

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 644/JP/2023
निर्धारण वर्ष / Assessment Years : 2017-18

Jagdamba Tolles 2/391 Housing Board, Bari Road Dholpur, Dholpur	बनाम Vs.	Income Tax Circle, Bharatpur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAMFJ 1417 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rahul Pandya (Adv.)
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 13/12/2023
उदघोषणा की तारीख / Date of Pronouncement : 20/12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal challenging the order of the National Faceless Appeal Centre, Delhi dated 27/03/2023 [here in after (NFAC)] for assessment year 2017-18 filed by the assessee and in turn that appeal was on account of the order dated 18.12.2019 passed under section 143(3) of the Income Tax Act, by the DCIT/ ACIT, Circle Bharatpur.

2. The assessee challenged the finding of NFAC on the

following grounds;

That the humble Appellant filed the original Return of Income on Dt 30-10-2017 declaring total Loss at Rs. 32,93,612/- and case was selected for Scrutiny under CASS. The Humble Appellant received Notices, and reply filed from time to time.

That the humble Appellant had been engaged in Toll Collection in the name style of M/s Jagdamba Tolles. That the Learned Assistant Commissioner, Circle Bharatpur has not verified the basic facts of the case & with predetermined Mind additions were made of Rs. 10.36.334/- on account Undisclosed Toll Receipts on the assumption basis without considering the facts of the case. That Learned Deputy Commissioner, Circle Bharatpur & Learned Commissioner of Income Tax (Appeals) has considered Toll receipts on the basis of Form 26AS while TCS has been deducted by State Government office on Remittance of installment. Thus the Ld DC, Circle Bharatpur without verification of facts & documents & with predetermined Mind made the additions.

That the the Learned Assistant Commissioner, Circle Bharatpur has not been rejected Books of Account at any stage during Assessment Proceedings. That the additions of Rs. 10,36,334.00 were made on Account of Undisclosed Toll Receipts as reflected in AS-26 (TCS Deducted from RSRDC on Rs. 38783297.00) including Security Deposit & Earnest Money liable to refund on Completion of Contract. Thus, not liable for TDS/TCS.

That as per provisions of Section 206C is as per below:-

(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

1. TABLE

<i>Sl. No.</i>	<i>Nature of contract or licence or lease, etc.</i>	<i>Percentage</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(i)</i>	Parking lot	Two per cent

(ii)	Toll plaza	Two per cent
(iii)	Mining and quarrying	Two per cent.

Thus, the TCS is to be collected at the time of receipt, which are reconciled, in these situation. No TCS/TDS is required to Deduct & Addition made by Learned AO is against Facts / Law.

That the Reconciliation of AS 26 with Books are as per below:-

balances remitted to RSRDC	3,10,26,846.00	As per Ledger Account
Advance Instalments	77,56,711.00	Reflected in Balance Sheet
Total (A) as per Books	3,87,83,557.00	
As per AS 26	3,87,83,397.00	
Difference	160.00	

That the difference of Rs. 160 is best known to RSRDC, our books has not been rejected at any stage. Further the TCS is lesser deducted on Rs. 160.00, thus the Humble Appellant have shown excess Amount by Rs 160.00

The Humble Appellant submit the Appeal on Following Ground:-

1. That order of Learned Assessing Authority is bad in law, illegal and against facts and circumstances of the case.
2. That learned Assessing Authority grossly erred in law and facts in making additions of Rs. 10,36,334/ on account Undisclosed Toll Receipts on the basis of Form 26AS while TCS has been deducted by State Government office on Remittance of installment & the Learned Commissioner of Income Tax (Appeals), Faceless Appeal Centre, Delhi grossly erred in sustaining the additions of Rs. 10.36.334/- without giving the Details (Being Receipt for RSRDC on which deducted TCS deducted & for our Firm its an Payment made to RSRDC).
3. That order of learned Assessing Authority is based on assumptions and presumptions and against real facts of the case.
4. That further submissions in support of appeal shall be made at the time of hearing.
5. That appellant craves leave to add, amend or alter all or any grounds of appeal before or at the time of hearing.”

3. At the outset of the hearing the bench noted that the registry pointed out that there is a delay of 153 days for which the assessee also prefers the petition for condonation of delay and the contention so raised in that condonation petition reads as under:

“Application under Section 5 of the Limitation Act for condonation of delay in filing of Appeal.

Respectfully

1. That the applicant has filed an Appeal before the Hon'ble INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH, JAIPUR
2. THAT JAGDAMBA TOLLES is popularly known as Jagdamba Tolls. It is an Partnership Firm having its office registered in Rajasthan at 2/391 HOUSING BOARD,BARI ROAD DHOLPUR DHOLPUR - 328001 (Rajasthan). The Firm carries out its major operations from Rajasthan which includes Toll Collection & engaged a number of persons.
3. That there is 153 days delay in filing the Appeal due to overburdened Accounts Department, who usually Check the income Tax Portal was remained busy due to voluminous of Accounting Work which involves number of entries posted for cash, Fast tag, Credit Card, Debit Card, number of persons employed their Salary and heavy day-to day working of Accounting along with Account Reconciliation of RSRDC, thus could not able to check the Income Tax Portal.
4. That during filling of Tax Audit Report on Dt 21-10-2023, our Chartered Accountant informed that one of your Appeal has been decided by CIT(A).
5. That we have not received Hardcopy of the Order passed by CIT(A), thus was not aware of the Order.
6. That the delay in filing the Appeal is neither intentional nor will full but due to the good and sufficient reasons shown herein above.
7. That Interest of justice demands that the present application is allowed and the delay in filing of Appeal is condoned so that the matter can be adjudicated upon on its merit.
8. It is, therefore, most respectfully prayed that this application may kindly be allowed and the delay of 153 days in filing the Appeal may kindly be condoned and the matter may kindly be heard on its merit in the interest of justice. Such other orders as deemed fit and proper in the facts and circumstances of the case may kindly also be passed.”

In support of the contentions so raised the Id. AR of the assessee also submitted that these contentions are declared even on oath as per the affidavit filed by the authorized signatory.

3.1 The Id. AR of the assessee in addition to the petition filed also submitted that the assessee has not received the copy of order in email and the same was also not sent it physically. In that case the Id. AR of the assessee also submitted that even SMS for passing an order has not been received. The assessee has nine partners and the accountant and consultant handles the passwords and OTPs whenever required are shared by the partner. Based on these set of facts the assessee has reasonable cause in bringing the present appeal though belated. The Id. AR of the assessee further argued that the assessee filed the audit report on 21.10.2003 and in that process they came to know about the passing of the impugned order. Immediately on becoming aware of the facts the appeal was filed on 26.10.2023. This immediate action of the assessee shows that the assessee is serious about legal remedy and legal right available. To drive home to the contentions as argued

the Id. AR of the assessee also relied upon the judicial precedent on the decision of the Mumbai Benches of the ITAT in the case of Shree Swamy Samarth vs. ITO, Mumbai (ITA No. 237/Mum/2023 dated 22-05-2023) and the relied upon part is reproduced as under:-

“4. We have heard rival submission of the parties and issue-in-dispute and perused the relevant material on record on the issue of condonation of delay in filing appeal before the Id. CIT(A). We find that the delay has been caused mainly due to the dispute of the assessee society with one of its members and thereafter in taking decision by the Society involving many members. Thereafter delay has occurred in filing appeal due to mistake on the part of the Chartered Accountant. Relying on the decision cited above, we are of the opinion that there is no malafide or deliberate in action on the part of the assessee in filing the appeal with delay of 387 days before the Id. CIT(A). Accordingly, we direct the Id. CIT(A) to condone the delay in filing appeal before him and admit the appeal for adjudication on merit in accordance with law after considering the submission of the assessee. The grounds of appeal by the assessee are allowed for statistical purposes.

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

3.2 During the course of hearing, the Id. DR objected for the delayed appeal filed by the assessee contending that the assessee was not communicated it properly. All the sequence of event expressly clear that the neither the assessee nor the Id. AR of the assessee is serious about the statutory right and this right has also responsibility attached to it. The order was

downloaded from the system by the assessee. Based on that contention the Id. DR submitted that bench may decide the issue as deem fit in the interest of justice.

3.3. We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 153 days has merit as the assessee has not received the copy of order in email and the same was also not sent it physically. In that case the Id. AR of the assessee also submitted that even SMS for passing an order has not been received. The assessee has nine partners and the accountant and consultant handles the passwords and OTPs whenever required are shared by the partner. Based on these set of facts the assessee has reasonable cause in bringing the present appeal though belated. As submitted the assessee filed the audit report on 21.10.2003 and in that process they came to know about the passing of the impugned order under attack. Immediately on becoming aware of the facts the appeal was filed on 26.10.2023. This immediate action of the assessee shows that the assessee is serious about legal remedy and legal right available. Therefore, based on the reasons we concur

with the submission of the assessee and condone the delay of 153 days in filing the appeal by the assessee in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause and thus the bench considered it to dispose the appeal of the assessee on its merits.

4. The fact as culled out from the records is that the income tax return for the instant year was e-filled by the assessee on 30.10.2017, declaring total income at loss of Rs. 32,93,612/-. The case was selected for scrutiny through CASS, and accordingly a notice u/s 143(2) dated 29.09.2018 was issued to the assessee by the then ITO, Ward-4, Bharatpur which stands duly served upon the assessee electronically through e-mail. The assessee is engaged in Toll Collection in the name style of M/s Jagdamba Tolls. The Id. AO made addition for an amount of Rs. 10,36,334/- on account Undisclosed Toll Receipts based on the Form 26AS wherein TCS has been deducted by State Government office on Remittance of installment and collection of toll amount with that of the receipt offered by the assessee in the accounts. The Id. AO has

not rejected Books of Account at any stage during Assessment Proceedings and made the additions of Rs. 10,36,334.00 on Account of Undisclosed Toll Receipts as reflected in AS-26 (TCS Deducted from RSRDC on Rs. 38783297.00) including on Amount of Security Deposit & Earnest Money liable to refund on Completion of Contract.

5. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“4.1 All the grounds of appeal are clubbed together and decided together for the sake of convenience.

4.2 The AO has stated that, during the assessment proceedings, it is noted from the Profit and Loss account, the appellant has disclosed Gross Receipts amounting to Rs. 2,99,90,352/- whereas on going through (ITS) extracted from departmental software as well as Form 26AS submitted by the appellant, it is noticed that the Gross receipts from Toll Plaza is Rs. 3,87,83,397/- In response the appellant has submitted as The assessee has made Advance Installment and EMD of Rs. 94,94,214/- on which TDS of Rs. 1,86,161/- were made and net payment of Rs. 93,08,053/- being 5% of tender value as per terms and condition No. 2 of Agreement of Toll Tax. This Advance has been adjusted by assessee in next Toll expenses. The Net advance of Rs. 93,08,503/- is to be divided in next 24 Months installments. Thus amount of Rs. 15,51,342 (being 4 month Dec. 2016 to March 2017) out of total. Advance amount of Rs. 93,08,053/- is transferred in profit & Loss account for the year under consideration and remaining amount of Rs. 77,56,711/- shown as Advance EMI in the Balance Sheet which were also reflected in form 26AS and TDS was also deducted on the amount and should be included in the Gross Toll Receipts”.

4.3 The AO stated that, the amount shown in the balance sheet of Rs. 77,56,711/- as advance EMI is added to the toll receipts shown in the P & L account and the difference amount of Rs. 10,36,334/- (Rs. 3,87,83,397-3,77,47,063) is added to the total income of the appellant.

5. As per the P & L account, the appellant has disclosed Gross Toll Receipts of Rs. 2,99,90,352/-, and the AO ascertained the Gross Receipts of Rs. 3,87,83,397/- after examining the Individual Transaction Statement (ITS) details extracted from the departmental software as well as 26AS. Thereafter, the AO required the appellant to clarify the difference in Gross Receipts and after examining the reply furnished by the appellant, the AO ascertained that the appellant has not shown the toll Receipts to the extent of Rs. 10,36,334/- and the same was added to the total income of the appellant. During the appellate proceedings, the appellant has neither furnished an explanation with respect to toll receipts of Rs. 10,36,334/-, nor furnished any documentary evidence as to how and why said amount was not taken as part of the Gross Receipts. Therefore, after considering all the facts and the circumstances of the case, I am of the opinion that, the AO has rightly added the amount of Rs. 10,36,334/- and hence the addition of Rs. 10,36,334/- is hereby confirmed. In view of this, the grounds of appeal are dismissed.

6. In the result, the appeal is dismissed.”

6. As the assessee did not satisfied with the order of the Id. CIT(A), the present appeal was filed with this tribunal. To support the various grounds raised by the assessee Id. AR of the assessee filed a detailed written submission as reproduce here in below :

That the humble Appellant filed the original Return of Income on Dt 30-10-2017 declaring total Loss at Rs. 32,93,612/- and case was selected for Scrutiny under CASS. The Humble Appellant received Notices, and reply filed from time to time.

That the humble Appellant is engaged in Toll Collection in the name style of M/s Jagdamba Tolls. The Learned Assistant Commissioner, Circle Bharatpur has not verified the basic facts of the case & with predetermined Mind additions were made of Rs. 10,36,334/- on account Undisclosed Toll Receipts on the assumption basis without considering the facts of the case. That Learned Deputy Commissioner, Circle Bharatpur & Learned Commissioner of Income Tax (Appeals) has considered Toll

receipts on the basis of Form 26AS while TCS has been deducted by State Government office on Remittance of installment. Thus the Ld DC, Circle Bharatpur without verification of facts & documents & with predetermined Mind made the additions.

That the the Learned Assistant Commissioner, Circle Bharatpur has not rejected Books of Account at any stage during Assessment Proceedings. That the additions of Rs. 10,36,334.00 were made on Account of Undisclosed Toll Receipts as reflected in AS-26 (TCS Deducted from RSRDC on Rs. 38783297.00) including on Amount of Security Deposit & Earnest Money liable to refund on Completion of Contract. Thus, not liable for TDS/TCS.

Remittance of installment & the Learned Commissioner of Income Tax (Appeals), Faceless Appeal Centre, Delhi grossly erred in sustaining the additions of Rs. 10.36.334/- without giving the Details (Being Receipt for RSRDC on which deducted TCS deducted & for our Firm its an Payment made to RSRDC).

Written Submission:-

1. That learned Assessing Authority grossly erred in law and facts in making additions of Rs. 10,36,334/ on account Undisclosed Toll Receipts on the basis of Form 26AS while TCS has been deducted by State Government office on Remittance of installment & the Learned Commissioner of Income Tax (Appeals), Faceless Appeal Centre, Delhi grossly erred in sustaining the additions of Rs. 10,36,334/- without giving the Details (Being Receipt for RSRDC on which deducted TCS deducted & for our Firm its an Payment made to RSRDC).

That as per provisions of Section 206C is as per below:-

(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

1. TABLE

<i>Sl. No.</i>	<i>Nature of contract or licence or lease, etc.</i>	<i>Percentage</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>

(i)	Parking lot	Two per cent
(ii)	Toll plaza	Two per cent

That as per provisions of Section 206C is as per below:-

(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

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<i>Sl. No.</i>	<i>Nature of contract or licence or lease, etc.</i>	<i>Percentage</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
(i)	Parking lot	Two per cent
(ii)	Toll plaza	Two per cent
(iii)	Mining and quarrying	Two per cent.

Thus, the TCS is to be collected at the time of receipt, which are reconciled, in these situation. No TCS/TDS is required to Deduct & Addition made by Learned AO is against Facts / Law.

That the Reconciliation of AS 26 with Books are as per below:-

balances remitted to RSRDC	3,10,26,846.00	Refer Page No. 7 Ledger Account of Paper Book Dt 07-12-2023
Advance Instalments	77,56,711.00	Refer Page No. 6 Ledger Account & Balance Sheet at Page No 1 of Paper Book Dt 07-12-2023

Total (A) as per Books	3,87,83,557.00	
As per AS 26	3,87,83,397.00	Refer Page No. 9 (AS-26) at Page No 9 of Paper Book Dt 07-12-2023
Difference	160.00	

That the difference of Rs. 160 is best known to RSRDC, our books has not been rejected at any stage. Further the TCS is lesser deducted on Rs. 160.00, thus the Humble Appellant have shown excess Amount by Rs 160.00

Grounds of Appeal:

2. That learned Assessing Authority grossly erred in law and facts in making additions of Rs. 10,36,334/- on account Undisclosed Toll Receipts on the basis of Form 26AS while TCS has been deducted by State Government office on

(iii) Mining and quarrying Two per cent.

Thus, the TCS is to be collected at the time of receipt, which are reconciled, in these situation. No TCS/TDS is required to Deduct & Addition made by Learned AO is against Facts / Law.

That the Reconciliation of AS 26 with Books are as per below:-

balances remitted to RSRDC	3,10,26,846.00	As per Ledger Account
Advance Instalments	77,56,711.00	Reflected in Balance Sheet
Total (A) as per Books	3,87,83,557.00	
As per AS 26	3,87,83,397.00	
Difference	160.00	

That the difference of Rs. 160 is best known to RSRDC, our books has not been rejected at any stage. Further the TCS is lesser deducted on Rs. 160.00, thus the Humble Appellant have shown excess Amount by Rs 160.00

Thus, the TCS is to be collected at the time of receipt, which are reconciled, in these situation, Addition made by Learned AO is against Facts / Law.

We therefore request you to kindly accept the Ground of Appeal.

In view of the above, I request you to kindly accept the Appeal & delete the Additions made vide order Dt 18/12/2019 & oblige.”

7. To support the contentions raised in the written submission the Id. AR of the assessee has relied upon the following evidences / records:

INDEX

S No	Particulars	Page No.
1.	Audited Balance Sheet & Profit and Loss Account for the year ended 31-03-2017 alongwith Annexures	1-5
2.	Ledger Account of Advance Money with RSRDC	6
3.	Ledger Account of RSRDC Alwar	7
4.	Ledger Account of TCS	8
5.	Copy of AS-26	9-12
6.	Screenshot of E-Proceedings from Income Tax Portal	13-16
7.	Copy of Notice Dt 24-11-2019 (fixed for 28-11-2019) & Reply thereof	17-20
8.	Copy of Notice Dt 25-09-2019 (fixed for 01-10-2019)	21-30

8. In addition the Id. AR of the assessee vehemently referring a reconciliation chart in the written submission as reproduced here in below submitted that in fact in the books of account the receipt is much more then what is contended by the Id. AO and as such in the books of account the receipt is more. The chart is again extracted here in below :

balances remitted to RSRDC	3,10,26,846.00	Refer Page No. 7 Ledger Account of Paper Book Dt 07-12-2023
Advance Instalments	77,56,711.00	Refer Page No. 6 Ledger Account & Balance Sheet at Page No 1 of Paper Book Dt 07-12-2023
Total (A) as per Books	3,87,83,557.00	
As per AS 26	3,87,83,397.00	Refer Page No. 9 (AS-26) at Page No 9 of Paper Book Dt 07-12-2023
Difference	160.00	

9. Based on the above reconciliation the Id. AR submitted that there is no difference and in fact the total amount reflected in the books is more for an amount of Rs. 160 in the books. Thus the contention of the lower authorities are misplaced and misinterpreted. The Id. AR of the assessee further stated that he has submitted this detail before AO but the same has not been considered in its true spirit even the profit and loss account was already on record. The amount is exactly tallied. Therefore, the addition of Rs. 10,36,334/- is not warranted and is required to be deleted.

10. Per contra, the Id. DR relied upon the contention so recorded in the orders of lower authorities.

11. We have heard the rival contentions and perused the material placed on record. The bench noted from the reconciliation chart submitted by the Id. AR of the assessee that the assessee is subjected to the provisions of TCS. So, the amount represented in the form no. 26AS is the payment made to RSRDC [Rajasthan State Road Development & Construction Corporation Limited] by the assessee upon which RSRDC collected the TCS in accordance with the provision of section 206C as the assessee is licensee of Toll plaza. The Id. AO considered that the sum reflected in the Form 26AS is the amount of the receipt but in fact based on the facts presented before us is the payment made by the assessee to RSRDC upon which the TCS is collected so the amount is the payment made by the assessee and the assessee has reconciled the same as under :

Balances remitted to RSRDC	3,10,26,846.00	Page No. 7 Ledger Account of Paper Book filed by the assessee
Advance Instalments	77,56,711.00	Page No. 6 Ledger Account & Balance Sheet at Page No 1 of Paper Book. Even the

		Id. AO has not disputed the said amount.
Total (A) as per Books	3,87,83,557.00	Thus, the total amount upon which the provision of TCS applicable as per books of assessee.
As per AS 26	3,87,83,397.00	Page No. 9 form no 26ASof Paper Book
Difference	160.00	To be ignored as the assessee books represent the more amount then reflected in the form no. 26AS. Thus, the books results has not alleged defects as pointed out by the Id. AO.

Thus, based on the presented documents reconciled with the records already on record we are of the considered view that Id. AO has compared the toll receipts with the toll payment which will never reconciled as the TCS is made on payments made by the assessee. So payments in form no 26AS needs to be compared with payment recorded in books and receipts recorded in form no. 26AS needs to be reconciled with the receipts recorded in the books. But we find that Id. AO made comparison of payment with the receipts, whereas looking to the facts presented and as reconciled the alleged difference of payment recorded in the books

are very well reconciled with the payments recorded in the form no. 26AS and on these figures presented in the reconciliation upon which there is no dispute and therefore, considering the peculiar facts of the case we are of the considered view that the lower authority has erred in comparing the receipts with the payment. Considering the above factual aspect of the matter the bench noted that the total balance remitted to RSRTS is amounting to Rs. 3,10,26,846/- which is not disputed as per the books of account submitted by the assessee and is supported by ledger book page 7 of paper book even advance of amount of Rs. 77,56,711/- is also not disputed by the Assessing Officer and adding to this amount reflected in the books of the account of the assessee total comes to Rs. 3,87,83,557/- and the amount of payment upon TCS is deducted as per 26AS amounts to Rs. 3,87,83,397/- and therefore, we see no reason to sustain the addition of Rs. 10,36,334/- and therefore, the same is hereby vacated. In the result ground no. 2 raised by the assessee is allowed. The other ground no. 1, 3, 4 & 5 are general in nature does not require any adjudication.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 20/12/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/12/2023

*Ganesh Kr., PS

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

1. अपीलार्थी / The Appellant- Jagdamba Tolles, Dholpur
2. प्रत्यर्थी / The Respondent- Income Tax Circle, Bharatpur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 644/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar