

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos.400&401/Rjt/2018
(Assessment Year: 2009-10)

Bharat Sanchar Nigam Ltd., C/o. D.R. Adhia, "Om Shri Padmalaya", Nr. Trikamayji Haweli, 16-Jagnath Plot, Opp. Imperial Hotel, Dr. Yagnik Road, Rajkot	Vs.	Deputy Commissioner of Income Tax, TDS, Ahmedabad
[PAN No.AABCB5576G]		
(Appellant)	..	(Respondent)

Appellant by :	None (Written Submission)
Respondent by:	Shri Ashish Kumar Pandey, Sr. DR

Date of Hearing	02.01.2024
Date of Pronouncement	05.01.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

These appeals have been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-8, (in short "Ld. CIT(A)"), Ahmedabad in Appeal No. CIT(A)-8/223/10818/16-17 vide order dated 11.09.2017 passed for Assessment Year 2009-10.

2. The assessee has taken the following grounds of appeals:-

ITA No. 400/Rjt/2018 (A.Y. 2009-10)

"1. The Ld. C.I.T. (A) has erred in law and facts in confirming actions of the Ld. A.O. treating the assessee as liable for making no TDS and interest charging thereon in respect of discount payment and passing order U/s. 201(1) / 201(1A) and raising demand of Rs. 5,03,229/- (2,56,749 + 2,46,479). The same needs cancellation.

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2. *The Ld. C.I.T. (A) has erred in law and facts in confirming actions of the Ld. A.O. treating the assessee as liable for making no TDS and in respect of discount payment and passing order U/s. 201(1) and raising demand of Rs. 2,56,749/-. The same needs cancellation.*
3. *The Ld. C.I.T. (A) has erred in law and facts in confirming actions of the Ld. A.O. treating the assessee as liable for making no TDS and interest charging thereon in respect of discount payment and passing order U/s. 201(1A) and raising demand of Rs. 2,46,479/-. The same needs cancellation.*
4. *The Ld. C.I.T. (A) has erred in law and facts in not accepting that no reasonable opportunity was provided to the appellant by the Ld. A.O. The order being bad in law needs cancellation.*
5. *The Ld. C.I.T. (A) has erred in law and facts in not accepting that the order passed by the Ld. A.O. is bad in law, illegal and unsustainable. The same needs cancellation.*
6. *The Ld. C.I.T. (A) has erred in law and facts in not accepting that the order passed by the Ld. A.O. is without statutory authority and in excess of jurisdiction. The same needs cancellation.*
7. *The Ld. C.I.T. (A) has erred in law and facts in not considering that the order passed by the Ld. A.O. is passed beyond statutory time limit as provided and hence needs cancellation being bad in law. "*
8. *Without prejudice, the Ld. C.I.T. (A) has erred in law and facts in not providing reasonable opportunity to the appellant. The order needs cancellation.*
9. *Taking into consideration over all legal, statutory and settled law beside factual aspects of the case the order passed by the Ld. A.O. ought to have been cancelled. The order needs cancellation.*
10. *The appellant craves leave to reserve his right to amend / alter / add and / or substitute any / all grounds of appeal before the actual hearing takes place."*

ITA No. 401/Rjt/2018(A.Y. 2009-10)

- “1. *The Ld. CIT(A) has erred in law and facts in rejecting the application of the assessee requesting rectification. The same needs rectification.*
2. *The Ld. CIT(A) has erred in law and facts in rejecting the application of the assessee requesting rectification without passing speaking order. The same needs rectification.*
3. *The Ld. CIT(A) has erred in law and facts in confirming tax liability without proper opportunity to the assessee. The same needs rectification.*

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4. *The Ld. CIT(A) has erred in law and facts in confirming tax liability in violation of principals of natural justice. The same needs rectification.*
5. *Without prejudice, the order confirmed by the Ld. CIT(A) is passed by the Ld. A.O. beyond limitations prescribes needs cancellation. The same needs rectification*
6. *Taking into consideration the legal, statutory, factual and administrative aspects, determination of TDS liability ought to have been rectified as per return of income without any modification, the same being in order.*
7. *Without prejudice, the order being bad in law deserves annulment.*
8. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at the time of assessment stage. The same needs rectification.*
9. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at the time of appellate stage. The same needs rectification.*
10. *Without prejudice, the determination is framed beyond statutory time limit. The same needs rectification.*
11. *The appellant craves leave to add/alter/amend and/or substitute any or all ground of appeal before the actual hearing takes place.”*

3. These are appeals filed by the assessee with respect to the issue of demand raised on the assessee for non-deduction of tax at source under Section 194H of the Act on sale of pre-paid vouchers and cards to various distributors at a rate lower than the face value. In ITA No. 400/Rjt/2018, the assessee is in appeal before us against the order passed by Ld. CIT(A) dismissing the appeal of the assessee against the order passed by the AO under Section 201(1)/201(1A) of the Act holding the assessee to be an “assessee in default” for non-deduction of tax at source. The second appeal in ITA No. 401/Rjt/2018 relates to order passed by Ld. CIT(A) dismissing the rectification application filed by the assessee contending that since the assessee has already deducted taxes at source on trade discounts under Section 194H of the Act, the assessee could not

be held to be an assessee in default under Section 200 of the Act. Since common issues for consideration are involved for both the years under consideration, both the appeals are being disposed of by way of a common order.

4. The brief facts of the case are the assessee is engaged in the business of telecom operations and providing telecom services. During the year under consideration, the assessee has sold pre-paid vouchers and cards of various face value to distributors at lower rate than its face value. The difference of the MRP and price charged from distribution is the trade discount passed on to the retailers. The Assessing Officer passed order under Section 201(1)/201(1A) of the Act holding that the assessee is an “assessee in default” on account of non-deduction of tax at source on the difference between the face value of prepaid vouchers and amounts actually received by the assessee on distribution of prepaid vouchers, by treating such difference as “commission” paid to the distributors. The Assessing Officer / TDS Officer passed an order holding that the assessee was liable to deduct TDS on such difference, being commission paid to distributors under Section 194H of the Act. The appeal of the assessee against the aforesaid order before Ld. CIT(A) was also dismissed by the Ld. CIT(A) by holding that the distributors was acting as an “agent” of the assessee and therefore, the assessee was liable to deduct taxes under Section 194H of the Act. Separately, the assessee also filed rectification application under Section 154 of the Act dated 09.07.2018 before the CIT(A)-8, Ahmedabad submitting that irrespective of treatment of trade discount as “commission” by the

Department, the assessee had duly deducted taxes at source on such trade discount / commission to its distributors and, accordingly, the assessee could not be held to be an “assessee in default” in the first instance, having deducted taxes at source on such alleged commission income. The aforesaid application was also dismissed by the Ld. CIT(A), against which the assessee is in appeal before us.

5. The limited issue for consideration before us is that the assessee has contended that it has made due compliance of TDS provisions and the assessee has deducted taxes at the appropriate rates at the time of giving trade discount / commission to its agents and, accordingly, the assessee could not be held to be an “assessee in default” in the first instance, since it has already deducted taxes at source at the appropriate rates. However, we observe that the Department has not analyzed this aspect / contention of the assessee that since the assessee has already deducted taxes at source at appropriate rates, there is no question of invoking the provisions of Section 201(1)/201(1A) since the assessee cannot be held to be an “assessee in default” for non-deduction of TDS, when assessee has already deducted taxes at source appropriate rates. Accordingly, in the interest of justice, the matter is being restored to the file of the Ld. CIT(A) for carrying out the necessary verification as to whether the assessee has deducted taxes at source on such discounts / commission given to its agents, as contended by the assessee. Notably, the assessee has also furnished tabular chart alongwith supporting documents to demonstrate that TDS at appropriate rates has been deducted on such trade discount / commission given to its agents.

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Accordingly, the matter is being restored to the file of Ld. CIT(A) for carrying out the necessary verification, as directed above.

6. In the result, both the appeals of the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on

05/01/2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 05/01/2024

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot