

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1106/MUM/2023
Assessment Year: 2020-21

Vishesh Films Pvt. Ltd.,
402, Durga Chambers, Linking
Road, Khar (West),
Mumbai-400052.

PAN NO. AAACV 9556 D
Appellant

JCIT (OSD) (TDS), Circle 2(3),
MTNL, Telephone Exchange
Vs. Building, Cumballa Hills, Peddar
Road, Mumbai-400026.

Respondent

Assessee by : None
Revenue by : Mr. Sunil Mathews, DR

Date of Hearing : 13/07/2023
Date of pronouncement : 25/07/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is preferred against order dated 07.02.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2020-21, raising following grounds:

1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals). NFAC, Income-tax Department, New Delhi herein after referred to as Ld. CIT (A) erred in dismissing the appeal filed on the ground that TDS on payment to Junior artists are covered by the provisions of Section 194C and not 194J



of the Income-tax Act, 1961(Act) by treating the same as infructuous and not on merits.

2. (a) On the facts and circumstances of the case and in law the Ld CIT (A) erred in conforming the demand raised by the Ld AO amounting Rs. 1,55,506/- under section 201(1) of the Act being difference between TDS originally computed by the appellant under section 194C of the Act and as calculated by the Ld AO under section 194J of the Act without considering the merits of the case.

(b) On the facts and circumstances of the case and in law the Ld CIT (A) erred in conforming the demand raised by the Ld AO amounting Rs. 21,391/- under section 201(1) of the Act without considering the merits of the case.

(c) That on the facts and circumstances of the case the Appellant cannot be treated as an

"assessee in default" under section 201(1) of the Act where the payees have admitted the income and paid the tax due in their return of income.

(d) Alternately, the Ld CIT (A) be directed to dispose of the appeal on merit and pass the order on the grounds raised by the Appellant.

3. That the order is bad in law and on the facts.

2. Briefly stated facts of the case are that the Ld. CIT(A) dismissed the appeal of the assessee observing as under:

4 From perusal of the Form No 35 submitted, the issue for consideration in appeal is in respect of the order u/s 201 of the I.T. Act requiring the TDS amounting Rs. 1,55,506/- being the difference between TDS originally computed by the appellant under section 194C of the Act and as calculated by him under section 194J of the Act. As per form No 35, appellant has filed appeal against the order u/s 201 passed on 02.11.2020 for AY 2020-21. However, appellant has not submitted the copy of order. Appellant has submitted the copy order for AY 2019-20



for which appeal has already been decided. Accordingly, appellant was requested to submit copy of the order for AY 2020-21. vide notices dated on 21.12.2022 and 03.01.2023. In response to notice dated 21.12.2022 appellant in its reply dated 03.01.2023 requested for adjournment up to 05.01.2023. Accordingly, a notice dated 17.01.2023 was issued to the appellant to submit the copy of order. However, appellant neither submitted the copy of order nor requested any adjournment.

4.1 Under such circumstance, where appellant has not submitted the copy of order u/s. 201 of the Act for AY 2020-21 against which it has preferred to contest in appeal, it is not possible for this office to pass any order on merits. In absence of proper order against which appeal filed, it is not possible to adjudicate the matter.

Accordingly, the appeal is treated as infructuous and is hereby dismissed on account of want of order appeal against.”

3. We find that the assessee filed appeal to the Id CIT(A) against order u/s 201 of the income-tax Act, 1961 (in short the Act) passed by the Assessing Officer holding the assessee in default for deducting tax at source at rate lower than prescribed, but by mistake filed the order u/s 201 of the Act for earlier year along with the appeal papers. The Ld. CIT(A) dismissed the appeal of the assessee mainly for the reason that order u/s 201 of the Act for the assessment year under consideration was not filed by the assessee. In our opinion, the Ld. CIT(A) could have accessed the said order u/s 201 of the Act for the year under consideration from the record of the Assessing Officer also rather than dismissing the appeal on this ground. In the interest of the substantial justice, we feel it



appropriate to restore the issue back to the file of the Ld. CIT(A) in view of copy of the order u/s 201 of the Act filed before us by the assessee which is part of the appeal folder. In the circumstances, the appeal is restored back to the file of the Ld. CIT(A) for deciding afresh. The grounds raised by the assessee are allowed for statistical purposes.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25/07/2023.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 25/07/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai