

## ITAT remanded matter back to CIT(A) as he passed ex parte order without considering assessee's objection

**Summary – The Mumbai ITAT in a recent case of Baweja Movies (P.) Ltd., (the Assessee) held that Where Assessing Officer held assessee as assessee in default for failure to deduct tax at source and on appeal filed against impugned order assessee neither appeared before Commissioner (Appeals) nor filed any written submissions and Commissioner (Appeals) vide ex parte order upheld findings of Assessing Officer without considering assessee's objections filed before Assessing Officer, Commissioner (Appeals) was directed to decide appeal afresh in light of objections filed by assessee before Assessing Officer**

### Facts

- The assessee-company was engaged in the business of production of feature films for entertainment.
- The Assessing Officer carried out a survey under section 133A upon the assessee for TDS verification and having noticed that the assessee had made various payments without deduction of tax at source recorded the statement of the Director of the company, who stated that he had made various payments without deduction of tax at source and further admitted that TDS was not deducted on the above payments by mistake.
- Thereupon the Assessing Authority called upon the assessee to explain as to why it should not be treated as assessee in default for failure to deduct tax at source on various payments.
- The assessee *vide* letter dated 16-3-2011 submitted that the amount paid under the head 'processing charges' to a party was not settled because of various reasons and finally the same had been reversed in the subsequent financial year. Therefore, the question of deduction of tax at source on such payment did not arise. Similarly the assessee had filed explanation for other payments to argue that TDS was not applicable on these payments. The assessee also taken the plea that since the deductees had paid the tax on the impugned amount in their income tax returns, it could not be held as assessee in default.
- The Assessing Officer, after considering the submissions of the assessee and also taking into account the statement recorded during the course of survey coupled with the observations of the Tax Auditor in his report, held the assessee as assessee in default for failure to deduct tax at source on various payments and computed short deduction of tax under section 201(1) and interest under section 201(1A).
- On appeal filed against the assessment order, the assessee neither appeared before the Commissioner (Appeals) nor filed any written submissions. The Commissioner (Appeals), after considering the assessee's non co-operation for disposal of the appeal, passed *ex parte* order, wherein he had upheld the findings of the Assessing Officer in respect of non deduction of tax at source on payments made to various parties, short deduction of tax at source on payments made to a party and also failure to deposit tax deducted at source on certain payments. However,

considering the plea of the assessee in so far as payments made by deductees in their income tax returns directed the Assessing Officer to verify the claim of the assessee with necessary evidences.

- On second appeal:

**Held**

- The Commissioner (Appeals) has passed the *ex parte* order on the basis of the material available on record to uphold the findings of the Assessing Officer to treat the assessee as assessee in default under sections 201(1) and 201(1A). Although the assessee has not appeared before the Commissioner (Appeals) when number of opportunities were given, the Commissioner (Appeals) has not appraised the facts in the light of the written submissions filed by the assessee before the Assessing Officer *vide* its letter dated 16-3-2011. The Commissioner (Appeals) has simply upheld the findings of the Assessing Officer to treat the assessee as assessee in default under sections 201(1) and 201(1A) without considering the objections of the assessee with regard to non-applicability of TDS provisions on certain payments and also reversal of certain payments in subsequent financial years. Though there is failure on the part of the assessee in appearing before the Commissioner (Appeals) on various dates but the Commissioner (Appeals) could have considered the written submissions filed by the assessee in the light of the observations made by the Assessing Officer. Since the Commissioner (Appeals) has upheld the findings of the Assessing Officer without considering the objections filed by the assessee, the issue needs to be re-examined by the Commissioner (Appeals) in the light of the evidences filed by the assessee. Therefore, the Commissioner (Appeals) was to be directed to decide the issue afresh in the light of the objections filed by the assessee *vide* letter dated 16-11-2011.