

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. Nos. 179 to 189/JP/2023
निर्धारण वर्ष/Assessment Years : 2011-12 & 2013-14 to 2017-18

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|---|-------------|-----------------------------------|
| Deputy Conservator of Forests Dausa, Near Collectorate Circle Bhankri Road, Dausa | बनाम Vs. | Income Tax Officer, TDS, Alwar |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAGD 2475 H | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Sh Sunil Kumar Uppaddhay
राजस्व की ओर से / Revenue by : Sh. James Kurian, (CIT) &
Sh. A. S. Nehara, (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 03/05/2023
उदघोषणा की तारीख / Date of Pronouncement : 10/05/2023

आदेश / ORDER

PER BENCH

These eleven appeals filed by the assessee arising out of the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to as Ld. NFAC/CIT(A)] passed on dates as mentioned here in below for the assessment year mentioned as tabulated here in below which in turn arises from the order passed by the Income Tax Officer, TDS, Alwar & Jt. CIT (TDS), Jaipur under the provision of Income Tax Act, 1961 (in short 'the Act') and dated referred here in below:

| Asstt. Year | Assessee's Appeal No. | Reference to the dated of order of NFAC | Reference to the order of the Id. AO date and section under which the order is passed | |
|-------------|-----------------------|---|---|--------------------|
| 2011-12 | 179/JPR/2023 | 30.03.2022 | 12.03.2018 | U/s 201 |
| 2013-14 | 180/JPR/2023 | 30.03.2022 | 27.06.2018 | U/s 201 |
| 2014-15 | 181/JPR/2023 | 30.03.2022 | 27.07.2018 | U/s 201 |
| 2015-16 | 182/JPR/2023 | 30.03.2022 | 27.07.2018 | U/s 201 |
| 2016-17 | 183/JPR/2023 | 30.03.2022 | 27.07.2018 | U/s 201 |
| 2017-18 | 184/JPR/2023 | 30.03.2022 | 27.07.2018 | U/s 201(1)/201(1A) |
| 2013-14 | 185/JPR/2023 | 30.03.2022 | 23.10.2019 | U/s 271C |
| 2014-15 | 186/JPR/2023 | 30.03.2022 | 23.10.2019 | U/s 271C |
| 2015-16 | 187/JPR/2023 | 30.03.2022 | 23.10.2019 | U/s 271C |
| 2016-17 | 188/JPR/2023 | 30.03.2022 | 23.10.2019 | U/s 271C |
| 2017-18 | 189/JPR/2023 | 30.03.2022 | 23.10.2019 | U/s 271C |

2. As it is seen that out of eleven appeals of the assessee, six appeals challenge to the levy of TDS demand on the alleged default of the assessee and five related to the levy of penalty u/s. 271C. Since the issues involved in the assessee's appeal for all the years are almost identical and the issues are almost common,

except the difference in figure of additions disputed and the amount of levy of penalty in each year. Based on these facts, all these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter pertaining to ITA no. 180/JPR/2023 & 185/JPR/2023 may be taken as a lead case for discussions as the issues involved in the lead cases are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are exactly identical except the difference in the amount in other assessment year. The Id. DR did not raise any specific objection against taking that cases as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 180/JPR/2023 & 185/JPR/2023 is taken as a lead cases. Based on the above arguments we have also seen that for all these appeals are having similar facts, grounds and arguments were similar and therefore, were heard together and are disposed by taking lead case facts, grounds and arguments from the folder in ITA No. 180/JPR/2023 & 185/JPR/2023.

4. The registry pointed out that all the appeal of the assessee is filed with a delay of 304 days. The assessee has filed the petition for condonation of delay along with the affidavit of the Dy. Conservator of Forest Dausa, of all the appeals and the contentions so raised in the affidavit is reiterated here in below :

“Affidavit of Dy. Conservator of Forest Dausa.

That I the above designated deponent, am well conversant with the facts deposed to below.

1. That the appeal filed by the Assessee before the Commissioner of Income Tax (Appeals), Alwar was disposed of by order dated 30/03/2022 passed by Commissioner of Income Tax (Appeals), Alwar.

2. That the time for filing of the appeal before the Tribunal is time-barred by 304 days.

3. We as a department of Rajasthan government was requested to follow the chain of command and seek approval of competent authorities before initialization of any legal proceedings, and as the proceedings include assessment of more than one financial year, we took our time before the approach, therefore, appeal could not be filed.

4. That the memo of appeal has been filed on 29/03/2023 in the Office of the Tribunal.”

Based on the above contention the Id. AR of the assessee prayed to take a lenient view of the matter.

4.1 Per contra, the Id. DR representing the revenue did not raised any objections to the contentions raised by the assessee and left the decision to the bench.

4.2 We have heard both the parties and have considered the content of the application for condonation of delay as well as the arguments of the Id. DR on the issue. Based on the materials available on record the bench noted that the assessee prayed for condonation of delay of 304 days. The reasons placed on record has merit and we concur with the submission of the assessee. Thus the delay of 304 days in filing the appeal by the assessee is condoned in view of the decision of the apex court decision in case of Collector, Land Acquisition vs MST Katiji, wherein the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted is one of the principles that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Another principle laid down by the Hon'ble Supreme Court is that when substantial justice and technical

considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that the assessee has all along acted diligently in safeguarding their legal rights and availing the remedies available to him and has acted and taken action but has sufficient reasons so as to bring this appeal. Considering the facts of the case and considering the interest of justice the delay of 304 days in bringing this appeal is condoned and the appeal is hereby admitted for adjudication on merits.

5. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in 180/JPR/2023 & 185/JPR/2023 on the following grounds;

Grounds of ITA 180/JPR/2023

- “1. Erred in facts on holding that the assessee was not provided opportunity to furnish the details of PANs during the course of proceedings u/s 201(1) and 201(1A).
2. The CIT(A) further erred in law in not considering the fact that income of the deductee is totally exempt and no TDS is deductible.
3. The CIT(A) erred in law in holding that the appellant assessee can be said to have entertained a bona-fide belief that It was not liable to deduct tax at source from the impugned payments.
4. On the facts and circumstances of the case the CIT(A) ought to have upheld the “order of the Assessing Officer passed u/s 201(1) and 201(1A).
5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”

Grounds of ITA 185/JPR/2023

- “1. Erred in facts on holding that the assessee was not provided opportunity to furnish the details of PANs during the course of proceedings u/s 201(1) and 201(1A).
2. The CIT(A) further erred in law in not considering the fact that income of the deductee is totally exempt and no TDS is deductible.
3. The CIT(A) erred in law in holding that the appellant assessee can be said to have entertained a bona-fide belief that It was not liable to deduct tax at source from the impugned payments.
4. On the facts and circumstances of the case the CIT(A) ought to have upheld the “order of the Assessing Officer passed u/s 271C.
5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”

6. Briefly the facts of the case are that the assessee is an office of State Government of Rajasthan, Forest Department for conservation of forest and increasing the forest area through use of re-forestation. A Spot verification of TDS was conducted at the office premises of the deductor u/s 133A(2A) of the Act in the office

of the assessee on 29.09.2016. During the course of verification and on perusal of information provided it was found that the payments are being made for civil construction work relating to environmental development, forestation, forest development, buffer area development etc. through EDCs (ECO Development Committees). The EDCs are bodies registered with the forest department and are mainly constituted with local villagers and with one representative of Forest Department.

6.1 Based on the information so collected Id. AO vide letter No.757 dated 14.06.2018 informed the assessee that the work completed through Eco Development Committee (EDC) includes construction and maintenance of roads, enikets and enclosures etc. No TDS is being made on such payments made to various EDCs. Therefore, the assessee deductor was asked to provide details of payments made to various EDCs along with the PAN number of such EDCs. The assessee submitted the details of the payments but has not submitted the details of PAN Numbers of such payees. Since the assessee has not submitted the PAN number the Id. AO contended that the TDS is required to be deducted @ 20 % on all such payments as per provision of section

of 194C of the Act and raised the demand accordingly. The Id. AO also levied the penalty for this defaults u/s. 271C equivalent to the amount of demand.

7. Aggrieved from both the order of TDS and related penalty the assessee has preferred the appeal for before the Id. CIT(A). Apropos to the grounds so raised by the assessee the relevant finding of the Id. CIT(A) is reiterated here in below:

Finding of the Id. CIT(A) related to the TDS demand

“5.3 All the grounds raised pertain to the demand raised u/s 201(1)/201(1A) of LT. Act, hence the same are adjudicated together.

5.4 The appellant has claimed that vide order dated 17 10.2000 of Govt of Rajasthan EDCs shall not be treated as contractor within the meaning of section 1940 of the IT Act and that EDCs are not non-profit making units. Further amount received from Forest Department and amount paid by EDCs are equal Hence, no profit have been earned by EDCs. It has been claimed by the appellant that the Govt. Order no. F7(39) Van/90 dt 17.10.2000 was enclosed, but no such order was enclosed. Moreover, despite repeated notices calling for the same, it was not furnished.

5.5 The appellant was issued notices during the course of the appellate proceedings in particular, the appellant was repeatedly asked to furnish the following:-

1. Copy of Govt. order no F7(39) Van/90 dt 17.10.2000 as mentioned in Form 35 and copy of Audited Report and Payment Accounts of various EDCs as mentioned in Form 35.

2. Please state whether the above information had been filed before the ITO(TDS). Copy of agreement with EDCs regarding execution of the work and term of payment.

3. Procedures followed to identify and award of the work to the EDCs.
4. Terms and conditions of the payment to EDCS
5. Please explain how were the accounts and bills relating to Development expenditure maintained.

As no reply was filed, despite several opportunities, it was proposed that in the absence of these details, the appeal will be decided on the basis of material available on record. No reply has been filed in response to this notice as well; hence the appeal is being decided accordingly.

5.6 The appellant's claim is that as per Rajasthan Government notification, EDCs can not be treated as contractors for the purposes of section 194C of IT. Act. As has been clarified by the ITO, TDS in his order, notification if any is by the Government of Rajasthan and no such exemption is available to the EDCs under Income Tax Act. The appellant has not furnished copy of such notification despite repeated opportunities

5.7 Whether or not EDCs are making profit or not, is not material. As per law, the appellant was required to deduct tax on the contractual payments. Moreover, it is not known how EDCs are incurring the expenditure and what is the procedure followed. In the absence of any details filed to support the claim of the appellant, the same cannot be accepted. The grounds raised are rejected and the order passed by the Assessing Officer u/s 201(1)/201(1A) is hereby upheld.

6. In effect, the appeal is Dismissed.”

Finding of the Id. CIT(A) related to the levy of penalty

“5. Decision:-

5.1. The present appeal is filed against penalty order passed by the Jt Commissioner of Income Tax(TDS), Jaipur u/s 271C of IT Act. The only grievance of the appellant that an appeal had been filed against the order dated 27.07.2018 passed by Income Tax Officer TDS, Alwar and that the Jt. Commissioner of Income Tax(TDS), Jaipur has passed the penalty order during the pendency of the appeal filed by the appellant which as per the appellant is in contravention of the provision of Section 275 of LT. Act. The ground is adjudicated accordingly.

5.2. Brief facts of the case are that the appellant had made payment to Eco Development Committees (EDCs) for civil construction work, without deducting tax at source. The Income Tax Officer, TDS, held that the appellant was liable to deduct tax and accordingly passed an order u/s 201(1)/201(1A) of IT. Act raising demand. He also referred the matter to the Jt Commissioner of Income Tax for penalty u/s 271C of 1.T: Act

5.3. The Jt. Commissioner of Income Tax, TDS noted that no reply was filed on merit. It was only replied that online appeal has been filed on 28.08.2019 against order dated 27.07.2018 of Income Tax Officer, TDS. The Jt Commissioner of Income Tax noted that 27.07.2018 the appeal was delayed and the order for condonation of delay had not been passed by the Commissioner of Income Tax(A). Hence, considering the limitation for passing the penalty order, the Jt Commissioner of Income Tax imposed the penalty.

5.4. So far as the claim of the appellant regarding contravention of provision of Section 275 of 1.T. Act is concerned, the same is not correct. The limitation prescribed for passing a penalty order is the permissible outer limit for passing a penalty order. In the facts and circumstances, the Jt. Commissioner of Income Tax was right in passing the order, particularly as the appeal filed was belated and the delay had not been condoned by the Commissioner of Income Tax(A).

5.5. So far as the merit of the penalty order is concerned, the appellant was required to deduct tax at source on the payment made EDCs. The appellant was asked to furnish written submission in support of the grounds raised. Except for quoting the provision of Section 275, no reply has been given on merit. The appellant was asked to furnish a copy of State Government order which has been mentioned in the order of Income Tax Officer, TDS. However, no such detail has been furnished by the appellant despite several opportunities. Therefore, it is inferred that the appellant has nothing to state on merit. The grounds raised are rejected. The penalty order u/s 271C is hereby confirmed.

6. In effect, the appeal is Dismissed.”

8. Feeling not satisfied the assessee is in appeal for the levy of TDS demand and for the penalty on the grounds as stated here in above. To support the various grounds so raised by the assessee

the Id. AR of the assessee submitted that the purpose constitution of these EDCs with the aim to conduct the development works in the reserve areas with the active local participation of the villagers and to create job opportunities among them. He also submitted that the above EDCs has been exempted from the category of 'Contractor' vide Rajasthan State Government's order dated 24.10.2002 and accordingly no TDS was made from the payments made to such EDCs. The Id. AR of the assessee further submitted that there is no element of profit and the income is not taxable in the hands of the assessee as the grant was being received towards reimbursement of expenses and on these payments no TDS was liable to be deducted. The Id. AR of the assessee alternatively submitted a list of all the payee with their PAN number and based on these complete details also submitted the levy of TDS liability @ 20 % is illegal and in the interest of the justice these details be admitted. And if these PAN numbers are considered then also the assessee receive justice for reduction of TDS liability as well as consequential levy of penalty.

9. On the other hand Id. DR representing the revenue relied upon the orders of the lower authorities and further submitted that

the assessee deductors submission that the EDCs are exempted from the category of Contractor by the Rajasthan State Government is seems to be made only for the purpose to avoid legal and procedural obligations in respect to award the construction and development work to these entities as if the same are categorized under category of contractor, the development/construction work cannot be awarded to such entities without calling of tender etc. and without following the proper procedure for awarding such works. To fulfill the aim of active participation of local villagers in the work of safety and security of wild life and environmental/ecological development of the core area of the wild-life reserves, such exemption for the limited purpose is always required. Therefore the Rajasthan State Government exempted these entities from the category of contractor for this purpose only and the assessee cannot take shelter to avoid the liability casted under the Income Tax Act. The assessee has not submitted that the PAN number of the assessee now at the bench and the same if admitted the same is required to be verified by the Id. AO and therefore, he prayed that if at all the bench if it deem to admit the additional evidence being the PAN number of the payee then in that case let this details be verified by

the Id. AO and based on the these details final liability of TDS and related penalty thereof be decided.

10. We have heard both the parties, perused materials available on record. In this case the bench noted that all the EDCs since the assessee has not given the details of PAN number the Id. AO has raised the demand @ 20 % and if the Id. AO consider the PAN number of these case the assessee will get the substantial relief on the levy of TDS defaults as well as on the levy of penalty on the TDS defaults. The bench also noted that the assessee is part of the state government and the defaults if any is on account of the peculiar circumstances of the case and on the facts these EDCs are working under the direct supervision of the assessee on no profit no loss basis. In light of these facts we deem it fit in the interest of justice to admit the details of the payee with the PAN numbers. As this details were not before the lower authority we admit it in the interest of equity and justice and restore the matter to the file of the AO to examine the case afresh but by providing adequate opportunity of being heard to the assessee. The assessee is also directed to produce the documentary evidences

concerning the issue in question and will cooperate the AO. Thus, the appeal of the assessee is allowed for statistical purposes in ITA No. 180/JPR/2023.

11. As we have restored the matter of TDS liability before the Id. AO we also resort the matter of levy of penalty if any on the assessee in ITA NO. 185/JRP/2023 to be decided a fresh based on the decision taken by the Id. AO in ITA NO. 180/JPR/2023. Based on this observation the appeal of the assessee in ITA NO. 185/JPR/2023 is also allowed for statistical purpose.

12. The fact of the case in ITA No. 180/JPR/2023 is similar to the case in ITA No. 179/JPR/2023 and ITA No. 181 to 184/JPR/2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 180/JPR/2023 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. 180/JPR/2023 for the Assessment Year 2013-14 shall apply mutatis mutandis in the 179/JPR/2023 and ITA No. 181 to 184/JPR/2023. In the results

appeal of the assessee in ITA No. 179/JPR/2023 and ITA No. 181 to 184/JPR/2023 stands allowed for statistical purpose.

13. The fact of the case in ITA No. 185/JPR/2023 is similar to the case in ITA No. 186 to 189/JPR/2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 185/JPR/2023 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. 185/JPR/2023 for the Assessment Year 2013-14 shall apply mutatis mutandis in the ITA No. 186 to 189/JPR/2023. In the results appeal of the assessee in ITA No. 186 to 189/JPR/2023 stands allowed for statistical purpose.

In the result, the appeals of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 10/05/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/05/2023

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Dy. Conservator of Forest Dausa
2. प्रत्यर्थी / The Respondent- Income Tax Officer, TDS, Alwar
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA Nos. 179 to 189/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar