

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH,
VISAKHAPATNAM

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL
MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

I.T.A. No.92/Viz/2015
(Assessment Year :2013-14)

M/s. The Bheemunipatnam
Mutually Aided Cooperative
Building Society Ltd.,
Bheemunipatnam,
Visakhapatnam.
PAN: AAAAT 5114 H
(Appellant)

Vs. Income Tax Officer (TDS),
Ward-6(1),
Visakhapatnam.

(Respondent)

Appellant by
Respondent by

: Sri Y.A. Rao
: Sri Karthik Manickam, Sr. AR

Date of Hearing : 13/04/2022
Date of Pronouncement : 11/05/2022

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal is filed by the assessee against the orders of the
Ld. CIT(A)-2, Visakhapatnam in ITA No.1252/2013-14/ITO-W-
6(3) VSP/2014-15, Date 17/12/2014 passed U/s. 201(1)/201(1A)

r.w.s 250(6) of the Act for the AY 2013-14. The assessee has raised the following grounds of appeal:

1. *The appellant claimed before the CIT(A) that reasonable opportunity was not given by the AO before passing orders U/s. 201(1) & 201(1A) of the IT Act and CIT (A) also refused to grant further time to submit factual position.*
2. *The order of CIT(A), sustaining the action of the AO in raising demand U/s. 201 of the IT Act without proper appreciation of facts on record and without considering properly the written submissions made, is illegal.*
3. *The CIT(A) has erred in holding that provisions of section 206AA would be applicable in the case of an appellant who correctly deducted TDS U/s. 195A of the Act.*
4. *The appellant submits that CIT(A) has erred in concluding that the provisions of section 206AA override the other provisions of this Act, while the provisions of section 195A were meant for specific purpose.*
5. *The CIT(A) is not justified in concluding that provisions of section 194J of the IT Act would be applicable to payments made to Sri A. Venkateswarlu without taking into consideration of provisions of section 194J(1)(a) and 1(b) of the Act, since Sri A. Venkateswarlu is not a professional person / technical person and no technical services are involved.*
6. *The CIT(A) is not justified in upholding the action of the AO in determining the interest leviable U/s. 201(1A) for a period of 3 months for delay in remittance of TDS, while the delay is only....days.*
7. *The appellant submits that CIT (A) has erred in concluding that the provisions of section 206AA override the other provisions of the Act including provisions of section 195A of the Act.*
8. *The CIT(A) ought to have allowed the claim of appellant that provisions of section 194C would not be applicable to payments covered by service tax, claimed by M/s. Venus Ventures India Limited.*
9. *The CIT(A) is not justified in upholding the action of AO in levying interest U/s. 201(1A) for a period upto January 2014, while M/s. Venus Ventures India Ltd., filed their IT Return for AY 2013-14 before 30/09/2013 and no arrear of taxes are due and hence interest U/s. 201(1A) can be raised upto 31/09/2013 only.*
10. *For these and other grounds that may be urged at the time of hearing, the appellant prays for necessary relief.*

Additional Grounds of appeal:

1. *The petitioner / Appellant filed an appeal on 9/3/2015 before the Income Tax appellate Tribunal.*

2. *The petitioner / appellant has not raised specific grounds before the Commissioner of Income Tax (Appeals) against the determination of demands raised U/s. 201(1) and 201(1A) in the order dated 279/01/2014 passed by the ITO (TDS), Ward-6(3), Visakhapatnam.*
3. *The petitioner / appellant is now raising additional grounds, which may be considered as an alternative ground, without prejudice to the grounds already raised in the appeal.*
4. *The petitioner / appellant submits that the Additional Grounds raised now is purely a legal ground based on the facts available on record, which may kindly be admitted for adjudication.*

2. Brief facts of the case are that a survey operation was conducted on 21/11/2013 in the office premises of the assessee and during the survey proceedings on verification of the books of account short deduction of tax was noticed on the payment made to Sri A. Venkateswarlu for Rs. 2 Crs. While recording the statements from Sri K.V. Harinath, the President of the Society on 26/11/2013 it was specifically questioned whether the payee has furnished his PAN for deduction of tax at source from the payments made to him. In response, the President, Sri K.V. Harinath stated that the above payee did not furnish his PAN to the assessee. He also stated that e-TDS statement was filed without PAN of the assessee. The Assessing Officer therefore invoked the provisions of section 206AA and assessed the payment of professional fees to Sri A. Venkateswarlu at the tax rate of 20% as per the provisions of section 206AA of the Act and

raised a demand of Rs. 25,89,776/- including interest on short deduction of tax.

3. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-2 (I/c), Visakhapatnam. Before the Ld. CIT(A), the assessee contended that the payment is subjected to TDS U/s. 194C of the Act but it was wrongly deducted U/s. 194J of the Act. The assessee has also provided the TDS challan dated 20/03/2013 for Rs. 24,07,407/- being the tax deducted on Rs. 2 Crs paid to Sri A. Venkateswarlu towards professional charges. The assessee also submitted that the TDS has been grossed up as per the provisions of section 195A of the Act @ 10%. The Ld. CIT(A) noted in para 4.3.2 of his order that the assessee has not provided the PAN details of the payee Mr. A. Venkateswarlu even during the appellate proceedings. The Ld. CIT(A) therefore rejected the plea of the assessee and sustained the order of the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

4. The Ld. AR submitted that the assessee submitted documents for allotment of Government Land. The assessee entered into an oral agreement for liaisoning and coordination in connection with obtaining necessary approvals for the allotment

of land by the Government. The Ld. AR also pleaded that section 195A of the Act is applicable and accordingly the tax has been grossed up @ 10% and the tax deducted along with interest thereon was paid on 20/03/2013. He also submitted that where the provisions of section 195A are applicable, the provisions of section 206AA could not be invoked. The Ld. AR also referred to the decision of the Hon'ble Delhi High Court in the case of Danisco India Private Limited vs. Union of India & Ors in W.P.(C) No. 5908/2015, dated 5/2/2018. On the other hand, Ld. DR relied on the orders of the Authorities below. The Ld. DR also submitted that section 206AA overrides the other provisions of the Income Tax Act, 1961 since it starts with non-obstante clause.

