

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकरअपील सं./ ITA Nos.511 & 512/Chny/2024
(निर्धारणवर्ष / Assessment Years: 2016-2017 & 2017-2018)**

Photon Kathaas Production Private Limited, **Vs.** The Income Tax Officer,
No.19, Avenue Road, TDS, Ward 1(1)
Nungambakkam, Chennai.
Chennai 600 034.

[PAN: AAFCP 2805A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. Raghav Menon, Advocate
: Shri. ARV Srinivasan, IRS, Addl.CIT.

सुनवाई की तारीख/Date of Hearing : 11.07.2024
घोषणा की तारीख /Date of Pronouncement : 22.07.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

These two appeals being ITA Nos.511-512/Chny/2024 filed by the assessee are directed against separate orders of even date 29.12.2023 passed by the learned Commissioner of Income Tax (Appeals) ['CIT(A)' in short], Chennai-20 for the assessment years 2016-17 and 2017-18.

2. The assessee has raised common grounds of appeal in both the assessment years, therefore, for the sake of brevity grounds of appeal filed in ITA

No.511/Chny/2024 for the assessment year 2016-17 is being taken as lead case and our order thereon will mutatis mutandis apply to appeal for AY 2017-18 accordingly.

Grounds of appeal filed in ITA No.511-512/Chny/2024 are reproduced as under:-

Assessment Year:- 2016-2017

	<i>The order of the Learned Commissioner of Income Tax (Appeals), Chennai u/s.250 of the Income Tax Act, 1961 is opposed to law, facts and circumstances of the case</i>	--
2	<i>The Ld. CIT (Appeals) was not justified in holding that the appellant is to be considered as an 'assessee in default' under section 201(1) and in not quashing the interest charged by the Assessing Officer under section 201(1A).</i>	Rs.87,84,617/-
3	<i>The Learned CIT(Appeals) Ought to have appreciated the fact that the recipient has offered the entire income as part of their Total income and offered the said income to Tax.</i>	Rs.87,84,617/-
4	<i>The Learned CIT(Appeals) Ought to have appreciated the Fact that to certain parties whom the appellant has deducted TDS as disallowed the same expenditure in the subsequent Financial Year</i>	Rs.87,84,617/-
5	<i>For the aforesaid grounds and for other grounds to be raised at the time of hearing, the order of CIT(A) may be quashed and justice be rendered.</i>	N.A.
	<i>Total tax effect</i>	Rs.87,84,617/-

Assessment Year:- 2017-2018

1	<i>The order of the Learned Commissioner of Income Tax (Appeals), Chennai u/s.250 of the Income Tax Act, 1961 is opposed to law, facts and circumstances of the case</i>	--
2	<i>The Ld. CIT (Appeals) was not justified in holding that the appellant is to be considered as an 'assessee in default' under section 201(1) and in not quashing the interest charged by the Assessing Officer under section 201(1A).</i>	Rs.45,37,296/-
3	<i>The Learned CIT(Appeals) Ought to have appreciated the fact that the recipient has offered the entire income as part of their Total income and offered the said income to Tax.</i>	Rs.45,37,296/-

4	<i>The Learned CIT(Appeals) Ought to have appreciated the Fact that to certain parties whom the appellant has deducted TDS as disallowed the same expenditure in the subsequent Financial Year</i>	<i>Rs.45,37,296/-</i>
5	<i>For the aforesaid grounds and for other grounds to be raised at the time of hearing, the order of CIT(A) may be quashed and justice be rendered.</i>	<i>N.A.</i>
	<i>Total tax effect</i>	<i>Rs.45,37,296/-</i>

3. Brief facts of the case are that the Appellant, company is engaged in the business of production and distribution of feature films. During the course of TDS survey u/s 133(2A) on 11/10/2017, it was found that the assessee had TDS arrears for various financial years, which was deducted but not remitted to Government of India account. After a great persuasion from ITO TDS by letter dated 11/10/2017, 13/12/2017 and 01/06/2018 the appellant finally replied that it has not deducted TDS with respect to some of the items identified by the AO. It was also stated that the company could not remit TDS due to shortage of funds. The AO found from tax audit report filed for the A.Y 16-17 that TDS u/s 194J, 194C, 192 and 194I has been deducted to the extent of Rs 52,91,938/- but not remitted into Government account. Consequently, the AO treated the appellant as assessee in default to the extent of Rs 52,91,938/- u/s 201 and levied interest (from April 2015 to November 2018) Rs 34,92,679/- u/s 201(1A). Aggrieved with the order u/s 201/201(1A), the assessee filed an appeal before the Id. CIT(A). Despite several notices sent by the Id.CIT(A) appellant failed to appear before the CIT(A). However, finally appellant filed written submissions on 27.12.2023. Before, the Id.CIT(A), none appeared for

the appellant. The Id.CIT(A) on the basis of material on record upheld the order of AO. The Id.CIT(A) in its para 7.6 held as under:

“7.6 It is not sufficient if a claim is made, it is to be backed by sufficient evidence. In the present case, the appellant failed to back its claim by furnishing most basic details like names of payees, dates of payment of amount, their PAN numbers etc. These details were not furnished even before AO. During appeal proceedings, the appellant has not filed any copies of Form 26A to consider applicability of proviso to section 201 of IT Act”.

Now the assessee is in appeal before us.

4. Before us, the appellant has filed Petition to produce additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules 1963. Ld.Counsel further submitted that before both the lower authorities assessee was not adequately heard or given chance to produce relevant documents like invoices issued in the name of the appellant, Bank statement of appellant. Ld.DR of revenue vehemently opposed the admission of additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules 1963. Ld.DR further submitted that if the additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules 1963 is admitted then AO must be given chance to go through the such additional evidence and verify the same.

5. We have heard the rival submissions of the parties, perused the orders of the lower authorities and the petition to produce additional evidence under Rule 29 of the Income Tax Appellate Tribunal Rules 1963 filed by the assessee. We find that both the authorities below have not provided proper opportunity to assessee to represent and substantiate the case. Therefore, we are of considered view that the case requires fresh consideration by the AO. Hence, we accordingly set aside the

impugned order of Id.CIT(A) to the file of AO for de novo adjudication after affording proper opportunity of hearing to the assessee subject to cost of Rs.5000/- which shall be deposited by the assessee within 30 days from the date of receipt of this order to 'Tamil Nadu State Legal Services Authority' at Hon'ble High Court of Madras. The proof of the receipt will be furnished by the assessee to AO whose shall proceed for de novo adjudication. Ld.AO, before de novo adjudication will take into consideration all relevant documents / evidence filed by the assessee and will grand proper opportunity of hearing to the assessee. The assessee is also directed to appear before AO and substantiate its case failing which AO shall be at liberty to proceed with disposal of case according to law.

6. In the result, both these appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 22nd July, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated :22-07-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF