

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.628/Del/2024
Assessment Year: 2014-15

Shakuntam Apparels Pvt. Ltd., Vs ACIT,
J-91, Rajouri Garden, Circle 77(1),
New Delhi – 110 027. Delhi.

PAN: DELS32475C

(Appellant)

(Respondent)

Assessee by : Shri J.B. Agarwal, CA
Revenue by : Shri Ravi Kant Choudhary, Sr. DR

Date of Hearing : 12.06.2024
Date of Pronouncement : 27.06.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 18.12.2023 of the Commissioner of Income Tax (Appeals), Prayagraj (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.NFAC/2013-14/10040179 arising out of the appeal before it against the order dated 08.03.2021 passed u/s 201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the ACIT, Circle-77(1), Delhi (hereinafter referred to as the Ld. AO).

2. The assessee is engaged in the business of trading of garments and a TDS survey of Ambience group was held on 12.02.2018 as a consequence of which proceedings u/s 201(1) and 201(1A) were initiated in case of the assessee and the AO held that maintenance charges paid to Ambience group for commercial space taken on rent was in the nature of rent and, accordingly, raised the demand holding that less TDS @2% was deducted as against 10% on payment made for common area maintenance. This has been upheld by CIT(A) against which the assessee is in appeal before us.

3. In the course of hearing, the ld. counsel appearing for the assessee has submitted that the AO himself in AY 2015-16 assessment order dated 23.03.2022 has accepted the plea of the assessee relying the judgement of the Hon'ble Supreme Court in the case of *Hindustan Coca Cold Beverages Pvt. Ltd. vs. CIT (2007) 293 ITR 226 (SC)*. The ld. AR has submitted that certificate of the Accountant under first proviso to sub-section (1) of Section 201 of the Act for certifying the furnishing of return of income, payment of tax, etc., by the payee could not be filed for which an additional evidence application is being filed. The ld. AR has submitted that due to Covid protocols this certificate could not be filed at the time of assessment.

4. The ld. DR has although defended the order of the ld. tax authorities below, but we are of the considered view that as there is no change in the terms

and conditions of the agreement which has been relied by the AO in regard to F.Y. 2014-15, relevant to AY 2015-16 vide order dated 23.03.2022, the principles of rule of consistency require the assessee to be given an opportunity to satisfy the AO on the basis of the additional evidence in the form of certificate dated 28.03.2021 issued by the Accountant under first proviso to sub-section (1) of section 201 of the Act.

5. Thus, admitting the additional evidence of the assessee, the impugned assessment order is set aside and the issue on merits is restored to the files of the AO to consider the Accountant's report prepared under first proviso to sub-section (1) of Section 201 of the Act and after giving the assessee further opportunity of hearing, pass the order afresh.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.06.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 27th June, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi