आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.195 & 196/Ind/2023
(Assessment Years: 2012-13 & 2013-14)

MP Warehousing and Logistics Corporation, Indore	Vs.	ACIT (TDS) Indore
(Appellant / Assessee)		(Revenue)
PAN: BPLM0195F		

Assessee by	Shri Apurva Mehta, AR
Revenue by	Shri Ashish Porwal, Sr. DR
Date of Hearing	11.10.2023
Date of Pronouncement	13 .10.2023

O R D E R

Per Vijay Pal Rao, JM:

These two appeals by the assessee are directed against the two separate orders of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, dated 18.03.2023 arising from the order passed by the AO u/s 201(1)/201(1A) of the Act for A.Y. 2012-13 & 2013-14 respectively. The assesse has raised common grounds of appeal. The grounds for A.Y.2012-13 are as under:

> *The appellant company craves leave to prefer an appeal against the Order u/s. 250 of the Income Tax Act, 1961 (the Act) passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (the Ld. CIT(A), NFAC') dated 18.03.2023 on the below mentioned Grounds of Appeal which are independent and are without prejudice to one another:*

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC has erred in confirming the action of the Ld. ACIT(TDS), Indore ('the Ld. AO') by treating the assessee as 'assessee in default' in respect of TDS of Rs. 1,06,035/- without appreciating that the income of the recipient Krishi Upaj Mandi Samiti is exempt u/s. 10(26AAB) of the Act, which is wrong and contrary to the provisions of the Act.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC has erred in upholding the Order u/s. 201(1)/201(1A) of the Act whereby the assessee deductor has been treated as an 'assessee in default' in respect of TDS of Rs. 1,06.035/- without appreciating that there is no loss to revenue as the income of the recipient Krishi Upaj Mandi Samiti is unconditionally exempt u/s. 10(26AAB) of the Act and is not statutorily required to file its return of income as per Section 139 of the Act.

3. On the facts and in the circumstances of the case and in law, the Ld. AO has erred in treating the assessee deductor as 'assessee in default' without appreciating that as per CBDT Circular No. 18/2017 dated 29.05.2017, tax is: not required to be deducted at source on payments / credits to Krishi Upaj Mandi Samiti, and not doing so is wrong and contrary to the facts of the case and provisions of the Act. Thus, the Order u/s. 201(1) 201(1A) dated 28.12.2018 and the Order passed by the CIT(A), NFAC dated 18.03.2023 are liable to be quashed.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC has erred in confirming the action of the Ld. AO of levying tax of Rs. 36,980/- by holding that the assessee has failed to deduct TDS u/s. 194-I of the Act without considering the Order of the Honourable Income Tax Appellate Tribunal, Indore Bench, dated 26.05.2020 (ITA No. 491/Ind/2019) in the assessee's own case for the FY 2010-11, whereby the issue has already been decided in favour of the assessee deductor.

5. On the facts and in the circumstances of the case and in law, the Order u/s. 201(1)/201(1A) of the Act is unlawful and against the provisions of the Act. Thus, the same is liable to be quashed.

2. Ld. AR of the assesse has submitted that the AO has passed order u/s 201(1)/201(1A) of the Act by treating assessee in default in respect of the non-deduction of TDS on the payment made to Krishi Upaj Mandi Samiti. He has pointed out that the income of the recipient Krishi Upaj Mandi Samiti (APMC) is exempt u/s 10(26AAB) of the Act and therefore,

the assesse cannot be held as assessee in default in respect of the non-deduction of TDS for the payment made to Krishi Upaj Mandi Samiti. He has referred to the CBDT Circular no.18 of 2017 dated 29.05.2017 whereby the CBDT had clarified that tax is not required to be deducted at source on the payment/credit to Krishi Upaj Mandi Samiti. However, the authorities below have not followed the circular of the CBDT which is otherwise binding as per section 119 of the Act. He has further submitted that an identical issue has been considered by the Coordinate Bench of this tribunal in assessee's own case for A.Y.2011-12 vide order dated 26.05.2020 in ITANo.491/Ind/2019 and therefore, the issue is otherwise covered by the order of this Tribunal in assesse's own case.

3. On the other hand, Ld. DR has relied upon the order of the authorities below.

4. We have considered the rival submissions as well as relevant material on record. There is no dispute that the order u/s 201(1)/201(1A) of the Act have been passed for these assessment years in respect of the payment made by the assesse to Krishi Upaj Mandi Samiti and income of the said Samiti is exempt as per provision of section 10(26AAB) of the Act. The Coordinate Bench of this Tribunal in assessee's own case for A.Y.2011-12 vide order dated 26.05.2020(supra) has considered this issue in para 12 to 16 as under:

> *"12. As regards, the **First ground** of appeal that whether the assessee was rightly treated as assessee in default for non deduction of TDS on rent paid to Krishi Upaj Mandi Samiti we find that the payee i.e. Krishi Upaj Mandi Samiti is State Government undertaking and it income is exempt u/s 10(26AAB) of the Act. CBDT, vide its circular No.04 of 2002 on 16.07.2003 states "Boards or Bodies whose income is unconditionally exempt u/s 10 of the Act and who are statutorily not required to file return of income as per section 139, there would be no requirement for tax deduction at source since their income is anyway exempt under the Income Tax Act. The CBDT, Circular was further modified on 29.05.2017 vide circular No.18/2017 stating that "Accordingly, it has been decided that in case of below mentioned funds or authorities or*

Board or bodies, by whatever name called, referred to in section 10 of the Income Tax Act, whose income is unconditionally exempt under that section and who are also statutorily not required to file return of income as per section 139 of the Income Tax Act, there would be no requirement for tax deduction at source, since their income is anyway exempt under the Income Tax Act-

(xiii) Agricultural Produce Marketing Committee referred to in clause(26AAB)"

13. A certificate of the Chartered Accountant under first proviso to section 201(1) of the Act dated 3rd June, 2016 states about the amount of rent paid by the assessee to the payee and certifies that the rental income received from the assessee has been accounted for in the financial statements and the taxable income of the 'payee' is nil. This fact proves that there was no liability to pay income tax on the payee as taxable income was nil.

14. Thus, in view of the CBDT, circular referred above and the certificate of Chartered Accountant dated 03.06.2016 we are of the considered view that the assessee should not have been treated as assessee in default for non-deduction of tax at source on the rent payment of Rs. 4,37,528/- to Krishi Upaj Mandi Samiti.

15. Our this view finds support by the decision of Co-ordinate Bench, Jaipur in the case of ITO, Ward TDS-2 vs. Branch Manager, State Bank of Bikaner & Jaipur(2012) 19 taxmann.com 221(JP) wherein it was held that "there was no question of deducting TDS by the assessee u/s 194A of the Act on the interest paid to Rajasthan Rural Road Development Agency (RRRDA) which is a society registered under Societies Act, 1958 and was wholly financed by the Stated Government. Similar view was also taken by the Coordinate Bench Jaipur in the case of ITO (TDS) vs. the Secretary, Krishi Upaj Mandi Samiti (ITANO.342,343 & 344/JP/2013) on 20.07.2015 wherein it was held that " there is no loss to the revenue as the deductee (RSAMB) was not liable to pay tax (the income being loss and RSAMB being registered u/s 12A). In view of the above, it is held that assessee cannot be treated as an assessee in default. The Assessing Officer is directed to delete the demand raised u/s 201(1) & 201(1A) of the Act.

16. Respectfully, following the above decisions and in view of the CBDT Circular No.4 of 2002 dated 16.07.2013 and circular No.18/2017 on 29.05.2017, are of the considered view that the assessee should not treated as assessee in default for non-

> *deducting tax on rent of Rs.4,37,528/- paid to Krishi Upaj Mandi Samiti. Thus, ground no.1 of the assessee's appeal stands allowed."*

5. Accordingly in view of the CBDT circular No.18/2017 dated 29.05.2017 as well as following the earlier decision of this tribunal in assessee's own case the orders passed by the authorities below are set aside.

6 In the result, both appeals of assessee are allowed.

Order pronounced in open court on 13.10.2023.

Sd/-	Sd/-
(B.M. BIYANI)	**(VIJAY PAL RAO)**
Accountant Member	Judicial Member

Indore, 13.10.2023

Patel/Sr. PS

Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore