

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1394 to 1396/PUN/2024
निर्धारण वर्ष / Assessment Years : 2015-16, 2017-18 & 2018-19

Pudhari Publications Pvt. Ltd., 2318 C-Ward, Bhausingji Road, Pudhari Bhawan Karveer, Kolhapur- 416002. PAN : AADCP2453Q	Vs.	ITO (TDS), Kolhapur.
Appellant		Respondent

Assessee by : None (Written Submission)
Revenue by : Shri Arvind Desai
Date of hearing : 10.10.2024
Date of pronouncement : 27.11.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

The above captioned three appeals filed by the assessee are directed against the separate orders of Ld. Addl./JCIT(A)-4, Kolkata dated 02.05.2024 for the assessment years 2015-16, 2017-18 and 2018-19 respectively.

2. Since identical facts and common issues are involved in all the above captioned three appeals of the assessee, therefore, we proceed to dispose of the same by this common order.

3. First, we shall take up the appeal of the assessee in ITA No.1394/PUN/2024 for A.Y. 2015-16 for adjudication.

ITA No.1394/PUN/2024, A.Y. 2015-16 :

4. The appellant has raised the following grounds of appeal :-

- “1. *That on the facts and in the circumstances of the case and in law, the Ld. CIT-A erred in disposing of the appeal Ex-Parte in limini, without granting any opportunity of being heard, by treating the appeal as non-est on a purported premise that appeal reportedly suffers from non-curable defect (whereas there exists no such defect), which action being unlawful, unwarranted, unjustified, based on misconception and also against the principle of natural justice, is liable to be quashed and thereby the under reference appeal warrants admission.*
2. *The A.O. has erred in raising demand of Rs. 52,554/- u/s 201(1) for non-deduction of tax at source where in fact there is no liability for deduction of tax at source in this case which is the subject matter of the order appealed against.*
3. *The A.O. has erred in levying interest of Rs. 42,248/- u/s 201(1A) for failure to pay the amount of tax deducted at source. As there is no liability to deduct tax at source, there is no question of levying interest.*
4. *The A.O. has erred in initiating penalty proceedings u/s 271H for furnishing incorrect information in the statement required to be delivered under section 200(3) which has been disputed as above.*
5. *The assessee craves leave to amend, alter or delete any of the above grounds of appeal.*
6. *It is prayed that the above claims and allowances be allowed.”*

5. The facts of the case, in brief, are that the assessee is a private limited company engaged in the business of newspapers publication. The case of the assessee was taken for enquiry with the approval of the CIT(TDS), Pune, & required information were

called u/s 133(6) of the IT Act. On verification of all the information, it was noticed that the company made payments without deduction of tax at source to various contractors. The assessee company submitted before the Assessing Officer that it was not required to deduct TDS on the impugned contractor's payments. However, the Assessing Officer rejected their contentions and accordingly for the said default the demand was raised u/s 201(1) of Rs.52,554/- and interest u/s 201(1A) of Rs.42,248/- amounting in all to Rs.94,802/- for the period 01.10.2014 to 31.03.2015 i.e. for financial year 2014-15 relevant to the assessment year 2015-16.

6. In first appeal, Ld. Addl./JCIT(A)-4, Kolkata observed that the appeal is filed for the assessment year 2014-15 but the order u/s 201(1)/201(1A) dated 19.07.2022 against which the appeal is filed is passed for the assessment year 2015-16 and accordingly dismissed the appeal by observing as under :-

“E] Action by this Office:-

E1] A notice u/s. 250 of the Income-tax Act, 1961 was issued to the appellant vide DIN & Notice No: ITBA/APL/F/APL_1/2024 - 25/1063968820(1) on 08.04.2024 which is as under:-

“1. Please be informed that the Appeal is pending in e-Appeal Scheme dated 29/05/2023 duly notified in the Gazette of India vide CBDT's Notification No. 33/2023/F. No. 370142/10/2023-TPL.

1.1 It appears that the Appeal is filed for the A Y 2014-15, but the Order u/s 201(1)/ 201(1A) dated 19/07/2022 against which the Appeal

is filed is for A Y 2015-16. The Appellant may please explain the same and upload the copy of the order for A Y 2014-15.

2. In the Grounds of Appeal, the Appellant has claimed that no TDS was made from the Contractors where the total Contractual Payment for the whole year doesn't exceed the basic exemption limit of Rs 2,50,000/-. The Appellant wanted to state that as the Contractors' total income is not more than Rs 2,50,000/-, they were having no taxable income for which no TDS was made by the Appellant. It is seen that the Appellant has explained the same before the Ld A O and the Ld A O has explained with Section 194C.

2.1 The relevant part of Section 194C is as under:

“(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed thirty thousand rupees :

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds seventy-five thousand* rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.

[* Rs 1 lakh w e f 01/06/2016 as per Finance Act, 2016]

2.2 Here no such condition is there for the deductors to consider the total payment of Rs 2.5 lakhs in a year as the Contractor can receipt such contractual payment from different parties without the knowledge of a single deductor. If the Contractors are sure that they will not be liable to pay tax, they might collect the No Deduction Certificate from the Concerned TDS AOs. But without this certificate, there is no other option other than making TDS as the total payment for the F Y was above Rs 75,000/- to the Contractors.

2.3 The Appellant may please explain the above with supporting documents.

3. Any other document in support of the Grounds of Appeal, which will be considered before passing any order by this office.”

E2] In response, the appellant has furnished his submission dated 18/04/2024 as: “Clarification –

1. As regards Point No.1.1 of your ANNEXURE, we are enclosing herewith Form No.35 filed by us, wherein the F.Y. is correctly written as per order u/s 201(1) for the said F.Y. However, the system has wrongly generated A.Y. instead of F.Y. which is beyond our control. Therefore, your honour is requested to treat the A.Y. as F.Y. and submission / filing from our end is correct.

2. As regards, Point No.2, please refer our ground wise submission.”

Brief Facts of Case

The Appellant has furnished the detailed submission for A Y 2015-16 and at last stated as under:-

Considering the above facts and judicial precedence, your honour is requested cancel the levy of tax under section 201(1) of Rs. 52,554/- and Interest under section 201(1A) of Rs. 42,248/-.

F] Findings & Decision:-

Grounds No. 1 to 3:-

As all the Three Grounds are related to one another, the three grounds are adjudicated together. The submission of the Appellant has been carefully perused. I find that the proceedings u/s 201 was initiated for A Y 2015-16. Proceeding under each A Y is different. The Proceedings u/s 201 for A Y 2015-16 is independent. The Appellant has filed the Appeal for A Y 2014-15 against the Order and Demand for A Y 2015-16. The Copy of the Assessment Order clearly shows that the Demand is for A Y 2015-16. The Appellant in its reply as above in para E 2 has mentioned that due to system error the Appeal has been filed for a wrong Assessment Year. But the Appellant has pleaded to cancel the demand for A Y 2015-16, when no such Appeal is pending in this office for A Y 2015-16 in respect of the Appellant.

F1] It has been mentioned that any Appeal Order passed by this office for A Y 2014-15 is not applicable for A Y 2015-16. The Ld AO will not be able to give effect for A Y 2015-16, the A Y in which the Demand is raised, on an Appeal Order for A Y 2014-15. As the Order u/s 201 is passed for A Y 2015-16, the Appellant was required to file the Appeal for A Y 2015-16 against the Order u/s 201 for A Y 2015-16. This office has found that no such Appeal of the Appellant is there in the work list of this office for A Y 2015-16. Also, this office can't change the A Y of the Appeal from 2014-15 to 2015-16. The system doesn't allow the same. This is not a curable mistake. The Appellant has also paid the Appeal Fees for A Y 2015-16. In every proceeding in the Income Tax Department, the year mentioned is the Assessment Year. The Appellant claimed that it has mentioned the F Y but the system has treated it as A Y. The Appellant should have indicated the A Y as in the Order u/s 201(1) & 201(1A), the A Y is mentioned. So, the mistake done by the Appellant can't be changed by this office or any office. In view of the same, Grounds of Appeal in Grounds No. 1 to 3 are infructuous for A Y 2014-15 and as such DISMISSED.

However, if the Appellant wishes to file an Appeal for the A Y 2015-16, it may be filed with petition for condonation for delay with the facts as mentioned in this order.

Residual Ground:-

Here the appellant has prayed its right to add or modify any ground of appeal. I find that no ground of appeal has been added or modified. Hence, this ground is not required for adjudication and as such NOT ADJUDICATED.

In the result, the Appeal is DISMISSED being infructuous.”

7. It is this order against which the assessee is in appeal before this Tribunal.

8. In this case a written submission is filed by the assessee & it was specifically requested to decide the appeal on the basis of written submission & paper-book filed by the appellant-assessee. Accordingly, we proceed to decide the appeal on the basis of written submission filed by the assessee & after hearing LD DR.

8.1 It is the contention of appellant-assessee that the order passed by Ld. Addl./JCIT(A)-4, Kolkata is not justified. In the written submission it is submitted that the appeal was filed against the order passed u/s 201(1)/201(1A) order dated 19.07.2022 for financial year 2014-15 relevant to the assessment year 2015-16. It was further submitted that while online filing Form No.35 i.e. first appeal memo, it was clear cut mentioned that the appeal is filed for financial year 2014-15 and the order impugned against which the first appeal was filed is also related to financial year 2014-15. However, e-portal has assigned it as Assessment Year 2014-15

instead of Assessment Year 2015-16 and merely on this technical ground alone Ld. Addl./JCIT(A)-4, Kolkata has dismissed the appeal of the assessee. In the written submission it was submitted that it was beyond the control of the assessee to correct the above mistake made by e-portal. It has been submitted that the assessee has rightly mentioned financial year 2014-15 in the respective column of Form No.35 and in support of this contention copy of e-filing acknowledgement generated from e-filing portal is also produced before the Bench in the paper book. Under the above facts and circumstances, it was requested before the Bench to set-aside the order passed Ld. Addl./JCIT(A)-4, Kolkata and remand the matter back to the file of Ld. Addl./JCIT(A)-4, Kolkata with direction to treat the appeal as filed for the assessment year 2015-16 which is relevant to financial year 2014-15.

9. Ld. DR appearing for the Revenue relied on the orders passed by subordinate authorities & requested to confirm the same.

10. We have heard Ld. DR and perused the material available on record including paper book furnished by assessee. The only question that is to be answered by us is that whether Ld. Addl./JCIT(A)-4, Kolkata was justified in dismissing the appeal of the assessee merely on the ground of technical error which was

beyond the control of the assessee. A perusal of the acknowledgement receipt of income tax forms generated on e-filing portal regarding filing of Form No.35 makes it abundantly clear that the appellant has mentioned financial year 2014-15 in the memo of first appeal and the column of assessment year is blank. We therefore find force in the arguments of the appellant assessee that the assessee has not made any mistake and auto populated Assessment Year 2014-15 was generated by portal itself. It is the contention of appellant-assessee that under similar circumstances the Co-ordinate Bench of this Tribunal in the case of G-Trans Logistics (India) Pvt. Ltd. vs. ITO, in ITA No.398/Del/2020 order dated 09.11.2022 has allowed the appeal of the assessee by observing as under :-

“5. The Ld. CIT(A) dismissed the appeal just on the ground that in Form No.35, the section of assessment order mentioned is 144 instead of 143(3). In his opinion of Ld. CIT(A) this is an incurable defect. Ld. CIT(A) has not specified under which law, it is an incurable defect. On query in this regard, the Ld. DR has shown his inability to refer to any laws in this regard.

6. Be as it may in our considered opinion, when interest of substantial justice is pitted against technicalities, it is always justice that prevails. Accordingly, we remit this issue to the file of the Ld. CIT(A) to consider the issue and pass an order on the merits of this case after giving assessee the proper and requisite opportunity. The Ld. Counsel of the assessee has also undertaken to cooperate with the Ld. CIT(A).”

11. Considering the totality of the facts of the case and respectfully following the decision passed by the Co-ordinate Bench of this Tribunal in the case of G-Trans Logistics (India) Pvt. Ltd. (supra), we set-aside the order passed by Ld. Addl./JCIT(A)-4, Kolkata and remand the matter back to the file of Ld. Addl./JCIT(A)-4, Kolkata to decide the appeal afresh on merits of the case after treating the appeal as filed for the Assessment Year 2015-16 relevant to the financial year 2014-15. The assessee is also hereby directed to respond to the notices issued by Ld. Addl./JCIT(A)-4, Kolkata in this regard and produce the relevant documents/evidences in support of grounds of appeal, otherwise, Ld. Addl./JCIT(A)-4, Kolkata shall be at liberty to pass appropriate order as per law. Thus, the grounds of appeal are partly allowed.

12. In the result, the appeal filed by the assessee in ITA No.1394/PUN/2024 for A.Y. 2015-16 is allowed for statistical purposes.

ITA Nos.1395 & 1396/PUN/2024,
A.Ys. 2017-18 & 2018-19 :

13. Since the facts and issues involved in remaining two appeals of the assessee for the assessment years 2017-18 & 2018-19 are identical to the facts of the case for assessment year 2015-16,

therefore, our decision in ITA No.1394/PUN/2024 for A.Y. 2015-16 shall apply *mutatis mutandis* to remaining two appeals of the assessee in ITA Nos.1395 & 1396/PUN/2024 for A.Ys. 2017-18 & 2018-19. Accordingly, the remaining two appeals of the assessee in ITA Nos.1395 & 1396/PUN/2024 for A.Ys. 2017-18 & 2018-19 are allowed for statistical purposes.

14. To sum up, all the above captioned three appeals of the assessee are allowed for statistical purposes.

Order pronounced on this 27th day of November, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th November, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Addl./JCIT(A)-4, Kolkata
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.