

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.377/Kol/2022
Assessment year: 2012-13

Jiwanram Sheoduttrai Industries Pvt. Ltd.....Appellant
30D, Jawaharlal Nehru Road,
Park Street,
Kolkata-700016.
[PAN:AAACJ7420L]

vs.

ITO, Ward-2(1) (TDS), KolkataRespondent

Appearances by:

Shri Saumen Dutta, AR, appeared on behalf of the appellant.

Shri Vijay Kumar, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 29, 2022

Date of pronouncing the order : January 16, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 29.04.2022 of the National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has agitated the action of the CIT(A) in upholding the demand raised by the Assessing Officer on account of non-deduction of TDS u/s 201(1) of the Act and thereby, holding the assessee as assessee in default and thereby, raising the tax demand of Rs.82,990/- and interest of Rs.78,008/- u/s 201(1A) of the Act.

3. At the outset the ld. counsel for the assessee, in this respect, has submitted that so far as non-deduction on account of payment of professional fees of Rs.2,88,110/- to Rajesh Kumar Shah & Associates was concerned, it was not a case of non-deduction of TDS but short deduction of TDS. He has further contended that even otherwise the payee had included the said amount in his income tax return and that as per Proviso to section 201, if the payee has furnished his return of income and taken into account the amount of payment made to him without deduction of TDS and has paid the due taxes thereupon and declaration is furnished in this respect then the payer is not liable to be declared as 'assessee in default'. The ld. counsel has further submitted that so far as the issue relating to non-deduction of TDS paid to Shri Asit Mistri and Shri Umesh Sharma was concerned, both were skilled labourer and the payment was made on account of wages and not as contractors and the assessee was justified in non-deducting of TDS on the wages of the labourer as a matter of prevailing trade practice. The ld. counsel has requested that the matter may be restored to the file of the Assessing Officer for examination of the aforesaid factual aspect and pass a fresh assessment order on this issue.

4. The ld. DR has not objected to the same.

5. In view of the above, the impugned order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer to examine the aforesaid contentions of the assessee and if the contentions of the assessee are found correct, the accordingly grant relief to the assessee. The Assessing Officer will give proper opportunity to the assessee to present his case, thereafter to decide this limited issue afresh.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 16th January, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 16.01.2023.

RS

Copy of the order forwarded to:

1. Jiwanram Sheoduttrai Industries Pvt. Ltd
2. ITO, Ward-2(1) (TDS), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches