

IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH", PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI SONJOY SARMA, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 91/Pat/2021
Assessment Year: 2014-15

I.T.A. No. 92/Pat/2021
Assessment Year: 2015-16

I.T.A. No. 93/Pat/2021
Assessment Year: 2016-17

I.T.A. No. 94/Pat/2021
Assessment Year: 2017-18

Shiv Shankar Singh Contract
Private Limited,

House of Shiv Shankar Singh,
Rajendra Nagar,
Gopalganj - 841428
[PAN: AAJCS3062Q]

..... **Appellant**

vs.

ITO(TDS),
Muzaffarpur

..... **Respondent**

Appearances by:

Assessee represented by : Shri Sanjeev Kr. Anwar, Advocate

Department represented by : Shri Ashwani Kr. Singal, JCIT

Date of concluding the hearing : 09.01.2025

Date of pronouncing the order : 14.01.2025

ORDER

PER BENCH

1. This is a batch of 4 appeals which are delayed by 39 days. For the sake of convenience, the condonation petition filed by the assessee for Assessment Year (AY) 2014-15 is extracted as under:

“1) That an appeal against the order passed under section 250 by NFAC, Delhi uploaded on 25/08/2021 is being filed today.

2) That as per the normal calculation the limitation prescribed under section 253(3) of Sixty days has expired. However, as decided by Hon'ble Supreme Court in the case Re: Cognizance for Extension of Limitation, in the order dated 23/09/2021, the period till 02/10/2021 shall stand excluded and a limitation period of 90 days would be available.

3) That in view of the above order of Hon'ble Supreme Court, the appeal is being filed well within the period of limitation and it is humbly prayed the delay may kindly be condoned.

It is, therefore, humbly prayed that the appeal may kindly be admitted for hearing on merits.”

Since the reasons given for delay are same for all the four appeals hence, ITA No. 91/Pat/2021 (AY 2014-15) is taken as the lead case and a decision is taken to condone the said delay and admit the four appeals for adjudication.

1.1 This is a batch of four appeals passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, u/s 250 of the Income Tax Act, 1961 (hereafter 'the Act') as under:

AY 2014-15 order dated 25.08.2021

AY 2015-16 order dated 25.08.2021

AY 2016-17 order dated 25.08.2021

AY 2017-18 order dated 25.08.2021

2. In this case it may be mentioned that the point of contention (taking AY 2014-15 as the lead case) in all the four appeals is alleged TDS liability on the assessee for making payments to labourers. The Ld. AO has recorded that during the course of survey u/s 133A of the Act on 25.10.2018, the assessee was asked to produce details of payments of labour charges. Admittedly, adequate details were not produced and the Ld. AO proceeded to hold the assessee to be in default for not deducting tax at source u/s 194C of the Act.

2.1 Aggrieved with this action, the assessee approached the Ld. CIT(A), whereby he did not get any relief. Some relevant portions from the order for AY 2014-15 are extracted as under:

“One more observation is pertinent to make here. The document like muster roll is a primary document. It is indeed surprising that this document was not found present at the survey premises, which were the business premises of the assessee. It is also observed that even if the same was not present on survey/business premises, but was lying elsewhere, the assessee could produce it before survey team within a reasonable time. Further, after the survey proceedings had been concluded and AO issued show cause on very next day, the assessee could utilise the opportunity to produce it before AO. Not being able to produce before AO, during entire proceedings before AO, but produced for the very first time during these appellate proceedings, itself casts serious doubts upon the genuineness of such an document.

Under these circumstances, the additional evidence produced for the very first time these appellate proceedings, ie. the muster roll, is hereby rejected and not admitted. It has already been stated above that assessee has not filed this evidence through a formal application under rule 46A, still the admissibility of the evidence has been discussed, as if the evidence was filed through a formal application under rule 46A, in view of principles of natural justice.

6.8. In the written submissions, the assessee has also claimed that at the time of survey, the assessee had submitted that that he conducts his contract works through direct Labour payment basis and not through Labour Contractor. On the basis of said claim, the assessee has argued that the assessee was liable to deduct TDS only if he would have engaged a Labour contractor/ Labour supplier for doing the labour works,

but since he has not engaged any labour contractor, rather he has conducted his contract work through directly paying to labour persons, he was not liable to deduct TDS. However, before AO neither any such argument was ever made, nor any supporting documents were submitted before AO to substantiate such claim. So much so, that before AO even the documents called by AO could not be furnished, as has already been elaborately discussed above.

Further, as regard the assessee's claim made in the written submissions that at the time of survey, the assessee had submitted that he conducts his contract works through direct Labour payment basis and not through Labour Contractor, it is observed that no such so called copy of the statement recorded if any, from the assessee, at the time of survey, has been uploaded by the assessee. Even in the AO's order, there is no reference to any such statement. In all likelihood, even if assessee's version is to be believed that he made any such statement at the time of survey, either it may have been just an oral statement, but not part of any record. Assessee, on his part, has not even cared to mention in the written submissions, whether any such statement was recorded from him in writing, and if so, why he did not try to obtain the copy of such statement from AO. As already stated, in the AO's order, there is no reference to any such statement. Consequently, the assessee's claim made in the written submissions that at the time of survey, the assessee had submitted that he conducts his contract works through direct Labour payment basis and not through Labour Contractor is devoid of any merit and such claim is liable to be dismissed and is dismissed.

6.9. In view of above, the AO's order is upheld in its entirety, as in the absence of vital documents which assessee failed to produce, the AO has correctly held that labour payment and wages made by the assessee was the labour contract payment in terms of section 194C, and therefore such a payment required deduction of TDS while making such payment. However, since the assessee had failed to produce any evidence of deduction or explanation as to why the same is not deductible the AO has correctly held that the assessee is in default u/s 201(1)/ 1A of the I.T. Act. in respect of such payments. Accordingly, the Liability of TDS u/s. 201(1) and 201(1A), computed by the AO in the order, whose quantum is not under dispute, is confirmed. All the Grounds of appeal stands dismissed.

7. In the result the appeal is *DISMISSED.*”

3. Further, aggrieved with this action of the Ld. CIT(A), the assessee has approached the ITAT through the following grounds of appeal which are retrospective of other years also.

“1) For that the order of the authorities below are bad in law and fact.

2) For that no incriminating material were found during the course of survey that the appellant was making labour payments through contractors and as such the short deduction of tax calculated by the learned A.O. is based on presumption and surmises and not sustainable.

3) For that it was stated that the labour payments were made directly to the labour and as such question of TDS does not arise. This important fact of the case was totally ignored by the learned A.O.

4) For that the contract work is continuous one and runs in several years. When the fact of direct payment to labourers was accepted in the first and last year out of the six years for which proceeding was initiated, the payment made for this year as well should not have been presumed to have been made to labour contractors.

5) For that without prejudice to the grounds taken as above it is humbly submitted that the master roll uploaded in appellate proceeding should have been considered and accepted for deciding the appeal by the learned CIT(A).

6) For that the appellant was prevented by sufficient cause to produce the evidence with regard to direct payment to labourers, as the records were old and have to be collected from different site offices of the appellant.

7) For that the efforts of the assessee is proved from the fact that the master roll for F/y 2012-13 and 2017-18 were produced and accepted by the learned A.O. for almost the total payments made on account of wages.

8) For that the appearances of the appellant is also proved from the orders passed for F/y 2012-13 and 2017-18 on the date fixed for show cause, as mentioned in the order passed for these years. The learned A.O. should have given further opportunity to produce the evidences before passing of the order. It is proved that the appellant was prevented by sufficient cause and covered under the four situations/conditions mentioned in rule 46A. Under the circumstances, it is humbly prayed that one more opportunity may kindly be afforded to the appellant to produce the evidence before the learned A.O.

9) For that the interest charged on short deduction of tax u/s 201(1A) is invalid and illegal and has been charged without affording in any opportunity of hearing.

10) For that, in any view, the interest u/s 201(1A) charged is high and excessive.

11) For that considering the totality of facts and circumstances of the case, it would be found that the order was passed by the learned A.O. without any adverse material on record and the learned CIT(A) should not have rejected the additional evidences filed on the basis of rule 46A.

12) For that other ground, if any, would be urged at the time of hearing.”

3.1 Right at the outset, the Ld. AR averred that the assessee makes direct payment to labourers and does not route such outgoings through any sub-contractor. Accordingly, there was no liability for TDS u/s 194C of the Act. The Ld. AR also informed that due to some reasons, the muster rolls could not be presented before the Ld. AO and the Ld. CIT(A) was not inclined to entertain new evidence before him. He further informed that for FY 2012-13 and 2017-18 corresponding to AYs 2013-14 and 20185-19 the muster rolls were produced before the Ld. AO and on that account, the assessee was not held to be in default. The Ld. AR placed on record a brief synopsis of the issue as under:

<i>F/Y</i>	<i>Muster Roll Presented Before A.O.</i>	<i>Muster Roll Presented before CIT(A)</i>	<i>Remarks</i>
2012-13	Accepted	-	-
2013-14	-	Not Accepted by CIT(A) as not produced before A.O.	To be collected from different sites where must roll are maintained, so produced before CIT(A).
2014-15	-	Not Accepted by CIT(A) as not produced before A.O.	To be collected from different sites where must roll are maintained, so produced before CIT(A).
2015-16	-	Not Accepted by CIT(A) as not produced before A.O.	To be collected from different sites where must roll are maintained, so produced before CIT(A).
2016-17	-	Not Accepted by CIT(A) as not produced before A.O.	To be collected from different sites where must roll are maintained, so produced before CIT(A).
2017-18	Accepted by A.O.	-	-

The director of the company categorically stated that direct payment to labourers are being made so TDS is not applicable (Page – 6 of Paper Book).

In F/Y- 2012-13 & 2017-18, muster roll were produced and accepted by the learned A.O. (Page 7 to 10 of Paper Book) and no material was found by survey team u/s 133A that payment to labourers was made through contractors.

The evidences should have been admitted as the appellant was prevented by sufficient cause in producing the same before A.O.

The delay is on account of COVID Pandemic and well within the limitation as condoned by Hon'ble Supreme Court.”

3.2 The Ld. DR supported the orders of the authorities below and stated that in the absence of muster roll, the Ld. AO was in no position to ascertain whether the payments were made directly to the labourers, or otherwise.

4. We have carefully considered the arguments from both the sides and also perused the documents before us. It is evident that the assessee was able to produce muster roll for AY 2013-14 and 2018-19. Since, the whole controversy revolves around the verification of muster roll hence, we deem it fit to remand the matter back to the file of Ld. AO for fresh appraisal of facts. The assessee would do well to produce the necessary documents before the Ld. AO to prove the bonafides of his claim.

5. The decision in ITA No. 91/Pat/2021 (AY 2014-15) shall mutatis mutandis to apply for AYs 2015-16, 2016-17 and 2017-18.

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

Order pronounced in the court on 14.01.2025

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 14.01.2025
AK, P.S.

Copy of the order forwarded to:

1. Shiv Shankar Singh Contract Private Limited
2. ITO(TDS), Muzaffarpur
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches