accepted then disallowance under section 40(a)(i) and 40(a)(ia) cannot be made and provisions to that extent may become otiose. In view of the actual disallowance under section 40(a)(i) by assessee having been accepted by AO, we are of the opinion that the same amount cannot be considered as amount covered by the provisions of section 194C to 194J so as to raise TDS demand again under section 201 and levy of interest under section 201(1A). Therefore, assessee's ground on this issue are to be allowed as the entire amount has been disallowed under the provisions of section 40(a)(i)/(ia) in the computation of income on the reason that TDS was not made. For this reason alone assessee's grounds can to be allowed. Considering the facts and reasons stated above assessee's grounds are allowed.

11.2 In view of the above, we hold that there cannot be raised any demand against the assessee in the proceedings under section 201(1) and 201(1A) of the Act as the amount has already been disallowed under section 40(a)(ia) of the Act in the proceedings carried out by the AO under the provisions of section 143(3) of the Act on account of non-deduction of TDS. However, there was no order of the ITAT made available to us at the time of hearing against the proceedings under section 143(3) of the Act. Thus, we set aside the issue to the file of the AO to delete

the demand raised by him under the provisions of section 201(1)/201(1A) of the Act subject to the verification whether any disallowance has already been made on account of non-deduction of TDS under the provisions of section 194C read with section 40(a)(ia) of the Act in the proceedings carried out under the provisions of section 143(3) of the Act in the light of the order of Mumbai Tribunal as discussed above. Hence, the ground of appeal of the assessee is allowed subject to the direction stated above.

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

Order pronounced in the Court on 23/11/2022 at Ahmedabad.

**Sd/-
(T.R SENTHIL KUMAR)
JUDICIAL MEMBER**

(True Copy)

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 23/11/2022
Manish