

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SH. BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**I.T.A. Nos. 1005 & 1015/Del/2020
(Assessment Years : 2015-16 & 2016-17)**

M/s. Arcotech Limited
181, Sector-3, Industrial
Growth Centre,
District-Rewari, Bawal,
Haryana-123501

Vs. DCIT
Circle – 3(1)
New Delhi

PAN: AAACS 2437 G

(Appellant)

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(Respondent)

Appellant by :

Shri Sanjay Joshi, A.R.

Respondent by :

Shri Kanv Bali, Sr. D.R.

Date of Hearing 27.06.2024

Date of Pronouncement 28.06.2024

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

Both the appeals filed by the assessee are directed against the orders both dated 11.02.2020 passed by the Commissioner of Income Tax (Appeals)-I, New Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the orders both dated 26.12.2018 passed by the DCIT, Circle – 3(1), New Delhi under Section 144/147/148 of the Act for Assessment Years 2015-16 & 2016-17 respectively.

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2. Since both the matters relate to the same assessee, these are heard analogously and are being disposed of by this common order.

ITA No.1005/Del/2020 for A.Y. 2015-16 :

3. The appeal was dismissed by the First Appellate Authority. The admitted tax has not been paid by the assessee fully either till the date of filing of appeal on 25.01.2019 or till the date of last hearing took place before the Learned CIT(A) on 28.01.2019. The total income declared by the assessee was at Rs.32,18,06,716/- and the declared tax payable was Rs.10,62,87,090/-. The tax due on income declared during the period was not deposited by the assessee till completion of the order as per ITR filed on 20.07.2018.

4. Further that, as per the remand report, the assessee has not paid self assessment tax of Rs.11,83,15,124/- for A.Y. 2015-16 and only 29.15% of the undisputed demand has been paid. When the appellant was confronted on this issue by the CIT(A), on 28.01.2020 the details of self assessment tax paid for A.Y. 2015-16 was submitted by the assessee before the said authority from which, it appeared that payment in respect of Serial Nos. 1, 5 & 6 had already been adjusted for the tax payment against A.Y. 2014-15 where appellant has also failed to pay tax. As per return of income filed by the Appellant in part – B TTI of computation of tax liability in Column – II, the admitted tax payable was shown at Rs.10,62,87,090/-. The appeal was preferred before the Learned CIT(A)

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on 25.01.2019 as per the report of the Learned AO, the admitted tax has not paid fully till 17.09.2019. In that view of the matter, the appeal was not admitted under Section 249(4) of the Act by the Learned CIT(A) and the same stood rejected. Hence the instant appeal before us.

5. However, the appellant, before us, on 26.06.2014 filed a written notes of submission, wherein the reason for nonpayment of taxes by the appellant has been narrated in the following manner :

“Payment of Taxes: That despite all the aforesaid hardships, Company has paid taxes of about Rs 40.00 Crores (approx) during the year 2014-15 to 2019-20 by creating additional liabilities in the form of unsecured borrowings arranged by the promoters for this purpose. The company has also contributed to other statutory dues such as custom duty and other dues. The cash flows of the company were stressed and not adequate despite earning profits during relevant years. Furthermore, the interest cost was increasing on annual basis and did not allow the company to have adequate funds to pay towards tax liability duration.”

6. In that view of the matter, the Learned AR prayed for remitting the issue to the file of the Learned CIT(A) for consideration of the plea made by the appellant for not been able to pay admitted taxes by the appellant.

7. On the other hand, the Learned DR vehemently supported the order passed by the Learned CIT(A) in view of the fact that default on the part of the appellant is glaring. Despite having profits and robust sales, the appellant has not paid the admitted tax and in terms of the provision of Section 249(4) of the Act, the Learned CIT(A) has rightly

rejected the appeal by not admitting the same as was the crux of the submissions made by the Learned DR.

8. Having heard the Learned Counsel appearing for the parties and having regard to the facts and circumstances of the case, particularly the submissions made by the appellant before us for non-payment of tax due to not having adequate funds, we in order to prevent the miscarriage of justice, we find fit and proper to remit the issue to the file of the Learned CIT(A) to consider the same afresh and to pass a reasoned order upon perusal of the required documents to be submitted by the appellant before him in support of his claim of being unable to pay the tax liability for the year under consideration. In the event, the Learned CIT(A) finds the plea taken by the appellant is acceptable, the appeal should be admitted and be disposed of on merit. The Learned CIT(A) is further directed to grant an opportunity of being heard to the appellant and to consider the evidence on record or any other evidence which the assessee may choose to file at the time of hearing of the matter. With the aforesaid observation, we allow the appeal preferred by the assessee for statistical purposes.

ITA No.1015/Del/2020 for A.Y. 2016-17:

9. In view of the identical facts exist in ITA No.1015/Del/2020 for A.Y. 2016-17, the order passed hereinabove shall apply mutatis mutandis.

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10. In the result appeals of the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on 28/06/2024

Sd/-
(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated 28/06/2024

*Priti Yadav, Sr.PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI