

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES," B-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA. No. 501/JPR/2024  
निर्धारण वर्ष / Assessment Year : 2015-16

Shri Baba Mohan Ram Kali Kholi Wale Milakapur Gurjar Tapukara, Tijara, Alwar.	बनाम Vs.	CIT(TDS), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAJTS1719H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri P.C. Parwal (C.A.)  
राजस्व की ओरसे / Revenue by: Shri Ajey Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 27/06/2024  
उदघोषणा की तारीख / Date of Pronouncement: 28/06/2024

आदेश / ORDER

PER: NARINDER KUMAR, Judicial Member

Assessee-appellant herein-is feeling dissatisfied with the order dated 22.03.2024. Impugned order is by Learned CIT(TDS), passed u/s 263 of the Income Tax Act (hereinafter referred to as the "Act").

Matter pertains to the Financial Year 2014-15.

Vide impugned order, an order u/s 201(1)/201(1A) of the Act passed by the Assessing Officer-ITO(TDS), Alwar, has been set aside. The order

set aside, pertained to certain TDS deductions, which according to the Assessing Officer, were not made by the assessee while making payments.

2. While passing impugned order, certain directions have been issued thereunder to the Assessing Officer for decision afresh.

3. As per record, after conducting enquiries u/s 133(6) of the Act , in respect of certain payments made by the assessee to certain persons, the Assessing Officer, vide order 29.12.2021, was of the view that the assessee was in default, due to violation of provisions of Sec. 201(1)/201(1A) of the Act.

Accordingly, the Assessing Officer raised demand of Rs. 5,560/-, finding that the assessee had failed to deduct TDS at the prescribed rate, on certain payments.

4. As per the order, set aside by Ld. CIT(TDS), TDS was required to be deducted as regards payment of Rs. 1,32,000/- made on account of *Mela Bhandara* expenses; as regards payments of Rs. 62,300/- made to Smt. Babita on account of *Mela Bhandara expenses*; and payment of Rs. 86,575/- made to Sh. Ravatti Raman Gupta, on account of *Mela Mandir* security , during the financial year 2014-15.

5. It may also be mentioned here that regarding other payments of Rs. 8,28,771/- made towards TSS security expenses, the Assessing Officer

held, vide same order, that the assessee could not be deemed to be assessee in default for non deduction of TDS. He so held giving reasons, recorded therein.

6. Record reveals that Learned CIT(TDS) initiated proceedings u/s 263 of the Act. Ld. CIT(TDS) of the view that the assessment order dated 29.12.2021 was erroneous in so far as it was prejudicial to the interest of the revenue, particularly, when viewed having regard to Explanation 2 of Section 263 of the Act.

7. That is why, the appellant is before this Appellate Tribunal.

8. Arguments heard. File perused.

9. Assessee is a public trust registered under Rajasthan Public Trust Act, 1959. On its behalf, it has been submitted that the trustees of the said trust are heads of 8 families, which are descendants of Shri Lalu Bhagat, and that these heads are managing the trust.

Reference has been made to the scheme framed and approved by Learned District Judge, Jaipur, vide order dated 25.08.2005.

As per said scheme, the trustees have a right to receive 75% of the total collection from 'DanPatra' (donation box), whereas balance 25% of said collection is required to be spent on managing of dharamshala and temple, in addition to other development work.

The contention raised on behalf of the assessee is that when the Assessing Officer passed order dated 29.12.2021, after conducting enquiry and verifying documents submitted by the assessee, it cannot be said that the said order was erroneous or prejudicial to the interest of the revenue.

Further, it has been contended that this is a case where the Learned CIT(TDS) has put forth his view, which is different from the view of the Assessing Officer, and that in view of well settled law merely because of difference in opinion of the two authorities, assessment order that came to be passed after conducting enquiry regarding the issues raised, cannot be termed to be erroneous or prejudicial to the interest of the revenue.

In the written submissions presented by Ld. AR for the assessee only relevant paras from the decision in **Sir Dorabji Tata Trust vs. DCIT(E)**, 188 ITD 38 dated 28.12.2020 (Mum. Trib.), and certain other decisions on the issue, have been extracted for ready reference.

10. On the other hand, Id. DR for the department has urged for dismissal of this appeal, while submitting that he stands by the reasons recorded by Learned CIT(TDS) in arriving at the conclusion that the order dated 29.12.2021 is erroneous and prejudicial to the interest of the revenue.

11. We have gone through the legal proposition on the issue, as per paras extracted from decisions referred to in the written submissions presented on behalf of the Assessee, and the material available on record.

12. To the written submissions, we find annexed copy of notice dated 15.12.2021 issued by the Assessing Officer(TDS) to the assessee trust, u/s 201(1)/201(1A) and U/s 206C(6)/206C(7) of the Act, relating to the financial year 2014-15.

As is available from the contents of the said notice dated 15.12.2021, after issuing of notices u/s 133(6) of the Act it transpired that various defects pointed out that the assessee was in default for non deduction of TDS/TCS and interest as regards following payments -

<i>Name of expenses</i>	<i>Amount paid</i>	<i>TDS</i>	<i>TDS deducted</i>	<i>Non deduction</i>
<i>Mela Mandir Security Expenses (u/s 194C) (Apka Electric &amp; Decoration centre TSS security expenses)</i>	<i>46,000/- 8,28,771/-</i>	<i>460/- 8287/-</i>	<i>Nil</i>	<i>8,747/-</i>
<i>Mela Tent Decoration expenses (194C) (Apka Electric &amp; Decoration centre)</i>	<i>4,17,885/-</i>	<i>4178/-</i>	<i>Nil</i>	<i>4,178/-</i>
<i>Mela Mandir Roshni expenses (194C) (Apka Electric &amp; Decoration centre)</i>	<i>4,92,940/-</i>	<i>4,929/-</i>	<i>Nil</i>	<i>4,929/-</i>
<i>Mela Expenses (Apka Electric &amp; Decoration centre)</i>	<i>25,000/-</i>	<i>250/-</i>	<i>Nil</i>	<i>250/-</i>
<i>Mela Bhandara Expenses (194C) Dharamveer S/o Hukum Singh Babita &amp; Manoj Swami</i>	<i>132000/- 62,300/-</i>	<i>1320 623/-</i>	<i>Nil</i>	<i>1,943/-</i>

Accordingly, for the purpose of verification, the assessee was directed to provide details regarding said payments made to the trustees,

and reply was sought from the assessee, in addition to production of detailed Ledger Account relating to the above said transactions.

Order dated 29.12.2021 reveals that the assessee furnished parawise reply to the notice.

The Assessing Officer considered the response and the material available. It was thereafter that the Assessing Officer passed the order holding the assessee in default, and thereby raised a demand of only Rs. 5,560/- i.e. Rs. 2,809/-, u/s 201(1), and Rs. 2,753/- i.e. U/s 201(1A) of the Act, towards interest.

13. Learned CIT(TDS) took up the matter, and commenced proceedings u/s 263 of the Act, by issuing to the assessee a show cause notice dated 12.02.2024 calling upon to furnish response thereto.

The assessee submitted its response dated 25.02.2024.

In the impugned order, Learned CIT(TDS) has observed that he took into consideration the response submitted by the assessee and the decisions cited on its behalf.

Ld. CIT (TDS) also referred to certain decisions, which find mention in para 6.6 of impugned order, and ultimately, held that the order dated 29.12.2021 suffered from specific defects, and as such, the same was erroneous and prejudicial to the interest of the revenue. Consequently,

Learned CIT(TDS) directed the Assessing Officer to make necessary verification and examine in depth the issues noticed by him in the impugned order, in accordance with law, as regards the assessment year 2015-16, of course, after providing reasonable opportunity to the assessee.

14. Record reveals that before arriving at the abovesaid conclusion,, letter dt. 12.02.2024 was issued by Learned CIT(TDS), to the assessee, by way of show cause notice u/s 263 of the Act.

The allegation leveled therein was that the assessee had made certain payments to so-called trustees from its bank account, without deduction of tax under the Act; that the trustees had accounted for 25% receipt of total donations, received in Danpatra, in its Receipts and Payment Account, but the balance 75% of the amount was transferred to the 8 heads of the families of trustees ; that the assessee had failed to submit documentary or corroborative evidence as regards its claim that 75% did not form part of its Receipts and Payment Account.

Copy of reply dated 25.02.2024, submitted by the assessee to the aforesaid show cause notice, is also on record.

With the paper book, we also find attached copy of reply dated 22.12.2021 submitted by the assessee to the Assessing Officer, in reply to his notice.

15. As noticed above, while passing the order dated 29.12.2021, the Assessing Officer took into consideration the reply submitted by the assessee and only thereafter held the assessee to be in default. That is how, he had raised a demand only of Rs. 2,809/- only, u/s 201(1) of the Act, with interest of Rs. 2,753/-.

Record reveals that the Assessing Officer also took into consideration decision in ITA No. 789/JP/2009, by this Appellate Tribunal in respect of some other trust, namely, Shri Shyam Mandire Committee, Khatu Shyam Sikar, a trust, framed and also approved by the Learned District and Sessions Judge, Alwar, vide order dated 28.01.2005 and factum of diversion of the funds of that trust, as per order.

16. Herein, it is not in dispute that the assessee trust came to be constituted as per scheme, presented alongwith petition u/s 38 of Rajasthan Public Trust Act, 1959, and approved by the Learned District & Sessions Judge, Alwar on 25.08.2005. Copy of the scheme forms part of the said order dated 25.08.2005.

17. As is available from Clause-(Kha) of Serial No. 5 of the said scheme, 25% of the income of the trust was to be spent on Dharmshala and other development programmes and maintaining of the trust, whereas remaining

75% of its income, collected from Danpatras was to be equally divided amongst 8 heads of the trustee families.

The above referred to scheme must have been considered by the Assessing Officer (TDS).

18. As a result, it cannot be said that while passing the order, the Assessing Officer did not conduct proper enquiry or necessary verification. Rather, it can safely be said that the Assessing Officer applied his mind to the material collected during the enquiry and then arrived at a particular conclusion.

19. It is well settled that clause (a) of Explanation-2 to Section 263 of the Act shall apply, where the assessment order is passed without making enquiry or verification like a reasonable and prudent Officer, and further that the said provision cannot be resorted to by the higher authorities, here the Learned CIT(TDS), to set aside each and every order simply by observing that in his opinion, proper enquiry or verification was not made out, even though actually proper enquiry and verification is made by the Assessing Officer. In this regard, reference may be made to decisions in **Malabar Industrial Limited v. CIT**, 243 ITR 83, **CIT v. Raisons Industries Ltd.**, 288 ITR 322 (SC) and **Sir Dorabji Tata Trust's case**(supra) .

20. In view of the above discussion, we find that the impugned order deserves to be set aside, same having been passed by the Learned CIT(TDS) against well settled law, and even while, the Assessing Officer had conducted proper enquiry and verification, after having issued notice dated 15.11.2021.

### Result

21. Consequently, the appeal is allowed, and the impugned order u/s 263 of the Act passed by Ld. CIT(TDS) is set aside to the extent the order passed by the A.O.(TDS) was held to be erroneous and prejudicial to the interest of the Revenue.

Order pronounced in the open court on 28/06/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 28/06/2024

\*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Baba Mohan Ram Kali Kholi Wale, Alwar.
2. प्रत्यर्थी / The Respondent- CIT(TDS), Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 501/JPR/2024)

Sd/-

(नरेन्द्र कुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar