IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH
VIRTUAL HEARING AT KOLKATA

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA Nos.14 to 17/GTY/2022
Assessment Years: 2016-17 to 2019-20

M/s. Jack N Jill Solo Complex, Hazi Park Road, Hongkong Market, Dimapur, Nagaland-797112 (PAN: AALFJ0244L)	Vs.	Income-tax Officer, TDS-1, Guwahati
(Appellant)		**(Respondent)**

Present for:

Appellant by : Shri Sanjay Mody, FCA
Respondent by : Shri N. T. Sherpa, JCIT

Date of Hearing : 07.06.2023
Date of Pronouncement : 12.06.2023

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

All these four appeals filed by the assessee are against the separate orders passed by Ld. CIT(A), Guwahati-1, Guwahati vide Acknowledgment No. 462782611100419/108, 462786161100419/109, 462787371100419/107 and 462789001100419/110, all dated 11.09.2020 against the assessment order passed by ITO, TDS-1, Guwahati u/s. 201(1) and 201(1A) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") all dated 15.03.2019 for AYs 2016-17 to 2019-20 . Since grounds are common and facts are identical, we dispose all these four appeals by this consolidated order for the sake of convenience.

2. In all these four appeals, identical issues are involved except variation in amount, For the purpose of adjudication, we will take up one appeal for AY 2016-17 in ITA No. 14/GTY/2022 and the findings in this case shall apply mutatis mutandis to all other three appeals.

3 Grounds taken by the assessee for AY 2016-17 are reproduced as under:

"1. For that the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad in law, facts and procedure.

2. For that on the facts and circumstances of the case, the learned CIT(A) ought to have hold that the learned ITO, TDS-1, Guwahati [AO] was not justified in treating the appellant as assessee in default in respect of Rs. 3,82,104/- without bringing on record any material to show that any part of the related amount of Rs. 38,21,040/- paid by the appellant as Rent was 'income' chargeable to tax under section 4(1) of the Act.

3. For that the learned CIT(A) has erred in confirming the order of the Ld. AO without controverting and after admitting the fact that the rent of Rs. 38,21,040/- paid by the appellant was not assessable as income in the hands of the payees and payees were not liable to pay tax on that amount as per the provisions of the Act and therefore, the appellant was not a person responsible for paying income chargeable to tax within the meaning of section 204(iii) of the Act.

4. For that keeping in view the sanctity of the judicial hierarchical system followed in the country, the Id. CIT(A) was not justified in contemptuously ignoring and not following the binding decision of the Hon'ble Jurisdictional High Court and the Hon'ble Jurisdictional Tribunal cited before him.

5. For that the Id. CIT(A) was not justified in contemptuously ignoring and not following the interpretation rendered by the Hon'ble Apex Court to section 4 of the Act cited before him and that too without giving any reason, whatsoever.

6. For that the ld. CIT(A) was not justified in not holding that order under section 201(1) of the Act was passed by the Id. AO in gross violation of the principles of natural justice and without allowing any opportunity of hearing in respect of the decision of the Hon'ble Tripura High Court and therefore, the same was bad in law and was liable to be quashed.

7. For that the Ld. CIT(A) was not justified in ignoring the submissions of the appellant to the effect that the Ld. AO erred both in law and on facts in erroneously imposing interest under section 201(1A) of the Act without allowing any opportunity of hearing and consequently, in confirming the action of the Id. AO. Further, the Id. CIT(A) was not justified in ignoring the submission of the appellant to the effect that the Id. AO has erred in computing the interest under

section 201(lA) till the date of order which is bad in law and consequently, in confirming the action of the Id. AO.

8. For that the impugned order has been passed by the Id. CIT(A) in a laconic manner and in gross violation of principles of natural justice and therefore, the same is bad in law.

9. For that in absence of DIN being quoted in the face of the order the same is bad in law.

10. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing."

4. Brief facts of the case are that TDS survey u/s. 133A(2A) of the Act was conducted on 06.02.2019 in the office/business premises of the assessee at Dimapur. It was found that the assessee had failed to deduct tax at source u/s. 194-I on payment of rent of Rs.39,53,040/- to different persons during the financial year. Assessee was show caused why it should not be treated as an 'assessee in default' u/s. 201(1) for non-deduction of tax at source. In response, assessee made a detailed submission claiming that –

a. The three persons to whom rent exceeding Rs. l,80,000 per annum was paid during the year under consideration belong to Scheduled Tribe.

b. These persons have been granted a certificate from Income-tax Department issued by the Income-tax Officer, Ward -1 and Ward -2 Dimapur wherein it is certified that the persons belong to Scheduled Tribe and are not liable to pay tax under section 10(26) of the Act in respect of income arising or accruing to him from any source in the specified tribal area.

c. The rent paid to them is in respect of property situated in specified tribal areas and therefore, corresponding income arising or accruing to them are from a source situated in scheduled tribal areas. None of them is liable to pay income-tax on the amount of rent paid.