5. We have heard both the sides and perused the materials available on record and the orders of the authorities below. We note that section 195A is applicable in cases where the tax being borne by the payer of the services and therefore the tax has to be deducted by grossing up amount payable in accordance with the rates prescribed under the Act. In other words, the tax is not deducted at source from the amount paid to the payee. We find merit in the argument of the Ld. DR that section 206AA overrides

the other provisions of the Income Tax Act, 1961. For the sake of convenience, section 206AA of the Act is reproduced below:

“206AA. (1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

- (i) at the rate specified in the relevant provision of this Act; or*
- (ii) at the rate or rates in force; or*
- (iii) at the rate of twenty per cent.”*

6. From the plain reading of section 206AA of the Act, it is clear that it overrides the other provisions of the Act. It also specifies that on any sum or income or amount for which a person is entitled to receive on which tax is deductible under Chapter XVIIIB of the Act, shall furnish his PAN to the person responsible for deducting such tax, failing which tax shall be deducted at the higher of the following rates viz.,

- (i) at the rate specified in the relevant provision of this Act;
or
- (ii) at the rate or rates in force; or
- (iii) at the rate of twenty per cent.

7. Chapter XVIIIB of the Act covers the deduction of tax at source which includes section 194J also. The contention of the Ld. AR that when the provisions of section 195A are applied, applying the provisions of section 206AA is not valid due to the fact that the provisions of section

195A is very clear that the income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement. The Ld. AR also admitted that there is no written agreement of arrangement with the payee Mr. A. Venkateswarlu. The amount paid by the payer is based on the oral agreement entered into with the payee. Secondly, section 206AA specifies higher of the three rates viz., (i) at the rate specified in the relevant provision of this Act; or (ii) at the rate or rates in force; or (iii) at the rate of twenty per cent. Section 206AA considers "at the rate or rates in force" as mentioned U/s. 195A of the Act and stipulates that out of the three rates, higher rate needs to be applied, in the absence of furnishing of PAN. In the instant case since the PAN of the payee is not available, the rate of 20% deduction shall be applicable for deducting the tax at source from the income credited to the payee. Further, the argument of the Ld. AR could not be accepted, as section 195A is only a grossing up section for the purpose of deduction of tax when it has to be borne by the deductor. The decision of the Hon'ble Delhi High Court relied on by the Ld. AR in the case of Danisco India Pvt Ltd (supra) is not relevant for the present case as it applies to taxation for non-residents in accordance with DTAA. Further, the contention of the Ld. AR could not be accepted on the ground that section 194C is applicable in lieu of section 194J due

to the fact that the nature of services to be provided by Sri A. Venkateswarlu is of professional nature such as liaising and coordination in connection with getting necessary approvals. Further, various Hon'ble High Courts and various Bench of the Tribunal held that human interaction is a necessary factor for the applicability of section 194J of the Act and in the present case Sri A. Venkateswarlu has to intervene and coordinate and liaise with the Government Authorities for allotment of land by the Government. Hence, the provisions of section 194C is not applicable in the instant case.

8. It is also to be noted that, failure to produce PAN, and in consequence, when the rate of tax is determined as per the provisions of section 206AA of the Act, the grossing up has to be done based on the tax as determined U/s. 206AA of the Act ie., 20%. The AO has rightly computed the tax u/s. 206AA of the Act and has determined the tax liability accordingly. In the light of the above discussion, we find that there is no infirmity in the order of the Ld. CIT(A) and therefore we uphold the order of the Ld. CIT(A) on this issue. Accordingly, Ground No. 1 to 7 raised by the assessee are dismissed.

9. With regard to Ground No.8 & 9 raised by the assessee, we find that the Ld. CIT(A) has remitted the matter back to the file of the Ld. AO

to determine if there is any short deduction for the payment made to M/s. Venus Ventures India Limited. The Ld. AR has not produced any consequential order passed by the Ld. AO in this regard. We therefore remit the matter back to the file of the Ld. AO to examine whether there is any short deduction in the payment made to M/s. Venus Ventures India Limited. Accordingly, Grounds No. 8 & 9 raised by the assessee are allowed for statistical purposes. Ground No.10 is general in nature and therefore needs no adjudication.

10. In the result, appeal of the assessee is partly allowed.

Pronounced in the open Court on the 11th May, 2022.

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Sd/-
(S.BALAKRISHNAN)
ACCOUNTANT MEMBER

Dated : 11.05.2022

Copy of the order forwarded to:-

1. ननधधाररती/ The Assessee – M/s. The Bheemunipatnam Mutually Aided Cooperative Building Society Ltd., Bheemunipatnam, Visakhapatnam C/o. M/s. Rowe & Pal Chartered Accountants, 14-36-1, Krishnanagar, Visakhapatnam.
2. रधजस्व/The Revenue – Income Tax Officer, Ward-6(1), Visakhapatnam.
3. The Commissioner of Income Tax (TDS), Vijayawada. (ii) Chief Commissioner of Income Tax, Visakhapatnam.

4. आयकर आयुक्त (अनीर)/The Commissioner of Income Tax (Appeals)-2,
Visakhapatnam.
5. वक़्मधगीय प्रतननधध, आयकर अनीरीय अधधकरण, वक़्मधखधननम/ DR, ITAT,
Visakhapatnam
- 6 .गधर्ा फ़धईर / Guard file

BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam