

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 418/AHD/2022

निर्धारणवर्ष/Asstt. Year: 2016-2017

S.B. Patel JV Laxmi Construction, F-16,Vardhaman Complex, Subhanpura, Vadodara-390023. PAN: ACZFS2478M	Vs.	A.C.I.T., Circle-1(3), Vadodara.
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(Applicant)		(Respondent)
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Assessee by :	Shri MukundBakshi, A.R
Revenueby :	Shri SanjayKumar, Sr. D.R

सुनवाईकीतारीख/**Date of Hearing** : **10/01/2023**

घोषणाकीतारीख/**Date of Pronouncement**: **18/01/2023**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals), Vadodara, dated 30/08/2022 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:

1. *The Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi has erred in law and in facts in confirming the action of the Ld.A.O in denying the claim of TDS of Rs.7.00 Lakhs deducted from the advance given as the income in relation thereto is not offered to tax during the year under consideration.*
2. *The Ld.CIT(A), NFAC, Delhi ought to have directed the grant of credit of the TDS of Rs.7.00 Lakhs in the year in which the income in relation to such TDS is offered to taxation.*
3. *The appellant craves liberty to add, amend, substitute, or withdraw any ground of appeal hereinabove contained.*

3. The only issue raised by the assessee is that the Ld.CIT(A), erred in not granting claim of TDS deducted from the advance received from the party in the year in which such advance was offered to tax.

4. Briefly stated facts are that the assessee in the present case is a partnership firm and engaged in the business of Civil Road construction. The assessee in the year under consideration has executed work contract of Rs.4,44,48,833/- which was offered to tax. However, the party has also given the advance of Rs.3.50 crores to the assessee which was shown as liability in the books of accounts. However, the party has deducted TDS on the entire amount i.e. works executed of Rs.4,44,48,833/- and advance of Rs.3.50 crores aggregating to Rs.7,94,48,833/- only. The amount of TDS of Rs. 7 lac was attributable on the advance received by the assessee for Rs.3.50 crores. The assessee while filing the return of income has taken the credit of TDS deducted on the advance amount of payment without offering corresponding income of Rs.3.50 crores in the return of income. Thus, the AO did not allow credit of TDS amount of Rs.7 lakhs.

5. Aggrieved assessee preferred an appeal before the learned CIT-A

6. The assessee before the Ld.CIT(A), submitted that the amount of Rs.3.50 crores has been taken into consideration as income in the Financial Year 2016-17. Therefore, the assessee prayed to allow the benefit of TDS credit in the Financial

Year 2016-17. However, the Ld.CIT(A), rejected the claim of the assessee by observing as under:

6.2 Though the appellant claims that the AO was not justified in making such assessment, he never put forth any reason for claiming so. Even during current appellant proceedings, the appellant never came forward with his explanation to the grounds mentioned by the appellant despite being offered number of opportunities through hearing notices issues by this office. The onus lies on the appellant to prove his case seeking relief in the appellate proceedings. On this front, appellant has failed miserably. In these circumstances, it is deemed fit not to interfere with the assessment made by the AO. Accordingly. The addition made by the AO is upheld and grounds raised by the appellant are dismissed.

7. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before me.

8. The learned AR before us agreed that the assessee is not eligible for the TDS credit of Rs.7 lakhs in the year under consideration as the advance received by it was not offered to tax. However, it was submitted that the amount of advance has been offered to tax in the Financial Year 2016-17 corresponding to AY 2017-18 and therefore the amount of TDS credit should be allowed in the AY 2017-18.

9. On the other hand the Ld. DR vehemently supported the order of the authorities below.

10. I have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute to the fact that the assessee has shown advance of Rs.3.50 crores in the year in respect of which TDS was deducted by the corresponding party. Admittedly, the assessee is not eligible of the amount of TDS deducted on the amount of advance received by the assessee as the corresponding income was not offered to tax. Up to this, there is no dispute raised by the assessee. The next controversy arises when the assessee can claim the benefit of TDS i.e. the year in which it offers corresponding income in the income tax return. As per the assessee, it has shown the advance money as

income in the Financial Year 2016-17 corresponding to 2017-18. In this regard, I note that sub-rule (3) to the rule 37BA of Income Tax Rule r.w.s. 199 of the Act provides that Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. Accordingly, I am of the view that the assessee should be allowed the benefit of TDS credit in the AY 2017-18 subject to the verification. Hence, the ground of appeal of the assessee is allowed in the terms of the above direction.

11. In the result, the appeal of the assessee is allowed subject to the direction stated above.

Order pronounced in the Court on 18/01/2023 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 18/01/2023

Manish/Tanmay

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आदेशकीप्रतिलिपिग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR,
ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad