

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 255/Rjt/2018  
Assessment Year 2013-14**

Shri Jayantilal P Satikunvar Prop. M/s. J.P. Jewellers, Palace Road, Opp. Ashapura Temple, Rajkot-360001 PAN: AMYPS0044C (Appellant)	Vs	The ACIT, Circle-2(3), Rajkot (Respondent)
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**Assessee by: Ms. Devina Patel, A.R.  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 09-05-2023  
Date of pronouncement : 16-05-2023

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2013-14, arises from order of the CIT(A)-2, Rajkot dated 16-05-2018, in proceedings under section 250 of the Income Tax Act, 1961; in short "the Act".

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

“1). *The learned Commissioner of Income Tax (Appeals) - 2, Rajkot has erred in confirming the action of the assessing officer in respect of wrongly disallowed the payment of employee's contribution to PP beyond due date amounting to Rs. 37,632/- is unwarranted/unjustified and bad in law.*

2). *The learned Commissioner of Income Tax (Appeals) - 2, Rajkot has erred in confirming the action of the assessing officer in respect of wrongly disallowance u/s.40(a)(ia) of the I T Act for non deduction of TDS of Security Service Charges of Rs.2,17,743/- is unwarranted, unjustified and bad in law.*

3). *The learned Commissioner of Income Tax (Appeals) - 2, Rajkot has erred in confirming the action of the assessing officer in respect of Charging the interest u/s.234 A/B/C/D is unwarranted, unjustified and bad in law.*

4). *The learned Commissioner of Income Tax (Appeals) - 2, Rajkot has erred in confirming the action of the assessing officer in respect of initiating the penalty proceedings u/s.274 r.w.s. 271(1)(c) of the I T Act is unwarranted, unjustified and bad in law.*

*Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.”*

**Ground number 1: disallowance on account of late payment of employee's contribution to PF**

3. At the outset, the counsel for the assessee submitted that he shall not be pressing for ground number 1 relating to payment of employee's contribution fund to PF beyond the due date.

4. Accordingly, ground number 1 of the assessee's appeal is dismissed as not pressed.

**Ground number 2: disallowance under section 40(a)(ia) of the Act**

5. The brief facts in relation to this ground of appeal are that Ld. CIT(Appeals) confirmed the action of the assessing officer in respect of disallowance under section 40(a)(ia) of the Act for non-reduction of TDS on payments made for security charges of the ₹ 2,17,743/-.

6. Before us, the counsel for the assessee submitted that the assessee had made aforesaid payment to M/s Jay Bhole Security Services and relied upon the legal proposition that once the payee/recipient had offered the aforesaid receipts in its hands as its taxable income, then the assessee cannot be held to be "an assessee in default" u/s 201 of the Act. However, in the instant facts, it has not been ascertained whether the payee/recipient has offered the aforesaid income in its hands, and filed the return of income declaring the aforesaid receipts in its return of income. Therefore, it was requested that in the interests of justice, the matter may be remanded back to the file of assessing officer to determine whether the payee/recipient of income had offered the aforesaid sum in its return of income.

7. In response, the Ld. DR has not objected to the matter being set aside to the file of assessing officer to carry out the necessary verification with regards to this issue.

8. Before deciding the issue, it would be useful to reproduce the relevant extracts of the Act, for reference:

The second proviso to section 40(a)(ia) of the Act states as below:

*Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum **but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201**, then, for the purpose of this sub-clause, **it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.***

8.1 Further, section 201 of the act states as below:

**Consequences of failure to deduct or pay.**

201. (1) Where any person, including the principal officer of a company,—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which

*he may incur, be deemed to be an assessee in default in respect of such tax:*

*Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a payee or on the sum credited to the account of a payee shall not be deemed to be an assessee in default in respect of such tax if such payee—*

*(i) has furnished his return of income under section 139;*

*(ii) has taken into account such sum for computing income in such return of income; and*

*(iii) has paid the tax due on the income declared by him in such return of income,*

*and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.*

9. Accordingly, a combined reading of the aforesaid provisions makes it clear that once the recipient has shown the aforesaid receipts, on which tax was required to be deducted at source under section 40(a)(ia) of the Act, in its return of income and paid taxes thereon, then the payer shall not be treated as “an assessee in default” in terms of section 201 of the Act, and no disallowance in respect of aforesaid payments shall be made in the hands of the payer under section 40(a)(ia) of the Act of the Act.

10. Therefore, looking into the facts of the case and the statutory provisions with regards to the issue under consideration, in the interest of justice, this issue is being set aside to the file of assessing officer to carry out the necessary verification in this regard and ascertain whether the recipient/payee has offered the aforesaid income in its return of income. In the result, ground number 2 of the assessee's appeal is being set aside to the file of assessing officer with the aforesaid directions.

11. In addition, ground number 2 of the assessee's appeal is allowed for statistical purposes.

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

Order pronounced in the open court on 16 -05-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 16/05/2023**

**Sd/-**  
**(SIDHHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot