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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Sep-20-2007

Judge : S K Yadav, R Panda

Appellant : J. Rajagopal

Respondent : ito

Judgement :

1. These cross appeals are preferred by the assessee as well as the revenue against the orders of the Commissioner (Appeals) pertaining to the assessment year 2002-03.

2. The facts in brief on issue in dispute with regard to non-granting of credit for TDS on salary and professional fees, borne out from the record are that the assessee joined the company M/s. Ways India Ltd. as CEO on 3-10-2000 and continued in this employment till January, 2002.

In the assessment year under appeal, i.e., 2002-03, the assessee's employer M/s. Ways India Ltd. deducted the Tax Deduction at Sources at source on the salary as under: Similarly, the assessee has received professional fees from the company Enro Discover India Ltd. as under: No Tax Deduction at Sources certificate was issued by the employer to the assessee. He however filed the return of income claiming the Tax Deduction at Sources deducted by the employer. The assessing officer did not allow the credit for Tax Deduction at Sources of Rs. 26,65,952 (Rs. 22,49,401 + 4,16,351) while issuing the intimation under Section 143(1).

3. The assessee preferred an appeal before the Commissioner (Appeals).

During the course of appellate proceedings, the Commissioner (Appeals) asked the assessee whether assessee is in possession of Tax Deduction at Sources certificate. The assessee replied in negative. On a question, why the Tax Deduction at Sources certificate was not issued by the two employers, the assessee could not offer any satisfactory explanation. He, however, through written submissions has stated that this company was accused off defrauding several co-operative banks and their promoters were also taken into custody.

4. It was contended on behalf of the assessee that the provisions of Section 205 of the Income Tax Act emphasis that once the tax has been deducted at source, the same amount cannot be recovered from the assessee again and, therefore, the entire demand created by the assessing officer is unjustified. In support of his contention, assessee placed reliance upon the judgment of the Guwahati High Court in the case of Assistant Commissioner v. Omprakash Guttani (2000) 242 ITR 6381(Gau) and Jt. CIT v. Saraswati Real Estate & Investments (P) Ltd. (IT Appeal No. 186 (Del) of 2000, dated 5-12-2003). The Commissioner (Appeals) re-examined the issue in the light of evidence filed before him.

Since the assessee could not produce the evidence of deduction of Tax Deduction at Sources except the bank statements and some payslips, the Commissioner (Appeals) could not grant relief to the assessee. He, however, admitted the additional ground and directed the assessing officer to verify from the Tax Deduction at Sources Wing to establish whether the payers actually deducted the tax and/or filed the Tax Deduction at Sources return or not. If yes, the assessing officer is directed to give full credit of the Tax Deduction at Sources made on the basis of such verification report from the Tax Deduction at Sources Wing of the Income-tax department. Commissioner (Appeals) in the alternative has directed the assessing officer that in case, the credit for Tax Deduction at Sources cannot be made, at least the corresponding receipts should be reduced so that only the net receipts credited in the bank account be treated as the gross receipts on which the assessee may agree to pay the taxes again, can be considered sympathetically.

He, however, clarified that such action can be taken only as a last alternative.

5. These findings of the Commissioner (Appeals) are objected by the assessee as well as the revenue. The assessee demanded full credit of Tax Deduction at Sources deducted on the basis of the bank statements and some payslips whereas the revenue objects the directions of the Commissioner (Appeals) that the net receipt credited in the bank account be treated as the gross receipt on which tax liability can be determined.

6. During the course of hearing, the learned Counsel for the assessee has invited our attention to Form No. 16 issued by his employer Ways India Ltd., the payslips for April to July, 2001 and the statement of account with ICICI Bank from 1-8-2001 to 31-8-2001. The statement of account of HDFC Bank was also filed in support of his contention that Tax Deduction at Sources was regularly deducted from the gross salary and the professional receipts and net amount was credited to the bank account. The learned Counsel for the assessee further contended that since it is clear from the documents on record that the net amount after deducting the Tax Deduction at Sources was regularly credited to the bank account, the credit of Tax Deduction at Sources deducted by the employer should be given to the assessee while computing Income-tax liability.

7. The learned Departmental Representative, on the other hand, has submitted that when the assessee has claimed the credit of Tax Deduction at Sources deducted on the gross receipt by the employers, the onus is upon him to prove these facts by placing the certificate from the employer or other evidence. From the bank statements, the amount credited to the assessee's account can only be proved but these entries could not establish the deduction of Tax Deduction at Sources by the employer at the time of payment. The Learned Departmental Representative further contended that the Commissioner (Appeals) has no jurisdiction to issue the directions to treat the credited amount in assessee's account as a gross receipts for the purpose of taxation.

8. Having heard the rival submissions and from the careful perusal of the records, we find that assessee has filed few payslips that is for the month of April to July, 2001 and from its perusal it appears that Tax Deduction at Sources was deducted

at the time of payment and the net amount shows in the payslip was credited to the bank account of the assessee. We have also examined Form No. 16 filed by the assessee and we find that the Tax Deduction at Sources deducted was paid in April to July, 2001. But the figures of deposit do not correlate with the Tax Deduction at Sources deducted as per the payslip. For example, Tax Deduction at Sources was deducted on payment of salary for the month of April 2001 at Rs. 3,06,000 but the Tax Deduction at Sources deposited was at Rs. 2,19,305. From the perusal of the bank statement and payslip, it appears to us that net payment was credited to the bank statements month after month i.e., up to August, 2001. But from the perusal of payslip and the bank statement an inferences can only be drawn that Tax Deduction at Sources might have been deducted on payment: of salary and the professional fees to the assessee. But it cannot be called to be a conclusive proof for grant of credit of the same. No doubt it is a settled position of law that once the Tax Deduction at Sources is deducted, it becomes the liability of the deductor and the assessee or the deductee cannot be fastened with the same liability. We have also carefully examined the order of the Commissioner (Appeals) and we find that the Commissioner (Appeals) having admitted the additional grounds have directed the assessing officer to verify from the Tax Deduction at Sources Wing to establish whether the payers actually deducted the tax and filed the Tax Deduction at Sources return or not. If yes, the assessing officer is directed to give full credit of the Tax Deduction at Sources made on the basis of such verification report from the Tax Deduction at Sources Wing of the Income-tax department. We do not find any error in the direction of the Commissioner (Appeals) under the given facts and circumstances of the case. Besides, this direction we also direct the assessing officer to make necessary verifications from the payers i.e.

employer of the assessee in this regard. If it is established that Tax Deduction at Sources was deducted, the full credit be given to the assessee and recovery be made from the employers in this regard according to the law as they are the defaulters and not the assessee.

We also find force in the direction of the Commissioner (Appeals) which is considered to be last resort as in those directions Commissioner (Appeal) has

directed the assessing officer to treat the net receipts credited in the bank as gross receipt and compute the tax liability thereon. Therefore, we confirm the order of the Commissioner (Appeals).

Accordingly, the appeal of the assessee as well as the revenue stand dismissed.

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