

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.1602/DEL./2019
(ASSESSMENT YEAR : 2017-18)**

Suncity Cinemas Pvt. Ltd.,
251/96/9, Devi Bhawan Road,
Gali State bank,
Hisar – 125 005 (Haryana).

vs. ITO (TDS),
Hisar.

(PAN : AAQCS3069Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Anuj Garg, Sr. DR

Date of Hearing : 31.07.2023

Date of Order : 31.07.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.

CIT (A), Hisar dated 01.01.2019 pertaining to assessment year 2017-18.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the impugned order is against facts and bad in law.

2. That on the facts and circumstances of the case and the legal position, the learned CIT(A) has erred in confirming the order of AO that the appellant Company was liable for deduction of TDS on payment of Rs.52,28,454/- being the revenue share in joint venture with M/s Sharda Facility Management Pvt. Ltd.

3. That on the facts and circumstances of the case and the legal position, the learned CIT (A) has erred in confirming the chargeability of interest of Rs.62,741/- u/s 201(1A) of the IT Act, 1961.”

3. Brief facts of the case are that AO held the assessee liable for deduction of TDS by observing that during the course of TDS service, it was found that as per audit report, the assessee has made payment to Haldwani Branch of Rs.41,28,454/- on account of rent and Rs.11,00,000/- to Haldwani Branch and audit fee of RS.55,000/- for AY 2016-17 relevant to AY 2017-18 but no TDS has been deducted by the assessee on the above said payments. AO was not satisfied and made the impugned addition by observing as under :-

“ The reply filed by the assessee have duly been considered and not found any plausible explanation. The above said expenses has been claimed by the assessee under the head 'Rent' in the return of income filed by the assessee for the year under consideration. Further, the assessee has also claimed payment of Rs.44,14,350/- & Rs.4,54,040/-paid to Haldwani Branch under the head 'Rent in the return of income filed for the FY 2015-16 relevant to A.V. 2016-17. Thus the assessee has been continuously claiming these expenses under the head 'Rent'. Therefore, as discussed above, the assessee/PR had paid rent amounting to Rs.41,28,454/- to Haldwani Branch and Rs.11,00,000/- to Haridwar Branch and audit fee of Rs.55,000/- as mentioned above during the F.Y.2016-17 relevant to A.Y. 2017-18 and has failed to deduct TDS which was required to be deducted u/s 194I and u/s 194J of the Income-tax Act, 1961 @ 10% on the above said payments. Therefore, the assessee/PR has been treated as an assessee in default and TDS amounting to Rs.5,28,345/- (Rs.4,12,845/+1,10,000+ 5,500/-) u/s 201(1) + Interest of Rs. 63,401/-(Rs. 49,541/- +13,200/- + Rs.660/-) u/s 201(1A) is hereby charged.”

4. Against the above order, assessee appeal before the Id. CIT (A).
Ld. CIT (A) considered the submissions of the assessee but confirmed the AO's action by holding as under :-

“ I have carefully considered the facts of the case, assessment order and assessee's submission have carefully been considered, it is seen that the said expenses have been claimed by the assessee under the head "Rent" in the return of income filed for the year under consideration. Further, the copy of any Joint Venture agreement has not been produced neither during the assessment proceedings nor during the appellate proceedings. The submission of the appellant therefore has not been substantiated with any evidence. In light of the above ground of the assessee is dismissed.”

5. Against the above order, assessee is in appeal before us. We have heard Id. DR for the Revenue. None appeared on behalf of the assessee. Hence, we are going to dispose off this appeal after hearing the Id. DR for the Revenue and perusing the records.

6. Upon careful consideration and perusing the records, we note that while Revenue is claiming that rent paid shown in the return of income is actually rent but assessee claimed that it was a joint venture agreement and the revenue share of the other parties has been paid and not rent. In this regard, we observed that Id. CIT (A) in his order noted that no joint venture agreement has been produced during assessment proceedings and appellate proceedings and dismissed the appeal stating that assessee's submissions were not substantiated with the evidence. It is not coming out of the order of Revenue authorities, whether the document was called

for or not. Hence, we find that assessee deserves an opportunity to produce the relevant evidence of joint venture agreement before the Revenue authorities. Therefore, in the interest of justice, we remit this issue to the file of AO. AO shall grant the assessee an opportunity to produce the evidence to substantiate the claim. Needless to say, assessee should be provided an opportunity of being heard. Ld. DR for the Revenue fairly agreed to the proposition.

7. In the result, this appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on this 31st day of July, 2023 after the conclusion of the hearing.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 31st day of July, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A), Hisar.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**