

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI  
**BEFORE SHRI NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

1. ITA No. 3896/Mum/2024 (A.Y.2010-11)
2. ITA No. 3897/Mum/2024 (A.Y.2011-12)
3. ITA No. 3898/Mum/2024 (A.Y.2012-13)
4. ITA No. 3899/Mum/2024 (A.Y.2013-14)
5. ITA No. 3900/Mum/2024 (A.Y.2014-15)
6. ITA No. 3923/Mum/2024 (A.Y.2015-16)
7. ITA No. 3901/Mum/2024 (A.Y.2016-17)
8. ITA No. 3902/Mum/2024 (A.Y.2017-18)
9. ITA No. 3903/Mum/2024 (A.Y.2018-19)
10. ITA No. 3904/Mum/2024 (A.Y.2020-21)
11. ITA No. 3905/Mum/2024 (A.Y.2021-22)
12. ITA No. 3906/Mum/2024 (A.Y.2022-23)

**Skyway RMC Plants Pvt. Ltd.**

217, Kartik Complex,  
New Link Road, Andheri (E),  
Mumbai - 400 053  
PAN: AAMCS9233Q

..... Appellant

Vs.

**OSD TDS Circle DCIT-TDS – Ward 2(2) (2),**

R. No. 311, Cumballa Hill MTNL,  
Building, Peddar Road,  
Mumbai, Maharashtra – 400 026

..... Respondent

Appellant by	:	None
Respondent by	:	Shri P. Suresh, Ld. DR
Date of hearing	:	16/09/2024
Date of pronouncement	:	19/09/2024

## **ORDER**

### **PER GAGAN GOYAL, A.M:**

These appeals by the assessee are directed against the order of National Faceless Appeal Centre (for short “NFAC”) Delhi dated 23.06.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short ‘the Act’) for A.Y. 2010-11 to 2022-23, respectively. The assessee has raised the following grounds of appeal in ITA No. 3896/Mum/2024 for A.Y. 2010-11 to 2022-23 respectively:

#### **1. THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION**

*In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, [‘Ld. CIT (A)’] is bad, illegal and without jurisdiction, as the same is framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with the law.*

#### **WITHOUT PREJUDICE TO THE ABOVE**

#### **2. NATURAL JUSTICE**

*2.1 The Ld. CIT (A) erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while framing the appellate order.*

*2.2 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as the same is framed in breach of the principles of Natural Justice.*

#### **3. EX-PARTE ORDER**

*3.1 The Ld. CIT (A) erred in passing the order ex- parte.*

*3.2 While doing so, the Ld. CIT (A) failed to appreciate that the non-attendance/non-reply was for the reasons not attributable to the Appellant/ beyond the control of the Appellant and not deliberate or intentional.*

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

**WITHOUT PREJUDICE TO THE ABOVE:**

**4. DISMISSAL AS NOT ADJUDICATED**

4.1 The Ld. CIT (A) erred in dismissing the appeal as not adjudicated upon, in absence of a copy of the order u/s. 201 of the Act.

4.2 It is submitted that in the facts and the circumstances of the case and in law, no such action was called for.

**WITHOUT PREJUDICE TO THE ABOVE:**

**5. NON-EXISTENT ORDER**

5.1 In the facts and circumstances of the case and in law, the Ld. CIT (A) erred in not cancelling the demand reflected merely on the basis of Default Summary, as such demand was not backed by any order u/s. 201 of the Act.

**WITHOUT PREJUDICE TO THE ABOVE:**

**6. ON MERITS**

6.1 It is submitted that, in the facts and circumstances of the case and in law, no order making the Appellant liable for tax/interest for alleged short deduction/short payment /late payment of tax deducted at source was called for.

6.2 in the facts and circumstances of the case, and in law, the order / intimation so passed, if any, is bad and illegal.

6.3 without prejudice to the above, in the alternative, assuming - but not admitting - that the Appellant was to be made liable for tax/ interest, the computation of the same is not in accordance with the law, is arbitrary and excessive.

**7. LIBERTY**

The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.

2. The brief facts of the case are that the assessee under appeal approached the Tribunal in the matter of demand raised u/s. 201 of the Act amounting to Rs. 20/- as short deduction of tax and Rs. 19,110/- as interest on late payment of TDS amount. It is observed vide para 5 of the Ld. CIT (A)'s order that date of service of notice of demand was 10.02.2020, but appeal before the Ld. CIT (A) was filed on 17.08.2020 which is belated in category and the same was condoned by the Ld. CIT (A) vide para 4 of his order. Thereafter as per para 3, following opportunities were given to the assessee to represent the matter as under:-

*"3. during the appellate proceedings, the following notices u/s. 250 of the Act were issued. The details of compliance/non-compliance to the notices are also tabulated below:*

<i>Sl. No.</i>	<i>Date of Notice</i>	<i>Date for compliance</i>	<i>Remarks</i>
<i>1</i>	<i>02-02-2021</i>	<i>17-02-2021</i>	<i>No response</i>
<i>2</i>	<i>17-11-2021</i>	<i>25-11-2021</i>	<i>No response</i>
<i>3</i>	<i>29-07-2022</i>	<i>08-08-2022</i>	<i>No response</i>
<i>4</i>	<i>10-10-2022</i>	<i>19-10-2022</i>	<i>No response</i>
<i>5</i>	<i>14-06-2023</i>	<i>22-06-2023</i>	<i>No response</i>

*As can be seen from the above table, five opportunities have been granted and the appellant has not even responded once. Last opportunity was granted to the appellant vide notice u/s 250 dated: 14-06-2023 for compliance on 22-06-2023 and it was specifically stated in this notice that this is the last hearing. In spite of that, the appellant has not complied. It is stated that no useful purpose would be served by again adjourning the case and therefore, the appeal is adjudicated on the basis of documents available on record."*

3. In addition to above, vide para 5 the Ld. CIT (A) has following observations which are technical in nature, but to be followed mandatorily as under:-

*“5.2 As can be seen from the above, the order under dispute is order u/s. 201 of the Act and the date of order under dispute is 10/02/2020. On perusal of the mandatory attachments which are absolutely required to be attached with the Form No. 35, it is seen that the appellant has attached the print out of default summary from the TRACES which is downloaded from the TDS, CPC Portal. Further, although order under dispute is stated as order u/s. 201 of the Act in column no. 2(a) above, there is no such order u/s. 201 of the Act attached as a mandatory attachment.*

*5.3 Order no. mentioned in column no 2(a) is 201 of the Act and the same is not attached as a mandatory attachment. Further, it is stated that as per Sec. 246A of the Act, print out of default summary downloaded from TRACES, TDS CPC Portal is not an appealable order.*

*5.4 Moreover, the date of order under dispute as well as the date of service of order is one and the same being 10-02-2020, whereas, no such order dated 10-02-2020 has been attached as mandatory attachment.*

*5.5 As can be seen from the above, as per Col. 2 (a) order number is 10 as well as Document Identification No. (DIN) is stated as '10'. At the outset, there is no such order number 10 and no such order containing the DIN No.10 is attached. Moreover, the appellant has simply mentioned '10' whereas DIN would normally have more digits/characters.*

*5.6 as per Rules, the appellant are mandatorily required to attach the order under dispute along with Form No.35 which has not been done in the case under consideration. Therefore, is also an internal contradiction between what is stated in Form No.35 and the mandatory requirements which is actually attached with the Form No. 35. Further print out of default summary from the TRACES which is downloaded from the TDS, CPC Portal is not an appealable order as per the provisions of Sec. 246A of the Act. Under these circumstances, the appeal cannot be adjudicated upon, as the order under dispute itself is not attached.”*

4. In view of the above facts, it is observed that the assessee neither filed the appealable order nor the notice of demand which are mandatory in nature to be filed alongwith Form No. 35 before the Ld. CIT (A). Notwithstanding this fact the assessee never responded to the notices of hearing issued by the Ld. CIT (A) which resulted in *ex-parte* order. As a matter of lenient view being taken by this Bench, we deem it fit to restore the matter back to the file of Ld. CIT (A) with a direction

to hear the matter afresh after giving the assessee a proper opportunity of being heard again. The assessee is directed to comply with the deficiency pointed out by the Ld. CIT (A) and cooperate in the appeal proceedings without fail and without seeking any adjournment. With above directions, grounds raised by the assessee are allowed for statistical purposes.

**5. In the net result, all the appeals filed by the assessee are allowed for statistical purposes.**

Order pronounced in the open court on 19<sup>th</sup> day of August, 2024.

Sd/-

(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 19/09/2024

*Dhananjay, Sr. PS*

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai