

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 294/RPR/2023

निर्धारण वर्ष / Assessment Year : 2011-12

Executive Engineer,
M P P W D DN
P W Division (B/R)
G.E. Road, Kailash Nagar,
Rajnandgaon (C.G.)-491 441
TAN: JBPE00177C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer (TDS),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :S/shri Arvind Chand Surana &
Nilesh Jain, CAs
Revenue by :Shri Satya Prakash Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 17.10.2023

घोषणा की तारीख / Date of Pronouncement : 19.10.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 27.06.2023, which in turn arises from the order passed by the A.O under Sec. 201(1) & 201(1A) of the Income-tax Act, 1961 (in short 'the Act') dated 19.03.2018 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. In the facts and circumstances of the case, Ld. CIT (A), NFAC erred in confirming tax and interest of Rs.3,29,471/- u/ss. 201(1) & 201(1A). The tax and interest levied by A.O and confirmed by the Ld. CIT(A), NFAC is illegal, not allowing adequate opportunity of being heard, contrary to provisions of law and not justified.
2. The appellant reserves the right to add, amend or modify any of the grounds of appeal.”

2. Succinctly stated, the assessee, which is a State Government department, was subjected to a TDS survey u/s.133A of the Act on 06.10.2017. During proceedings, it was observed by the A.O that the assessee had failed to deduct tax at source (TDS) on the payments aggregating to Rs.42,59,946 as per the mandate of Section 194C of the Act, as under :

| Details of Party(s) & PAN | F.Y. | Amount Paid (Rs.) | Nature of Payment/Section Applicable | Date of Payment | TDS deducted | TDS to be deducted (Rs) | Default of Tax (Rs) | Delay in Months | Interest (Rs) | Total Amount (Rs) |
|---|-------|-------------------|--------------------------------------|-----------------|--------------|-------------------------|---------------------|-----------------|---------------|-------------------|
| Bhanshali Bichayat Kendra, Rajnandgaon AIAPB1528Q | 10-11 | 2,04,708 | Contract/194C | 10-06-2010 | NIL | 4,094 | 4,094 | 94 | 3,848 | 7,942 |
| M/s. Arihant Decorators, Rajnandgaon AJHPB0364Q | 10-11 | 3,33,416 | Contract/194C | 10-06-2010 | NIL | 6,668 | 6,668 | 94 | 6,268 | 12,936 |
| Bhanshali Bichayat Kendra, Rajnandgaon AIAPB1528Q | 10-11 | 2,94,840 | Contract/194C | 23-06-2010 | NIL | 5,897 | 5,897 | 94 | 5,543 | 11,440 |
| M/s. Arihant Decorators, Rajnandgaon AJHPB0364Q | 10-11 | 66,500 | Contract/194C | 23-06-2010 | NIL | 1,330 | 1,330 | 94 | 1,250 | 2,580 |
| Q1 | | 8,99,464 | | | | 17,989 | 17,989 | | 16,909 | 34,898 |
| Bhanshali Bichayat Kendra, Rajnandgaon AIAPB1528Q | 10-11 | 4,02,058 | Contract/194C | 06-07-2010 | NIL | 8,041 | 8,041 | 93 | 7,478 | 15,519 |
| M/s. Arihant Decorators, Rajnandgaon AJHPB0364Q | 10-11 | 4,83,564 | Contract/194C | 06-07-2010 | NIL | 9,671 | 9,671 | 93 | 8,994 | 18,665 |
| Mahaveer Decorators, Rajnandgaon AMTPB5740R | 10-11 | 9,81,229 | Contract/194C | 06-07-2010 | NIL | 19,625 | 19,625 | 93 | 18,251 | 37,876 |
| Arihant Kiraya Bhandar, Rajnandgaon AAVPB1653P | 10-11 | 3,75,633 | Contract/194C | 05-08-2010 | NIL | 7,513 | 7,513 | 92 | 6,912 | 14,425 |
| Q2 | | 22,42,484 | | | | 44,850 | 44,850 | | 41,635 | 86,485 |
| Bhanshali Kiraya Bhandar AIEPB6220B | 10-11 | 2,20,028 | Contract/194C | 30-10-2010 | NIL | 4,401 | 4,401 | 90 | 3,961 | 8,362 |
| Mahaveer Kiraya Bhandar, Rajnandgaon PAN AABHL4368K | 10-11 | 94,487 | Contract/194C | 30-10-2010 | NIL | 1,890 | 1,890 | 90 | 1,701 | 3,591 |

| | | | | | | | | | | |
|--|-------|----------|---------------|------------|-----|--------|--------|----|--------|----------|
| Mahaveer Bichayat Kendra, Rajnandgaon AEKPG3469H | 10-11 | 1,46,000 | Contract/194C | 04-11-2010 | NIL | 2,920 | 2,920 | 89 | 2,599 | 5,519 |
| Gurudev Tent House, Rajnandgaon AIEPB6221A | 10-11 | 2,97,095 | Contract/194C | 22-12-2010 | NIL | 5,942 | 5,942 | 88 | 5,229 | 11,171 |
| Q3 | | 7,57,610 | | | | 15,153 | 15,153 | | 13,490 | 28,643 |
| Bhanshall Kiraya Bhandar AIEPB6220B | 10-11 | 1,90,071 | Contract/194C | 21-01-2010 | NIL | 3,801 | 3,801 | 87 | 3,307 | 7,108 |
| Mahaveer Bichayat Kendra, Rajnandgaon AEKPG3469H | 10-11 | 1,70,317 | Contract/194C | 21-01-2010 | NIL | 3,406 | 3,406 | 87 | 2,963 | 6,369 |
| Q4 | | 3,60,388 | | | | 7,207 | 7,207 | | 6,270 | 13,477 |
| | | | | | | TOTAL | 85,199 | | 78,304 | 1,63,503 |

| Quarter | Gross Amount Paid to the above parties (Rs) | Applicable TDS @1% (Rs) | Interest @ 1% (Rs) | Total (Rs.) |
|---------|---|-------------------------|--------------------|-------------|
| 1 | 8,99,164 | 17,989 | 16,909 | 34,898 |
| 2 | 22,42,484 | 44,850 | 41,635 | 86,485 |
| 3 | 7,57,610 | 15,153 | 13,490 | 28,643 |
| 4 | 3,60,388 | 7,207 | 6,270 | 13,477 |
| TOTAL | 42,59,946 | 85,199 | 78,304 | 1,63,503 |

Based on the aforesaid fact, the A.O. held the assessee in default and saddled it with liability towards tax u/s. 201(1) of Rs. 85,199/- and interest u/s. 201(1A) of Rs. 78,304/-.

3. Also, it was observed by the A.O. that the assessee had failed to comply with the mandate of Section 194J of the Act and had made payments towards technical services to one single party, viz. M/s. Creative Architect, Raipur, of Rs.8,51,117/- without deducting tax at source on the said amount. Based on the aforesaid fact, the A.O. held the assessee in default and saddled it with liability towards tax u/s.201(1) of Rs.85,112/- and interest u/s. 201(1A) of Rs.80,856/-, as under:

| Details of Party(s) | F.Y. | Amount Paid (Rs.) | Nature of Payment/ Section Applicable | Date of Payment | TDS deducted | TDS to be deducted (Rs) | Default of Tax (Rs) | Delay in Months | Interest @ 1% (Rs) | Total Amount (Rs) |
|--|-------|-------------------|---------------------------------------|-----------------|--------------|-------------------------|---------------------|-----------------|--------------------|-------------------|
| M/s. Creative Architect, Raipur PAN AEXPA1605G | 10-11 | 8,51,117 | Technical Services/ 194J | 22-05-2010 | NIL | 85,112 | 85,112 | 95 | 80,856 | 1,65,968 |

4. Considering the aforesaid facts, the A.O. raised a demand u/s.201(1) & 201(1A) of the Act of Rs.3,29,471/- [Rs.1,63,503/- (+) Rs. 1,65,968/-].

5. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals), while upholding the view taken by the A.O, observed as follows:

“5.1 I have gone through the facts of case and grounds of appeal. The ITO TDS has correctly identified the payment where tax was to be deducted by the appellant . No where it is denied that such payment were not liable to TDS. There is also no other documentation available with the appellant whereby it can say that the deductee owned up to pay the taxes. And if one sees the duration of delay it runs into years. The appellant has failed to discharge the duty assigned to it as a deductor and hence has to bear the consequences. The ITO TDS has correctly culled out the sums and correctly worked out the liability and interest u/s 201/201(1A) to be paid by the appellant.

5.2 The appeal is also liable to dismiss on account of being late but the same is being condoned and matter decided as per merit above.

6. The grounds of appeal of the appellant are not maintainable and hence dismissed.”

6. The assessee, being aggrieved with the order of the CIT(Appeals), has carried the matter in appeal before me.

7. At the threshold of hearing of the appeal, it was submitted by the Ld. Authorized Representative (for short 'AR') that the appeal is time-barred by 16 days. Elaborating on the reasons leading to the aforesaid delay, it was submitted by the

Ld. AR that the same had occasioned for the reason that requisite documents, etc., which were required for filing the appeal, could not be collected within the stipulated time period within which the appeal was to be filed. The Ld. AR drew my attention to the application based on which the assessee had requested for condonation of aforesaid delay along with an "affidavit" in support thereof.

8. Per contra, the Ld. Departmental Representative (for short 'DR') did not object to the seeking of condonation of delay involved in the appeal filed by the assessee appellant.

9. I have given thoughtful consideration and am of the view that as the delay involved in filing the present appeal is for bonafide reasons, the same merits to be condoned.

10. Apropos the issue involved in the present appeal, i.e., sustainability of the order passed by the A.O u/ss.201(1) & 201(1A) of the Act, wherein the assessee has been held as being in default for non-deduction of tax at source u/s.194C and u/s. 194J of the Act, the Ld. AR had failed to point out any infirmity in the order passed by the CIT(Appeals). Apart from that, it is not the case of the assessee that as respective payees having included the aforementioned amounts in their respective returns of income and paid taxes on the same, it was, thus, not liable to be held as being in default.

11. Be that as it may, having given thoughtful consideration, I find no infirmity in the view taken by the CIT(Appeals), who had rightly upheld the liability fastened upon

the assessee u/ss. 201(1) & 201(1A) of the Act by the A.O. Accordingly, finding no merit in the appeal filed by the assessee, which is clearly devoid and bereft of any merit, I dismiss the same. Thus, the **Ground of appeal No.1** raised by the assessee is dismissed in terms of the aforesaid observations.

12. Before parting, I may herein observe that as the order relied upon by the Ld. AR of M/s. Ajay Construction Vs. Deputy Commissioner of Income Tax, ITA No.259/BIL/2016, dated 08.06.2022, is distinguishable on facts; therefore, the same will not assist its case. Ostensibly, as in the case of M/s. Ajay Construction Vs. Deputy Commissioner of Income Tax (supra), the certificate of the Chartered Accountant evidencing the fact that interest income had been included by the payee in its return of income and was subjected to tax, was filed as additional evidence under Rule 29 of the Income-Tax Appellate Tribunal Rules, 1963, which, however, is not so in the case of the present assessee before me; therefore, the said order would not carry the case of the assessee any further.

13. **Ground of appeal No.2**, being general, is dismissed as not pressed.

14. In the result, the appeal of the assessee is dismissed in terms of the aforesaid observations.

Order pronounced in open court on 19th day of October, 2023.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 19th October, 2023.

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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

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

आदेशानुसार / BY ORDER,

// True Copy //

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