

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH: RAIPUR**

श्री रवीश सूद , न्यायिक सदस्य, एवं  
श्री अरुण खोडपिया, लेखा सदस्य के समक्ष

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.33, 34 & 35/RPR/2020  
निर्धारण वर्ष /Assessment Years: 2011-12 & 2012-13

Block Resources Coordinator  
Rajiv Gandhi Siksha Mission, Block  
Patan, Bathena Road, Patan  
Dist. Durg – 491 111  
Chhattisgarh

v. ITO (TDS)  
Bhilai

[PAN: JBPBO 3891 G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Veekaas S Sharma, C.A.  
प्रत्यर्थी की ओर से /Respondent by : Shri Satya Prakash Sharma,  
Sr. D.R.

सुनवाई की तारीख/Date of Hearing : 21.09.2023  
घोषणा की तारीख /Date of Pronouncement : 22.09.2023

**आदेश / O R D E R**

**PER ARUN KHODPIA, ACCOUNTANT MEMBER:**

These three appeals filed by the Assessee are directed  
against the order of the Commissioner of Income Tax (Appeals)-  
II, Raipur 13.10.2019 for assessment years 2011-12 & 2012-13.

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

**ITA No.33/RPR/2020 for A.Y. 2011-12 :**

1. *"On the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in treating the assessee as assessee in default in respect of sum of Rs. 14,33,945/- paid to M/s Tamrakar Caterers on account of catering services, without appreciating the fact that the TDS on said payment amounting to Rs.14,339/- was paid through the head Office under its TAN JBPD00956E and therefore, the assessee was not liable to deduct TDS under its TAN as they have centralized system of deducting TDS, and Learned CIT(A) is not justified in confirming the order of Learned AO merely due to the reason that quarterly TDS Statement w/s 200(3) did not contain the details or TDS Statement u/s 200(3) was not filed for which penalty u/s 272A(2)(k) is leviable but assessee cannot be treated as "assessee in default" u/s 201 for such failure as the assessee had duly deducted and deposited the TDS, hence, it is prayed that the demand raised may kindly be cancelled.*
2. *Without prejudice to the above, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in computing the amount payable u/s 201(1) @ 20% of Rs.98,360/- i.e. Rs. 19,672/-(which already stands deposited by the assessee, credit whereof has not been given) which is applicable in the case where no PAN is available as per Section 206AA instead of computing the amount @ 1% as per Section 194C of the Income Tax Act, 1961, the Learned CIT (Appeals)-11, Raipur has erred in confirming the action of the Learned AO as the PAN was submitted at later date. Hence, it is prayed that the amount payable as per Section 201(1) be computed @ 1% as provided u/s 194C as PAN of the said deductee is available, the Learned AO has further erred in not giving credit of Rs. 1, 571/- which has been paid by the assessee merely due to the reason that the same could not be mentioned in the quarterly TDS Statement u/s 200(3).*

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3. *On the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in calculating interest on the aforesaid additions.*
4. *On the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in treating the assessee as assessee in default in respect of sum of Rs.64,824/- without appreciating that the said deductee / payee has discharged the income tax liability due thereon and has filed the return of income without considering the provisions of Section 4,191,202 and 205 of the Income Tax Act, 1961.*
5. *The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal."*

**ITA No.34/RPR/2020 for A.Y. 2012-13 :**

1. *"On the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in treating the assessee as assessee in default in respect of sum of Rs. 8,14,693/- paid to M/s Mohan Caterers on account of catering services, without appreciating the fact that the TDS on said payment amounting to Rs.8,147/- was paid through the head Office under its TAN JBPD00956E (which already stands deposited by the assessee, credit whereof has not been given) and therefore, the assessee was not liable to deduct TDS under its TAN as they have centralized system of deducting TDS, and Learned CIT(A) is not justified in confirming the order of Learned AO merely due to the reason that quarterly TDS Statement u/s 200(3) did not contain the details or TDS Statement u/s 200(3) was not filed for which penalty u/s 272A(2)(k) is leviable but assessee cannot be treated as "assessee in default" u/s 201 for such failure as the assessee had duly deducted and deposited the TDS, hence, it is prayed that the demand raised may kindly be cancelled.*
2. *Without prejudice to the above, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in computing the amount payable u/s 201(1) in respect of payment made to M/s Maa Shitla Radio @20% of Rs.1,22,229/- i.e. Rs. 24,446/- (Rs.1,657/- already stands deposited by the assessee,*

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*credit whereof has not been given) which is applicable in the case where no PAN is available as per Section 206AA instead of computing the amount @ 1% as per Section 194C of the Income Tax Act, 1961, the Learned CIT (Appeals)-11, Raipur has erred in confirming the action of the Learned AO as the PAN was submitted at later date. Hence, it is prayed that the amount payable as per Section 201(1) be computed @ 1% as provided u/s 194C as PAN of the said deductee is available, the Learned AO has further erred in not giving credit of Rs. 1,657/- which has been paid by the assessee merely due to the reason that the same could not be mentioned in the quarterly TDS Statement u/s 200(3).*

3. *Without prejudice to the above, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in computing the amount payable u/s 201(1) in respect of payment made to M/s Tarun Electronics for purchase of electrical goods amounting to Rs. 1,54,877/-, as liability to deduct TDS does not arise on purchase of goods. Thus, the Learned AO has erred in computing TDS @20% of Rs. 1,54,877/- i.e. Rs. 30,975/- and the Learned CIT(A) is not justified in passing non speaking order as the order of Learned CIT(A) is silent on the said issue.*
4. *On the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in calculating interest on the aforesaid additions.*
5. *On the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in treating the assessee as assessee in default in respect of Rs.1,12,187/- without appreciating that the said deductee/ sum of payee has discharged the income tax liability due thereon and has filed the return of income without considering the provisions of Section 4,191, 202 and 205 of the Income Tax Act, 1961.*
6. *The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal."*

**ITA No.35/RPR/2020 for A.Y. 2012-13 :**

1. *"On the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in treating the assessee as assessee in default in respect of sum of Rs. 11,97,645/- paid to Mr. Deepak Kumar*

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*Tamrakar, without appreciating the fact that the TDS on said payment amounting to Rs.11,977/- was paid through the head Office under its TAN JBPD00956E (which already stands deposited by the assessee, credit whereof has not been given) and therefore, the assessee was not liable to deduct TDS under its TAN as they have centralized system of deducting TDS, and Learned CIT(A) is not justified in confirming the order of Learned AO merely due to the reason that quarterly TDS Statement u/s 200(3) did not contain the details or TDS Statement u/s 200(3) was not filed for which penalty u/s 272A(2)(k) is leviable but assessee cannot be treated as "assessee in default" u/s 201 for such failure as the assessee had duly deducted and deposited the TDS, hence, it is prayed that the demand raised may kindly be cancelled.*

- 2. Without prejudice to the above, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in computing the amount payable u/s 201(1) in respect of payment made to M/s. Jay Tamrakar for purchase of Building Material amounting to Rs.2,11,840/-, as there was no liability to deduct TDS on purchase of goods. Thus the Learned AO has erred in computing TDS of Rs.2,118/- and the Learned CIT(A) is not justified in passing non speaking order as the order of Learned CIT(A) is silent on the said issue.*
- 3. Without prejudice to the above, alternatively, the Learned AO has erred in computing TDS of Rs. 2,118/- without appreciating the fact that the payee has duly furnished his return of income us 139 and as per first proviso to 201(1), if a person fails to deduct whole or part of TDS on the sum paid to payee, the person shall not be deemed to be assessee in default, if the payee has furnished his return of income u/s 139.*
- 4. Without prejudice to the above, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in computing the amount payable us 201(1) in respect of payment made to Mr. Kamdev Sinha for purchase of Building Material amounting to Rs. 1,00,000/-, as there was no liability to deduct TDS on purchase of goods. Thus, the Learned AO has erred in computing TDS of Rs. 20,000/- (at the rate 20%) and the Learned CIT(A) is not justified in passing non speaking order as the order of Learned CIT(A) is silent on the said issue.*

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5. *Without prejudice to the above, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in computing the amount payable u/s 201(1) in respect of payment made to M/s Mahamaya Hardware for purchase of Hardware Items & Material amounting to Rs. 52,275/-, as there was no liability to deduct TDS on purchase of goods. Thus, the Learned AO has erred in computing TDS of Rs. 10,455/-(at the rate 20%) and the Learned CIT(A) is not justified in passing non speaking order as the order of Learned CIT(A) is silent on the said issue.*
6. *Without prejudice to the above, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in computing the amount payable u/s 201(1) in respect of payment made to M/s Parakh Hardware for purchase of Electrical Items & Material amounting to Rs. 40,852/-, as there was no liability to deduct TDS on purchase of goods. Thus, the Learned AO has erred in computing TDS of Rs. 8,170/-(at the rate 20%) and the Learned CIT(A) is not justified in passing non speaking order as the order of Learned CIT(A) is silent on the said issue.*
7. *Without prejudice to the above, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in computing the amount payable u/s 201(1) in respect of payment made to M/s Ghanshyam Hotel amounting to Rs.36,000/- The Learned AO has erred in computing TDS of Rs. 360/-without passing any speaking order on said issue.*
8. *On the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in calculating interest on the aforesaid additions.*
9. *Without prejudice to the above grounds, on the facts and in the circumstances of the case, the Learned ITO (TDS), Bhilai has erred on facts and in law in treating the assessee as assessee in default in respect of sum of Rs.92,621/- without appreciating that the said deductee / payee has discharged the income tax liability due thereof and has filed the return of income without considering the provisions of Section 4,191, 202 and 205 of the Income Tax Act, 1961.*
10. *The Appellant craves leave to add, amend, alter vary and/or withdraw any or all the above grounds of Appeal."*

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3. Since, the aforesaid 3 appeals pertains to M/s. Block Resources Coordinator, Rajiv Gandhi Siksha Mission, Patan, the same assessee for 3 different assessment years having common, identical issues, therefore, we are taking up all three appeals together for adjudication.

4. At the outset, Learned AR of the assessee submitted written submissions pertaining to each year, the same are extracted as under:

**ITA No.33/RPR/2020 for A.Y. 2011-12 :**

*Hon'ble Sir.*

*Under instructions from our aforesaid client, we respectfully submit before your honor as under:*

1. *It is respectfully submitted that the order u/s 201&201(1A) was passed vide order dated 23.03.2018 determining the total demand payable at Rs.98,838/- details whereof is as under:*

| Sl. N. | Particulars   | Amount [in Rs.] |
|--------|---|-----------------|
| a.     | Demand on account of tax                                | 34,001/-        |
| b.     | Total interest payable                                  | 30,813/-        |
| c.     | <b>Sub Total (a+b)</b>                                  | <b>64,824/-</b> |
| d.     | Late Filing Fee u/s 234E of the Act                     | 34,001/-        |
| e.     | <b>Total Demand Payable as per impugned order (c+d)</b> | <b>98,838/-</b> |

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2. The appeal filed by the assessee before the Learned Commissioner of Income Tax (Appeals) II, Raipur was partly allowed and levy of late filing fees u/s 234E of Rs.34,001/- was cancelled vide order dated 13.10.2019.
3. The assessee has preferred the appeal against the impugned order passed by FAA details whereof is as under:

| S. No.       | Ground No. | Amount of alleged default of Tax | Relevant page of Assessment Order | Ground of Appeal   | Relevant page no. of Paper Book | Relevant page no. of Paper Book containing Additional Evidence   | Whether disclosed in TDS Return |
|--------------|------------|----------------------------------|-----------------------------------|--|---------------------------------|--|---------------------------------|
| 1.           | 1          | 14,339/-                         | Page No. -3                       | TDS deposited but credit not allowed   | Page No. - 4                    | Page 22 & 23 – Affidavit (Break up of Rs. 55,951/- is on page no. 23) (TDS was deducted at a higher rate)  | No, challan is unclaimed        |
| 2.           | 2          | 19,672/-                         | Page No. -3                       | <ul style="list-style-type: none"> <li>• TDS computed @ 20% U/s 206AA which is not applicable.</li> <li>• TDS of Rs.1,571/- duly deposited but credit not allowed</li> </ul> | Page No. - 4 & 5                | <ul style="list-style-type: none"> <li>• Page 2 – Revised TDS Return</li> <li>• Page 26 – Affidavit (Break up of Rs. 1,571/- is on page no. 26)</li> </ul> | Yes                             |
| <b>Total</b> |            | <b>34,011/-</b>                  |                                   |  |                                 |  |                                 |

4. The below mentioned documents are constituting 'Additional evidences under Rule 29 r.w.r. 18(4) of the Income-Tax (Appellate Tribunal) Rules 1963 for admission whereof, the assessee is making a humble prayer.

**5. List of documents constituting additional evidences:**

| Sl. No. | Particulars   | Page No. |    |
|---------|---|----------|----|
|         |   | From     | To |
| 1.      | Copy of Revised Quarterly Statement of deduction of tax under sub section (3) of section 200 of the | 1        | 15 |

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|    |   |    |    |
|----|---|----|----|
|    | Income Tax 1961 dated 25.06.2021.   |    |    |
| 2. | Copy of Provisional Receipt in respect of above Revised Quarterly Statement of deduction of tax dated 25.06.2021. | 16 | 16 |
| 3. | The Affidavit from Shri Praduman Lal Sinha,Block Resource Co-ordinator of appellant during A.Y 2011-12.           | 17 | 28 |

**Prayer:**

*In view of aforesaid facts, it is humbly submitted that the said documents may kindly be admitted as additional evidences as the same were directed to be filed by the Hon'ble Bench during the course of last hearing.*

**For, Block Resources Coordinator, Rajiv Gandhi Siksha Mission, Patan**

**ITA No.34/RPR/2020 for A.Y. 2012-13 :**

Hon'ble Sir,

Under instructions from our aforesaid client, we respectfully submit before your honor as under :

- It is respectfully submitted that the order u/s 201&201(1A) was passed vide order dated 23.03.2018 determining the total demand payable at Rs.1,75,755/- details whereof is as under :

| Sl. N. | Particulars                         | Amount [in Rs.]   |
|--------|-------------------------------------|-------------------|
| a.     | Total alleged default of tax        | 63,568/-          |
| b.     | Total interest payable              | 48,619/-          |
| c.     | <b>Sub Total (a+b)</b>              | <b>1,12,187/-</b> |
| d.     | Late Filing Fee u/s 234E of the Act | 63,568/-          |
| e.     | <b>Total Demand Payable (c+d)</b>   | <b>1,75,755/-</b> |

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2. The appeal filed by the assessee before the Learned Commissioner of Income Tax (Appeals) – II, Raipur was partly allowed and levy of late filing fees u/s 234E of Rs.63,568/- was cancelled vide order dated 13.10.2019.
3. The assessee has preferred the appeal against the impugned order passed by FAA details whereof is as under:

| S. No.       | Ground No. | Amount of alleged default of Tax | Relevant page of Assessment Order | Ground of Appeal   | Relevant page no. of Paper Book   | Relevant page no. of Paper Book containing Additional Evidence  | Whether disclosed in TDS Return |
|--------------|------------|----------------------------------|-----------------------------------|--|---|---|---------------------------------|
| 1.           | 1          | 8,147/-                          | Page No. -3                       | TDS deposited but credit not allowed   | Page No. – 6 (Challan)  | <ul style="list-style-type: none"> <li>• Page 2 &amp; 11 – Revised TDS Return</li> <li>• Page 23 to 25 – Affidavit (Breakup of Rs.16,949/- is on page no. 23 to 25 )</li> </ul> | No, challan is unclaimed        |
| 2.           | 2          | 24,446/-                         | Page No. – 2 & 3                  | <ul style="list-style-type: none"> <li>• TDS computed @ 20% U/s 206AA which is not applicable.</li> <li>• TDS of Rs.1,657/- duly deposited but credit not allowed</li> </ul> | Page No. – 7 (Challan)<br>Page No. – 8 (PAN of deductee)  | <ul style="list-style-type: none"> <li>• Page 2 &amp; 9 – Revised TDS Return</li> <li>• Page 26 &amp; 27 – Affidavit</li> </ul>   | Yes                             |
| 3            | 3          | 30,975/-                         | Page No. -3                       | • Payment against purchase of electrical goods, TDS does not arise on purchase.  | Page No. – 9 to 19 (Bill of purchase of electrical goods)<br>Page no. – 20 to 21 (Summary of bills) | -   | NA                              |
| <b>Total</b> |            | <b>63,568/-</b>                  |                                   |  |   |   |                                 |

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4. The below mentioned documents are constituting 'Additional evidences' under Rule 29 r.w.r. 18(4) of the Income-Tax (Appellate Tribunal) Rules 1963 for admission whereof, the assessee is making a humble prayer.

5. **List of documents constituting additional evidences:**

| Sl. No. | Particulars   | Page No. |    |
|---------|---|----------|----|
|         |   | From     | To |
| 1.      | Copy of Revised Quarterly Statement of deduction of tax under sub section (3) of section 200 of the Income Tax 1961 dated 25.06.2021. | 1        | 15 |
| 2.      | Copy of Provisional Receipt in respect of above Revised Quarterly Statement of deduction of tax dated 25.06.2021.                     | 16       | 16 |
| 3.      | The Affidavit from Shri Praduman Lal Sinha, Block Resource Co-ordinator of appellant during A.Y 2012-13.                              | 17       | 28 |

**Prayer:**

In view of aforesaid facts, it is humbly submitted that the said documents may kindly be admitted as additional evidences as the same were directed to be filed by the Hon'ble Bench during the course of last hearing.

For, **Block Resources Coordinator, Rajiv Gandhi Siksha Mission, Patan**



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**ITA No.35/RPR/2020 for A.Y. 2012-13 :**

Hon'ble Sir,

Under instructions from our aforesaid client, we respectfully submit before your honor as under:

1. It is respectfully submitted that the order u/s 201&201(1A) of the Income Tax Act, 1961 was passed vide order dated 23.03.2018 determining the total demand payable at Rs.1,45,701/- details whereof is as under :

| Sl. N. | Particulars                         | Amount [in Rs.]   |
|--------|-------------------------------------|-------------------|
| a.     | Total default of tax                | 53,080/-          |
| b.     | Total interest payable              | 39,540/-          |
| c.     | <b>Sub Total (a+b)</b>              | <b>92,621/-</b>   |
| d.     | Late Filing Fee u/s 234E of the Act | 53,080/-          |
| e.     | <b>Total Demand Payable (c+d)</b>   | <b>1,45,701/-</b> |

2. The appeal filed by the assessee before the Learned Commissioner of Income Tax (Appeals) – II, Raipur was partly allowed and levy of late filing fees u/s 234E of Rs.53,080/- was cancelled vide order dated 13.10.2019.

3. The assessee has preferred the appeal against the impugned order passed by FAA details whereof is as under:

| S. No. | Ground No. | Amount of alleged default of Tax | Relevant page of Assessment Order | Ground of Appeal   | Relevant page no. of Paper Book   | Relevant page no. of Paper Book containing Additional Evidence            | Whether disclosed in TDS Return           |
|--------|------------|----------------------------------|-----------------------------------|--|---|---|---|
| 1.     | 1          | 11,977/-                         | Page No. -4                       | TDS deposited mentioning PAN of payee.   | Page No. – 4 (Challan)  | • Page 4 to 6 – Affidavit (Breakup of Rs.12,628/- is on page no. 4 to 6 ) | No, TDS deposited mentioning PAN of payee |
| 2.     | 2 & 3      | 2,118/-                          | Page No. – 4                      | <ul style="list-style-type: none"> <li>• Payment against purchase of Building material, TDS does not arise on purchase.</li> <li>• Payee has furnished his ROI u/s 139 and as per first proviso to Section 201(1)</li> </ul> | Page No. – 5 to 7 (Copy of Form-26A of Shri Jay Kumar Tamrakar)   | Page No. – 1 to 3 (Copy of Form-26A of Shri Jay Kumar Tamrakar)           | NA  |
| 3.     | 4          | 20,000/-                         | Page No. – 4                      | <ul style="list-style-type: none"> <li>• TDS computed @ 20% U/s 206AA which is not applicable.</li> <li>• Payment against purchase of Building material, TDS does not arise on purchase.</li> </ul>                          | Page No. – 8 (Bill of purchase of building material)<br>Page no. – 9 (PAN of Vendor namely Shri Kamdev Sinha) | -   | NA  |

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|--------------|---|-----------------|-----------------|--|---|---|----|
| 4.           | 5 | 10,455/-        | Page No. –<br>4 | <ul style="list-style-type: none"> <li>• TDS computed @ 20% U/s 206AA which is not applicable.</li> <li>• Payment against purchase of Hardware item &amp; Material, TDS does not arise on purchase.</li> </ul> | Page No. – 10<br>(Bill of purchase of hardware item & material)<br>Page no. – 11<br>(PAN of Vendor namely Shri Tarkeshwar Sharma) | - | NA |
| 5.           | 6 | 8,170/-         | Page No. –<br>4 | <ul style="list-style-type: none"> <li>• TDS computed @ 20% U/s 206AA which is not applicable.</li> <li>• Payment against purchase of Electric item &amp; Material, TDS does not arise on purchase.</li> </ul> | Page No. – 12<br>(Bill of purchase of electric item & material)   | - | NA |
| 6            | 7 | 360/-           | Page No. –<br>4 | Not Pressed  | -   | - | -  |
| <b>Total</b> |   | <b>53,080/-</b> |                 |  |   |   |    |

4. The below mentioned documents are constituting 'Additional evidences' under Rule 29 r.w.r. 18(4) of the Income-Tax (Appellate Tribunal) Rules 1963 for admission whereof, the assessee is making a humble prayer.

5. **List of documents constituting additional evidences:**

| Sl. No. | Particulars   | Page No. |    |
|---------|---|----------|----|
|         |   | From     | To |
| 1.      | Copy of Form 26A of Jay Tamrakar for Rs.2,118/-   | 1        | 3  |
| 2.      | The Affidavit from Shri Shiv Prasad Kosre, Block Resource Co-ordinator (BRC) of appellant during A.Y 2012-13. | 4        | 10 |

**Prayer:**

In view of aforesaid facts, it is humbly submitted that the said documents may kindly be admitted as additional evidences as the same were directed to be filed by the Hon'ble Bench during the course of last hearing.

For, **Block Resources Coordinator, Rajiv Gandhi Siksha Mission, Dhamda**

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5. With the aforesaid submissions Learned AR of the assessee submitted that Learned ITO(TDS), Bhilai was unjustified on facts and in law in treating the assessee as 'assessee in default' in respect of non-deduction of TDS without appreciating the fact that the TDS on the said payment amounts paid by the head Office of the assessee under its TAN JBPD00956E. Therefore, the assessee was not liable to deduct TDS under its TAN as they centralized system of deducting TDS. Learned CIT(A) is not justified in confirming the order of Learned AO merely due to the reason that quarterly TDS Statement u/s 200(3) did not contain the details or TDS Statement under Sectio 200(3) was not filed for which penalty u/s 272A(2)(k) is leviable but assessee cannot be treated as 'assessee in default' u/s 201 for such failure as the assessee has duly deducted and deposited the TDS, hence, it is prayed that the demand raised may kindly be cancelled.

6. The **second issue** raised by the assessee was pertaining to deduction of TDS @1% u/s 194C of the Act whereas the same should be @20% when the PAN number of the contractor are not available. It was the contention of the Learned AR that since the assessee has submitted the PAN on a later date, the finding

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of Learned CIT(A)-II, Raipur was erroneous in confirming the action of Learned AO for making such additions.

7. The **third issue** raised by the Learned AR was pertaining to treating the 'assessee in default' in respect certain amount without appreciating that the said deductee/payee had discharged the income tax liability due therein and filed the return of income without considering the provisions of Section 4, 191, 202 and 205 of the Income Tax Act, 1961.

6. The aforesaid 3 contentions were raised by the assessee in its ITA No. 33/RPR/2020 for A.Y. 2011-12, apart from aforesaid common contentions, the assessee has assailed more grounds of appeal pertaining to TDS in ITA Nos.34 & 35/RPR/2020.

7. Further, the assessee has submitted certain additional evidences under Rule 29 r.w.r 18(4) of the Income Tax (Appellate Tribunal) Rules, 1963 for all the above three years. Since the additional evidences submitted by the assessee were accepted by the Tribunal and such evidences were not available before the authorities below. It was the prayer of assessee that in the interest of justice such additional evidences may be taken

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on record and issues are to be decided in light of facts coming from such evidences.

8. Ld Sr DR, vehemently supported the order of authorities below, however has fairly agreed on acceptance of additional evidence with the request that in all equality in the interest of natural justice such facts should be remitted to the Ld AO for verification to decide the issue denovo.

9. We have considered the rival contentions and perused the material available on records. On perusal of additional evidences, it is observed that all additional evidence with reference to the contentions raised in the grounds of appeal are subject to verification of facts emanating from such additional evidence. Under such circumstances, without going into the merits of the issues, with the concession of Departmental representative, after fair agreement by both the parties to restore the issues back to the files of AO for verification as well as examination of evidences furnished before us, which were not available before the lower authorities for their perusal, thus, in the interest of substantial justice, we find it appropriate to restore the issues back to the files of AO for re-adjudication of the same afresh. Assessee shall be provided with reasonable

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opportunity of being heard, liberty is granted to the assessee to furnish all such information/evidences which are necessary / significant in deciding the issues and to assist the proceedings before the Learned AO, failing which Learned AO would be at liberty to decide the issue in accordance with law. Consequently, the order passed by Learned CIT(A) in all these three appeals are set aside and the issues raised are restored back to the file of Learned Assessing Officer for re-adjudication. In the result, grounds raised in all these three appeals are partly allowed for statistical purposes.

10. In combined result, ITA Nos.33, 34 & 35/RPR/2020 For A.Ys.2011-12 & 2012-13 are partly allowed for statistical purposes.

Order pronounced on the 22<sup>nd</sup> day of September 2023, in Raipur.

Sd/-  
(रवीश सूद)  
**(RAVISH SOOD)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-  
(अरुण खोडपिया)  
**(ARUN KHODPIA)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

रायपुर/Raipur,  
दिनांक/Dated: 22<sup>nd</sup> September, 2023.  
**Priti Yadav, Sr.PS (on Tour)**

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आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Raipur (C.G)
4. The Pr.CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर /  
The DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाईल/Guard File

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur