

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.2636/MUM/2022 (A.Y: 2017-18)

M/s. Lakhi Fashion LLP Bungalow No. 161, RSC 4 Opposite Society No. 91 Near Gorai – 1, Borivali (W) Mumbai - 400092 PAN: AAFFL3987L	v.	National Faceless Appeal Center Delhi
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Shashi Bekal
Department Represented by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	28.12.2022
Date of Pronouncement	:	13.03.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 06.09.2022 for the A.Y.2017-18.

2. Brief facts of the case are, assessee filed its return on 07.11.2017 returning total income at ₹.5,55,760/ and assessee is a firm and is occupied in the business of Imitation Jewellery. The return was processed u/s 143(1) of Income-tax Act, 1961 (in short "Act") on 13.12.2018 at ₹.1,21,22,007/- after making adjustment of ₹.1,15,66,247/- u/s. 143(1) sub clause (iv) of clause (a) of the Act. The Assessing Officer has disallowed 30% of commission of ₹.3,84,54,157/- and professional fees of ₹.1,00,000 u/s 40(a)(ia) for which the assessee claims exemption for non deduction of TDS under Form 26A r.w. Rule 31ACB.

3. Aggrieved with the above order assessee preferred an appeal before the Ld.CIT(A), after considering the submissions of the assessee Ld.CIT(A) after condoning the delay of 12 days of filing of the appeal, sustained the additions made u/s. 40(a)(ia) of the Act.

4. Ld.CIT(A) observed that in order to claim the benefit under Rule 31ACB assessee has to be declared as assessee is not in default u/s. 201 of the Act by submitting Form-26A to the Director General of Income Tax (Systems). Further, he relied on section 201 of the Act, circumstances in which assessee failed to deduct TDS, it is the responsibility of the assessee to file the Form – 26A as per the procedure laid down under Rule 31ACB.

In this case, assessee has not furnished Form 26A to prove that payee has paid its taxes and filed the return of income, in the absence of the above said certificate the adjustment proposed u/s. 143(1) is accordingly sustained. He adjudicated similarly for the disallowance of professions fee of ₹.1,00,000/-.

5. Aggrieved assessee preferred appeal before us raising following grounds in its appeal: -

"Ground No. 1:

In law and on facts and circumstances of the case, the learned AO and Hon. CIT(A) did not grant sufficient opportunity to produce evidences to treat the appellant as assessee not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201 so as to be covered under 2nd proviso to section 40(a)(ia) for non-deduction of tax at source on commission of Rs.3,84,54,157/- and professional fees of Rs. 1,00,000/-. thereby making addition of Rs. 1,15,66,247/- being 30% of the aforesaid amount.

Ground No. 2:

In law and on facts and circumstances of the case, the addition of Rs. 1,15,66,247/- u/s 40(a)(ia) be set aside and quashed on merits and on the basis of Form 26A evidencing the payee having filed its return of income u/s 139, having considered the receipt of commission and professional fees in their income-tax return and paid tax due on such return of income.

All the above grounds are alternative & without prejudice to each other.

The appellant craves the leave to add, alter, amend, substitute, delete and modify the aforesaid ground as advised."

6. At the time of hearing, Ld. AR of the assessee submitted that assessee has not represented properly before Assessing Officer, however, filed the relevant information before Ld.CIT(A) and further, he submitted that the first appellate order passed was *ex parte* and he submitted that assessee could not file Form-26A due to various reasons and one of the reasons is system glitch. Therefore, he prayed that assessee is having Form-26A and prayed that the same may be considered. Further, he brought to our notice Page No. 24 and 26 of the Paper Book to highlight that assessee has various grievances as per which assessee could not file the Form – 26A on time and it was explained in detail before the Ld.CIT(A) which Ld.CIT(A) has not accepted while adjudication.

7. On the other hand, Ld.DR objected to the submissions made by the assessee and relied on the orders passed by the lower authorities.

8. Considered the rival submissions and material placed on record, we observe that assessee has made payments to Television Home Shopping Network Limited towards commission and SNH and Associates towards professional fees. It is fact on record that assessee failed to deduct TDS on the above said payments. We observe that assessee has not filed Form-26A as per Rule 31ACB to prove that the payee has furnished its

return of income u/s. 139 of the Act; and the payee has taken into account the amount paid by the assessee while computing the income in such return of income; and the payee paid the tax due on the income declared by it in such return of income. When the assessee files Form -26A before the authorities, it proves that assessee is not in default. Further, in the present case it is fact on record that assessee has not deducted TDS while making the payment to above said two parties. However, assessee has acquired the Form – 26A. However, failed to submit the same before CPC as well as Ld.CIT(A). As per the submissions of the assessee due to system glitch it could not upload the same in time and it has submitted a copy of Form -26A before us in the form of Paper Book. Therefore, it clearly indicates that assessee has genuinely possesses the Form – 26A at its disposal and as per the Rule 31ACB it has to be submitted to the DGIT(Systems). Since the case of the assessee is falling in the above category and there is no restriction that assessee has to file within such a period, that is, there is no bar on the assessee to file such form within such period. Therefore, the case seems to be genuine and assessee should be given one more opportunity for the sake of overall justice. Therefore, in our considered view we remit this issue back to the file of Ld.CIT(A) and to consider the Form – 26A, adjudicate the same after

considering the above said Form-26A and as per law. Accordingly, ground raised by the assessee is allowed for statistical purpose.

9. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 13th March, 2023

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER
Mumbai / Dated 13/03/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum