

No benefit of reduced rate of TDS as projection of losses by assessee was questionable : HC

Summary – The High Court of Gujarat in a recent case of OPJ Trading (P.) Ltd., (the Assessee) held that where Assessing Officer on tentative re-working of assessee's accounts formed a prima facie opinion and suggested collection of tax at reduced rate of 1 per cent, but since projection of losses by assessee were found questionable, assessee's application for reduced rate of TDS could not be granted

Facts

- The assessee-company was engaged in trading and financing activities. It applied to the Assessing Officer for granting a certificate of exemption from deduction of tax at source.
- The Assessing Officer noted that loss of Rs. 47.96 crores on total interest receipt of Rs. 68.63 crores was shown in the projected profit and loss account, whereas in the previous year there was profit of Rs. 1.48 crore on total revenue of Rs. 65.23 crore. After being questioned about the genuineness/rational of huge losses, the assessee had submitted revised working reducing losses to Rs. 26.57 crores after showing higher income.
- The Assessing Officer on tentative re-working out of the assessee's accounts formed a prima facie opinion that the loss of the assessee would come to Rs. 26.57 crores. He, therefore, suggested collection of tax at reduced rate of 1 per cent. The Commissioner, however, expressed an opinion that the losses projected by the company did not appear to be genuine as the only business of the assessee was obtaining loans from outside parties and advancing loans/making investments in group companies at marginally higher rates than the charges payable. However, in this year assessee was showing huge payments to outside parties for loans arrangements but had not charged interest from group-company. Thus, the projected accounts were not acceptable and, hence, the application was to be rejected.
- On writ:

Held

- Sub-section(2) of section 197 provides that where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Assessing Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.
- Under sub-section (1) of section 197 it is an Assessing Officer who can entertain and decide an application of an assessee for either total exemption or permission for reduced tax deduction at source. The statute has used the language that if the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any low rates or no deduction of income-tax, as the case may be, the Assessing Officer shall on application made by the assessee in this behalf give to him such certificate as may be appropriate. It is undoubtedly true that the deduction of tax at source and depositing it with the Government revenue by the payee does not

decide the final tax liability of the recipient of the income which would be the subject matter of assessment of the return. If tax higher than what is actually due to be paid by the assessee to the department is recovered in form of TDS, the assessee can always claim refund of such excess tax. However, sub-section (1) of section 197 has been enacted to give relief to the assessee, whose income may not justify deduction of tax at full rate or no deduction altogether. Necessarily, therefore, the satisfaction of the Assessing Officer at that stage about the total income of the recipient justifying reduced collection of tax at source would be *prima facie* in nature.

- Two things emerge from the section 197; firstly, that such consideration cannot be devoid of exercise of sound discretionary powers and based on mere *ipse dixit* of the Assessing Officer. Secondly, that the power vests with the Assessing Officer.
- The Assessing Officer on tentative re-working out of the assessee's accounts formed a *prima facie* opinion that the loss of the assessee would come to Rs. 26.57 crores. He, therefore, suggested collection of tax at reduced rate of 1 per cent. The Commissioner, however, expressed an opinion that the losses projected by the assessee-company do not appear to be genuine. It was noted that such projections were questionable, since only business of the assessee was obtaining loans from the outside agencies and advancing loans or making investments in group companies and during the year under consideration large amount of interest were paid to outside parties on loans but similar charges were not collected from the group companies to whom advances were made.
- In view of above that it is the power and duty of the Assessing Officer to decide applications under section 197(1), the Court would have ordinarily requested the Assessing Officer to reconsider the issue and take a final decision without being guided or governed by any outside influence. The contention of the assessee that the notes put up by the Assessing Officer suggesting collection of tax at reduced rate of 1 per cent was expression of his final decision could not be accepted. The Assessing Officer, therefore, not having expressed his final decision, his opinion would not be binding to the department. In such background, as noted, ordinarily the Assessing Officer would have been expected to reconsider the entire issue also looking into the aspect of possible contrived losses. However, in facts of the present case, this procedure cannot be adopted. Firstly, the periodic interest would have been paid to the assessee by the payees during the year under consideration. The last date of filing return for the assessee as well as payees would be 30-9-2018, by which time the question of deducting correct tax at source and depositing in the Government revenue would have to be crystallized, failing which untold complications could arise, not only in case of assessee's assessment but also in relation to assessment of the payees. The Court does not wish to bring about such a flux or fluid situation. It would be impracticable if not impossible to expect the Assessing Officer to re-examine the issues and pass a fresh order citing brief reasons for either granting or not granting application of the assessee. Even otherwise, it is not clear if after the tax is actually deposited with the revenue, certificate of exemption can be issued. As against this, the assessee option for claiming refund of tax which may have been deducted and deposited in the Government revenue is not foreclosed.

- In facts of the instant case, therefore, the petition was to be dismissed.