d. The assessee, in support of his submission, placed reliance on the following judgements:

i. CIT vs. Eli Lilly and Co. (India) P Ltd. (2009) 312 225 (SC)

ii. Sing Killing vs. ITO (2002) 255 ITR 444 (Gau)

iii. Komorrah Limestone Mining Co. Ltd. vs. ACIT in ITA No. l00/Gau/2016

iv. G E India Technology Centre P Ltd vs. CIT (2010) 327 ITR 456 (SC)

e. Lastly the assessee prayed for dropping of proceedings under section 201 of the Act as follows:

"In the circumstance, keeping in view the fact of the instant case and the above cited binding decisions of the Hon'ble Supreme Court, Hon'ble High Court and Hon'ble jurisdictional Tribunal, it may kindly be appreciated that as no part of the rent paid by us to the three schedu1ed tribe person in chargeable to lax under section 4 of the Act in view of the provisions of section 10(26) of the Act, hence, we could not have legally deducted ITDS therefrom. In the circumstances, we cannot be treated as 'assessee-in-default' on account of non-deduction of tax at source on Rent of Rs.39,53,040/- paid by us to the aforesaid persons during the financial year 2015-2016. Therefore, it is most respectfully prayed that the proceedings initiated vide notice under reference may kindly be dropped."

4.1. On the submissions made by the assessee, Ld. AO was of the opinion that deduction of tax at source u/s. 194-I is required to be made when the payment of rent equals or exceeds Rs.1,80,000/- and for this the payer i.e. the assessee cannot decide upon chargeability of receipt in the hands of payee. Thus, Ld. AO concluded that assessee deductor is deemed to be an 'assessee in default' u/s. 201(1) of the Act in respect of Rs.3,82,104/- being tax deductible @ 10% u/s. 194-I on the payment of rent. Ld. AO also charged interest u/s. 201(1A) of the Act in respect of the said TDS liability. The details of rent paid which is under consideration in the present four appeals is tabulated as under:

S. No	Name of land lord	PAN	Assessm-ent Year 2016-17	Assess-ment Year 2017-18	Assess-ment Year 2018-19	Assessm-ent Year 2019-20
1.	Zaselatuo Solo, Kohima	FEUPS 8773 D	6,80,520	6,80,520	6,80,520	2,46,853
2.	Linda Solo, Kohima	FNIPS 3272 J	6,80,520	6,80,520	6,80,520	2,46,853
3.	T. K. Angami, Dimapur	ABUPA 6964 C	24,60,000	25,02,915	29,74,980	9,91,660
4.	Vizolie Z Suokhrie, Kohima	DGPPS 6409 K TOTAL:	- 38,21,040	23,80,500 62,44,455	31,74,000 75,10,020	10,58,060 25,43,426
5.	TDS liability disputed in appeal (plus interest separately)		3,82,104	6,24,446	7,51,002	2,54,343

4.2. Aggrieved, assessee went in appeal before the Ld. CIT(A) who decided it against the assessee. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel furnished a written submission in four pages along with a paper book containing 16 pages. In order to corroborate the undisputed facts, which are placed before the Ld. AO, also, he referred to the certificates of all the four payees in respect of they being Scheduled Tribe. He also referred to certificates granted to all the four payees by their respective jurisdictional AO certifying that they are not liable to pay tax u/s. 10(26) of the Act, which are dated 26.08.2016, holding validity up to 31.03.2018.

5.1. Further, reference was made to certificates granted u/s. 197 of the Act by the Ld. AO in respect of the four payees for not deducting tax at source in AY 2019-20. Thus, Ld. Counsel asserted that rent paid by the assessee to the four persons is not includible in computing their respective total income in view of the provisions contained u/s. 10(26) of the Act and is

exempt from tax. According to him, the rent in question paid by the assessee is not chargeable to tax as income within the meaning of sec. 4(1) of the Act. According to him, sec. 4(2) categorically provides that in respect of such an amount which does not form part of total income, the provisions of TDS are not attracted.

5.2. Ld. Counsel also placed reliance on the decision of Hon'ble jurisdictional High Court of Gauhati in the case of Sing Killing V. ITO [2002] 255 ITR 444 (Gau) wherein it is held that if the income itself is exempted, any deduction/collection, on account of income-tax, at source, would be beyond the powers conferred by the provisions of the Act. Thus, by placing reliance on this decision, Ld. Counsel asserted that assessee was not obliged to deduct tax at source out of the rent, more particularly when it is not controverted that such rent is exempt from income-tax in the hands of the payees, as per the provisions of sec. 10(26) of the Act.

5.3. He also made a reference to the decision of Coordinate Bench of ITAT, Gauhati in assessee's own case in ITA No. 477/Gau/2019 dated 28.02.2020 for AY 2016-17. This year is in appeal before us. In this decision, the issue was in respect of disallowance made u/s. 40(a)(ia) for not deducting tax at source on the very same rent. The disallowance made was allowed. Ld. Counsel thus, submitted that for the same disallowance, which has been deleted, now the assessee has been treated as 'assessee in default' u/s. 201 of the Act though the Coordinate Bench has considered these rent payments as exempt and do not invite disallowance.

5.4. Ld. Counsel also referred to the decision of Coordinate Bench in the case of Komorrah Limestone Mining Co. Ltd. Vs. ACIT in ITA No. 100/Gau/2016 dated 08.03.2018, wherein similar issue was dealt and it has been held as under:

> *"In the instant case, the contention of the assessee is that since the payee to whom payments were made are tribal persons and being exempt from income-tax u/s 10(26) of the Income Tax Act, he was not required to deduct tax at source either u/s 194C or u/s 194-1 of the Act from the payments made to them. No material has been brought on record by the AO to show that the amounts paid by the assessee towards hiring of loader and excavator charges paid to Mr. L. S Nongrum of Rs. 77,33,101/- and land rent payment of Rs. 17,57,452/- made to Smt. Rekhila Tynsong and Shri Bhison Dorkhrat, was chargeable to tax under the provisions of the Act. Therefore, in our considered view the assessee was not liable to deduct tax at source from payments made and accordingly the AO was not justified in disallowing the payments made u/s 40(a)(ia) of the Act."*

6. Per contra, Ld. Sr. DR placed reliance on the order of Ld. AO and asserted that whether income is taxable or not, deduction of tax at source is a mandatory requirement u/s. 194-I which the assessee has failed to do so. According to him, the assessee is in default in respect of not deducting tax at source on the rent payments made by it, exceeding the threshold limit of Rs.1,80,000/- per year.

7. We have heard the rival contentions and perused the material available on record. The facts narrated above, in respect of status of the four persons to whom the rent has been paid, are undisputed. Their status have been adequately corroborated by the documentary evidence placed on record. We note that assessee firm has made the impugned rent payments to four persons, all of whom enjoyed exemption u/s. 10(26) as they belong to recognised Scheduled Tribes, under The Constitution (Scheduled Tribes) Order, 1950 and The

Constitution (Nagaland) Schedule Tribes Order, 1970 under Article 366 clause (25) of the Constitution of India. This being the fact, fortified by the decision of Hon'ble jurisdictional High Court of Gauhati in the case of Sing Killing (supra) as well as the decision of Coordinate Bench of ITAT, Gauhati in the case of Komorrah Limestone Mining Co. Ltd. (supra), we are of the considered view that rent payments made to exempt assessee under the Act do not invite deduction of tax at source and, therefore, assessee cannot be held to be 'assessee in default'. According to us, if the payee has no liability to pay tax on such income, the liability to deduct tax at source in the hands of the payer cannot be fastened. Thus, the assessee was not liable to deduct tax at source from the payment of rents paid by it.

7.1. The finding given by the Hon'ble jurisdictional High Court of Gauhati in the case of Sing Killing (supra) on the issue before us is as under:

> *"If the income to be generated by the writ petitioner from the lease in question has originated from a Sixth Schedule area and, therefore, the petitioner's income is exempted under section 10(26) of the Act, no question of applicability of section 206C of the Act can legitimately arise. If the income itself is exempted, any deduction/collection, on account of income-tax, at source, would be beyond the powers conferred by the provisions of the Act. The following passage from the judgment of the apex court in Bhawani Cotton Mills Ltd. v. State of Punjab (1967) 20 STC 290; [1967) AIR 1967 SC 1616, 1623, though made in somewhat different context may be usefully extracted hereunder (page 330 of 20 STC):*
>
> > *"If a person is not liable for payment of tax at all, at any time, the collection of tax from him, with a possible contingency of refund at a later stage, will not make the original levy valid; because, if particular sales or purchases are exempt from taxation altogether, they can never be taken into account, at any stage, for the purpose of calculating or arriving at the taxable turnover and for levy of tax."*

7.2. Considering the facts on record which are undisputed and uncontroverted, fortified by the judicial precedents, we hold that assessee is not to be treated as 'assessee in default'. Accordingly, grounds taken by the assessee in this appeal are allowed.

8. Similar issues are involved in the other three appeals, the observations and findings referred above in ITA No. 14/GTY/2022 applies *mutatis mutandis* to the other three appeals. Therefore, the other three appeals are also allowed.

9. In the result, all the four appeals of the assessee are allowed.

Order pronounced in the open Court on 12th June, 2023.

Sd/-	**Sd/-**
(Sanjay Garg)	**(Girish Agrawal)**
Judicial Member	**Accountant Member**

Dated: 12th June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent
3. CIT(A), Guwahti-1, Guwahati
4. CIT,
5. DR, ITAT, Gauhati Bench, Gauhati
6. Guard file

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata