

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 410/JP/2023
निर्धारणवर्ष/AssessmentYear :2014-15

Rajasthan Tourism Development Corporation Ltd. 3 rd Floor, Paryatan Bhawan, KhasaKothim M.I. Road, Jaipur – 302 001	बनाम Vs.	The DCIT Circle-TDS Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: JPRR 00038 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Siddharth Ranka, Avocate &
Shri Saurabh Harsh, Advocate

राजस्व की ओरसे / Revenue by: Shri A.S. Nehra, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 26/09/2023

उदघोषणा की तारीख / Date of Pronouncement: 19/10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 22-03-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-15 wherein the assessee has raised the following grounds :

“1. That in law and in the facts and circumstances of the case, the ld. CIT(A) grossly erred in passing order without providing sufficient opportunity of being heard as no notice of hearing was served properly on the assessee.

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2. That in the facts and in circumstances of the case, the Id. CIT(A) grossly erred in confirming ex-parte assessment order passed by the AO.

3. That on the facts and in the circumstances of the case, the Id. Lower Authorities erred in considering the assessee as a defaulter under section 201(1) of the Act for not deducting TDS on the payments made to the third party and in creating an illegal demand u/s 201(1) Rs.64,25,432/- and u/s 201(1A) Rs.61,68,415) totaling to Rs. 1,25,93,846/- which is illegal and bad in law.’’

2.1 At the outset of the hearing, the Bench noted that there is delay of 44 days for which Shri Arun Kumar Tank, Executive Director (Finance) vide his letter dated 27-06-2023 prayed to condone the delay with following submissions.

‘‘The humble assessee appellant applicant respectfully prays for the condonation of delay in the filling of appeal for the following reason:

1. That the Id. CIT (Appeals) passed his order on 22.03.2023 and the same was uploaded on the income tax portal of the assessee appellant and copy of the same was received on the Email of the assessee.

2. That the assessee appellant is a public sector undertaking owned by the Government of Rajasthan for the purpose of promoting the Tourism of the State of Rajasthan.

3. That the impugned order dated 22.03.2023 was received on the email of the department and thereafter the matter referred to the Chartered Accountant for further advise. However, the concerned staff subsequently got transferred/retired and he did not intimate his successor about the order passed by the Id. CIT(Appeals) and due to which the department failed to discuss the next step to be taken with its Chartered Accountant.

4. That subsequently the impugned order came to the knowledge of the concerned staff of the assessee. Thereafter, the assessee appellant contacted Shri Siddharth Ranka, Advocate to handle further action against the order dated 22.03.2023. On his opinion, without any further delay, at the first opportunity, the assessee with the help of his counsel has filed this appeal before the Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur with delay.

5. An Affidavit duly sworn in this regard is also enclosed herewith.

With this background, we request your honour to take stock of the situation in totality, take a lenient and human approach towards the humble assessee appellant as the delay

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was not intentional and lack of understanding of the income tax proceedings. The assessee appellant applicant shall be more vigilant about his obligation in future.

That in these circumstances we request your honour's to kindly condone the delay and oblige.”

It is also noted that the ld. AR of the assessee has filed an affidavit of Shri Arun Kumar Tank, Executive Director (Finance) deposing the above facts in the affidavit.

2.2 On the other hand, the ld. DR objected to the condonation application of the assessee and submitted that the Court may decide the issue as deemed fit and proper in the circumstances of the present case.

2.3 After hearing both the parties and perusing the materials available on record, the Bench finds merit in the condonation application of the assessee and thus allowed the same in view of the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

3.1 At the threshold of the hearing, it is also noted that the ld. AR of the assessee has filed an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 contending therein as under:-

- 1) That assessee appellant is a Rajasthan State Government Undertaking and is engaged in the business of the Hospitality and Tourism.
- 2) That assessee appellant is registered in the State of Rajasthan running many hotels and other tourism places. That assessee appellant is running one train, i.e., Palace on Wheels which operates from Delhi.

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- 3) That the unit under which the Palace on Wheels is operate is having separate TAN Number and they are ducting the TDS under the different TAN Number, i.e., DELR08712E.
- 4) That Audit and Income Tax returns of the assessee appellant company is filed with PAN Number AAACR7643H and TAN of Rajasthan Unit is JPRR00038D.
- 5) That Id. Assessing Officer vide ex-parte order dated 30.03.2021 passed u/s201(1)/201(1A) of the Act for non-deduction of TDS on the payment made by the Palace on Wheels Unit which had already deducted the TDS with TAN Number DELR08712E and created demand of Rs 1,25,93,846/-
- 6) That in the proceeding years similar controversy arise with the assessee appellant wherein the demand was created against the assessee and same was dropped by the Id. Assessing Officer after considering the submission of the assessee.
- 7) That during the assessment proceeding, the assessee appellant submitted the copy of ITR and computation of Income, however, no documents were submits with regards to the deduction of TDS by Palace on Wheels Unit with TAN Number DELR08712E.
- 8) That during the appellate proceeding before the Id. CIT(A), all the notices of hearing were send through email. The concerned staff of the company who looked into the matter was transferred during that period and he did not intimate his successor regarding notices of hearing and order passed u/s 250 of the Act.
- 9) Therefore, we are filing the application U/R 29 of the ITAT Rules 1963 to taking following documents on record which is essential for deciding the dispute in the appeal.
- 10) That List of documents which we are filing u/r 29 of the ITAT Rules 1963 is as under:-
 - (i) Copies of returns filed in 24Q and 26Q In TAN No. DELR08712E for the F.Y. 2013-2014.
 - (ii) Copies of the challans for the payment of TDS In the F.Y. 2013-2014
 - (iii) Copies of ledger of TDS Account for the F.Y. 2013-2014.
 - (iv) Copy of Statement of Unit wise payments detalls for the F.Y. 2013- 2014 .
 - (v) Copies of order passed In the F.Y. 2014-2015 and 2015-2016 wherein same controversy arise and proceeding were dropped.

That aforesaid documents will go to the root of the matter and therefore, it is humbly requested to kindly take the documents on record and application may be allowed.”

3.2 On the other hand, the Id. DR opposed to the filing of additional evidence at this stage by the assessee which were to be submitted before the lower authorities.

3.3 The Bench considered the submissions of both the parties and found merit in the application of the assessee under Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963 to deliver justice and the same is accepted.

4.1 Apropos Ground No. 1 to 2 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

‘5.1 It is clear from the contents of Para ‘2’ above that the assessee has not deemed it essential to respond to a host of notices from the department. Since in this case, the assessee has not effectively pursued the appellate proceedings, it is important to devolve into judicial pronouncement on this issue which are elaborated below.

5.1.1..... to 5.15.....

5.1.6 In a decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. On 02.09.2011 (ITA no.798 of 2009), the Hon'ble High Court of Delhi had held that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise it would amount to give premium to the assessee for his negligence.

6. The facts of the case as noted above are that the appellant has not pursued the appeal despite being granted several opportunities. There is not even an acknowledgement of the notices sent. This is after the assessee has assailed the lack of opportunity arising out of covid restrictions at the time of assessment. The fact was that when senior officials were ordained to work even at the time of lockdown it defies logic how important taxation matters were not attended to. Be that is it may the verification process that culminated into the assessment under consideration had been initiated in September 2019 in the shape of a TDS survey u/s 133A (2A) of the Act. The assessee had sufficient time, prior to Covid, to streamline the papers ready and evidences/explanations that the Income Tax Department was verifying. During the appellate proceedings no details, documents or submissions have been provided to come to any conclusion other than those arrived at by the assessing officer in the assessment order. Being quite aware of these facts and the possible conclusions that may be drawn the assessee did not file any written submissions. That clearly connotes that the assessee deems itself to be on weak footing and thus remained incommunicado. The department in the absence of any pursuance in the matter of any sort even till the date of passing order is left with no choice but to finalize the case against the assessee. There is no evidence propounded in respect of what was claimed in the "Grounds of appeal" namely raising a demand of Rs. 1,25,93,846/- on account of non-deduction of TDS and interest on non-deduction of TDS. Merely stating, to the effect that the addition should not have been made, does not suffice. That has to be backed by suitable evidences and judicial precedents, if any, in support. This has not been done by the assessee. The AO's order is held to be reasonable. The AO'S order reveals that the assessee had debited expenses on which TDS is required to be deducted but the assessee has not deducted or incorrectly deducted the TDS. The assessee had also not got audited his books of accounts u/s 44AB of the Act. During appellate proceedings also, the assessee didn't put forth any documentary evidence or explanation in support of his claim. The evidences, that the assessee argues, should have been checked by the AO i.e. the TDS return etc, could have been provided during the present proceedings. The same,

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regrettably, has not been done. In absence of any submission, the treatment of the entity as an "assessee in default" by the AO is found to be correct and justified. It is clear from both the AO's order as also the assessee's disinclination to respond during the course of the present proceedings that the assessee doesn't deem it proper to respond to statutory notices. There is nothing to rebut what had been arrived at by the AO. The findings, in respect of the assessee, clearly require no intervention.”

4.2 During the course of hearing, it is noted that the ld. AR of the assessee relied on the submissions as made in the application under rule 29 of Income Tax (Appellate Tribunal) Rules, 1963 and further submitted the assessee is registered in the State of Rajasthan running many hotels and other tourism places and simultaneously the assessee is running one train i.e. *Palace on wheels* which operates from Delhi and its TAN No. DELR08712E. He further submitted that the audit and income tax returns of the assessee company is filed with PAN AAACR 7643H and TAN of Rajasthan Unit is JPRR 00038D. He further submitted that Rajasthan Unit did not deduct the TDS but the Delhi unit deposited the same into TAN DELR 08712E (Delhi Unit). Thus there is no escapement of TDS which can be got verified by the AO-TDS and drop the proceedings. He further submitted that the similar things happened in the case of the assessee for the assessment year 2014-15 and 2015-16 which was inspected by the AO-TDS and found the same deposited and thus accepted that the TDS is deposited by the assessee and also dropped the proceedings. Hence, the ld. AR of the assessee requested the Bench to kindly consider the same and restore it to the file of the AO for inspection of TDS

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deposition and grant relief accordingly after considering the additional evidence placed on record.

4.3 On the other hand, the ld. DR relied upon the order of the ld. CIT(A).

4.4 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee deductor is a State Government Company engaged in hostel business and running a **Palace On Wheel**. A TDS survey/ verification was conducted u/s 133A(2A) of the Act on 15-09-2016 at the premises of the assessee. During the course of assessment proceedings, the AO noted in para 5 of his order that *It is pertinent to mention here that sufficient time was afforded to the assessee to furnish the requisite details/ documents but it did not furnish the same. This shows that the assessee has nothing to say or explain with regard to the facts mentioned in show cause notice and treating it in default u/s 201(1)/201(A) of the Act. From these facts, it is crystal clear that assessee has nothing to say or explain in support of non-deduction of TDS on above interest payment and the assessee has failed to deduct TDS on the above interest expenses paid/ credited.* Hence the AO based on the reasons mentioned at pages 4 & 5 of the assessment order deemed the assessee in default u/s 201(1) for non-deduction of TDS on payment paid to its party and accordingly raised total demand of

Rs.1,25,93,846/-u/s 201(1) / 201(1A) of the Act which has been confirmed by the

Id. CIT(A) with following narration:

“..... In absence of any submission, the treatment of the entity as an "assessee in default" by the AO is found to be correct and justified. It is clear from both the AO's order as also the assessee's disinclination to respond during the course of the present proceedings that the assessee doesn't deem it proper to respond to statutory notices. There is nothing to rebut what had been arrived at by the AO. The findings, in respect of the assessee, clearly require no intervention.”

The Bench considered orders of the lower authorities including the submissions of the both the parties and found it appropriate to restore the issue to the file of the AO to look into the issue of deduction of TDS as the assessee Govt. Company has deducted the TDS from the parties and deposited the same in Delhi TAN which only require verification based on the additional evidence placed on record. It may be noteworthy to mention that similar issue was decided by the AO in favour the assessee company for the assessment year 2014-15 & 2015-16. Hence, the similar treatment should also be provided. In this view of the matter, the appeal of the assessee is restored to the file of the AO to decide it as indicated hereinabove and grant relief accordingly as per law.

5.1 Before parting, we may make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law.

6.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19 /10/2023.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19 /10/2023

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. RTDC, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Circle-TDS, Jaipur
3. आयकरआयुक्त / The Id CIT (
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.410/JPR/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar