

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.862 to 864/Mum/2014  
(निर्धारण वर्ष / Assessment Years : 2007-08 to 2009-10)

Income Tax Officer- (TDS)(OSD)Rg-2, Room No.704,7 <sup>th</sup> floor, K.G.Mittal Hospital Building, Charni Road, Mumbai-400002	<b>बनाम/</b> Vs.	M/s Maharashtra Pollution Control Board, Kalpataru Point Building, 2 <sup>nd</sup> floor, Opp. Cinemax Multiplex, Sion, Mumbai-400022.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No.902 to 906/Mum/2014  
(निर्धारण वर्ष / Assessment Years : 2005-06 to 2009-10)

M/s Maharashtra Pollution Control Board, Kalpataru Point Building, 2 <sup>nd</sup> floor,Opp. Cinemax Multiplex, Sion, Mumbai-400022	<b>बनाम/</b> Vs.	Income Tax Officer-(TDS) -2(2), Room No.707,7 <sup>th</sup> floor, K.G.Mittal Hospital Building, Charni Road, Mumbai-400002.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**Permanent Account No:AAALM1046L**

अपीलार्थी ओर से / Revenue by:	Shri G N Makwana
प्रत्यर्थी की ओर से/Respondent by	S/Shri Jeevraj P Jain and Bipin J Jain

सुनवाई की तारीख / Date of Hearing : 18.8.2016  
घोषणा की तारीख /Date of Pronouncement : 25.8.2016

**आदेश / O R D E R**

**Per RAJESH KUMAR, Accountant Member:**

These are Nine appeals filed by the respective parties. Appeals bearing  
ITA Nos. 862 to 864/Mum/2014 for the Assessment Years : 2007-08 to

2009-10 filed by the revenue and are directed against the three separate orders passed by Id.CIT(A)-13,Mumbai dated 28.11.2013 and 6.12.2013 respectively. Appeals bearing ITA Nos.902 to 906/Mum/2014 for the Assessment Years : 2005-06 to 2009-10 filed by the assessee and are directed against the five separate orders passed by the Id.CIT(A)-13, Mumbai dated 28.11.2013 and 6.12.2013 respectively. Since, the appeals before us relate to the same assessee, therefore, for the sake of convenience, they are clubbed together, heard together and disposed of in this consolidated order.

**First we shall take the appeal in ITA Nos. 862 to 864/Mum/2014 relating to the assessment year 2007-08 to 2009-10**

2. We find from the orders of authorities below that the tax effect involved in the above referred cases is below the monetary limit (Rs. 10,00,000/-) prescribed by the Central Board of Director Taxes(CBDT), vide its Circular No.21/2015(F.No.142/2007-ITJ (Pt.) dated 10th December, 2015.

3. Shri Jeevraj P Jain and Bipin J Jain Shah appeared on behalf of the assessee. The Departmental Representative (DR) on a query by the Bench fairly conceded that the tax effect involved in the above cases is less than Rs.10.00 lacs. Considering these facts, we dismiss these appeals holding it as not maintainable u/s. 268A of the Act.

**Now, we shall take the appeal bearing ITA No.902/Mum/2014 relating to assessment year 2005-06.**

4. Grounds of appeal raised in this appeal read as under:

*"1. Learned CIT(A) 13 erred in not giving speaking order with regards to calculating T.D.S. Demand on Deemed Service Tax added by Assessing Officer. Appellant prays that since Appellant maintain accounts on payment basis, hence question of T.DS on deemed service tax do not arise and Appellant prays for deletion of same*

*2. Learned CIT(A) 13 erred in directing Assessing Officer to delete T.D.5. liability on Deemed Service Tax after verifying bill that no service tax is charged in bill of M/s Concept Creator Appellant prays that Appellant follows cash (payment) system of Accounting hence there is no question of T.D.S. on Deemed service tax. Appellant prays for deleting same.*

*3. Learned CIT(A) 13 erred in directing Assessing Officer to delete T.D.S. liability on Deemed Service Tax after verifying bill that no service tax is charged in bill of M/s ARK Designs Pvt.Ltd. Appellant prays that Appellant follows cash (payment) system of Accounting hence there is no question of T.D.5. on Deemed service tax. Appellant prays for deleting same.*

*4. Learned CIT(A) 13 erred in confirming T.D.S. deduction u/s 194C for payment made to Urvi Communication for telecasting short film on Air pollution and Noise Pollution for benefit of public in General and not for individual benefit hence not liable to TDS. Appellant prays for deletion of Demand u/s 194C \_*

*5. Learned CIT (A) 13 erred in not giving speaking order for charging Interest u/s 201 up to date of order even though proof of filing Return were submitted to Assessing Officer. Appellant prays that Interest is chargeable up to date of filing Return by deductee where proof of filing Return by deductee are submitted.*

5. Brief facts of the case are that a survey was conducted on the assessee u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as Act) on 12.6.2008 and thereafter order under section 201(1) and 201(1A)

was passed on 31.3.2001 after allowing due opportunity of hearing to the assessee raising a demand of Rs.21,89,835/- for non deduction/short deduction and deposit of TDS and interest thereon. Thereafter the assessee filed a rectification application u/s 154 of the Act by which it was submitted that there some apparent mistakes ex-facie in the order passed u/s 201(1)/201(1A) of the Act, which were required to be rectified and accordingly, the order u/s 154 of the Act passed by the AO on 22.3.2012 rectifying the mistakes by which tax demand was reduced to Rs.3,56,394/-.

6. Ground Nos.1,2 and 3 raised by the assessee are against the confirmation of demand raised on account of non deduction of tax at source by disregarding the fact that the assessee was following the cash system of accounting and therefore the TDS was deducted and deposited on the basis of actual payment. During the course of survey proceedings, the AO noted that the assessee has made certain payments to M/s Concept Creator and M/s ARK Designs Pvt.Ltd on which the assessee was liable to pay service tax. However, the AO found that the assessee has deducted and deposited TDS on the amount of payment without taking into account services tax as was imposable on the said payments and accordingly calculated the short in fall TDS resulting from not considering the amount of service tax part on the said payment into account. Aggrieved by the order of the AO, the assessee carried the matter before the Id.CIT(A) who allowed the appeal of the assessee for statistical purposes by observing and holding as under :

*"4.2 Thus, appellant has submitted that the TDS liability reflected by AO is only on account of deemed service tax, as no service tax was charged by the party in their bill raised upon the appellant. I have considered the same and also gone through the order passed by AO subsequently u/s.154 of the Act. The balance demand of Rs.31,980/- remains there due to service tax assumed which appellant says that was not charged by M/s. Concept Creators. In principle I am in agreement with the appellant that if no service tax has been charged, there cannot be TDS on the said amount. In view of this, AO is directed to ask for copy of bill raised by M/s. Concept Creators and having satisfied himself that no service tax was charged as claimed by the appellant to delete the demand of TDS liability. Accordingly this ground no.2 is treated as allowed for statistical purpose."*

Still aggrieved by the order of Id.CIT(A), the assessee is in appeal before us.

7. We have carefully considered the rival contentions of the parties, perused the material placed before us including the orders of authorities below. We find that the AO has raised demand u/s 201(1)/201(1A) of the Act on short deduction of tax at source and interest thereon by taking the amount of service tax on the payment made to two parties namely M/s Concept Creator and M/s ARK Designs Pvt.Ltd. The Id. AR submitted before us that since the assessee in the present case is a Government Organization and following cash system of accounting and accordingly TDS was deducted and deposited on payment basis. The Id. AR argued that since the assessee has wholly and fully deducted TDS on the payment made to these parties and therefore the Id. CIT(A) was wrong in setting aside and issuing directions to the AO that in case, the services tax was not charged in the bills to whom the payments were made only in that case delete the demand raised. The Id. AR vehemently submitted that the charging of service tax by the party in

the bill was immaterial as the assessee has made the payment to these parties only of the amount which was before service tax and rightly deducted by the assessee at the time of payment as per cash system of accounting and therefore, the Id.CIT(A) should have given clear cut directions to the AO to delete the demand. On the contrary, the Id. DR relied on the orders of authorities below.

8. Having considered the facts of the case and system of accounting followed by the assessee we find that the assessee has rightly deducted TDS on payment basis without taking into consideration the service tax and the AO, in our opinion, was not correct in applying deemed service tax on the payment made. Similarly, the Id.CIT(A) has also erred in holding that the TDS was deductible on the service tax component if charged in the bills not otherwise. In our opinion, no TDS is required to be deducted as the assessee was following cash system of account and accordingly, grounds no.1,2 and 3 are allowed in favour of the assessee. The AO is directed to delete the demand raised against the assessee.

9. The issue raised in ground no.4. is against the confirmation of T.D.S. u/s 194C for payment made to Urvi Communication for telecasting short film on Air pollution and Noise Pollution in the public interest on Doordarshan. The AO during the course of survey proceedings found that the assessee has made payment to M/s Urvi Communication of Rs.1,10,200/- on 10.11.2004 and similar payment was made to Prop. Urvi Deshmukh for the purpose of

telecasting short film on Doordarshan on Air Pollution and Noise Pollution on ETV and Sub-TV. The AO noted that the assessee has not deducted TDS u/s 194J of the Act on these payments as required to be deducted for rendering the technical services and accordingly raised the demand for non TDS u/s 194J. Aggrieved by the order of AO, the assessee carried the matter before the Id.CIT(A), who partly allowed the appeal of the assessee by accepting the alternative plea that the deduction was required to be made u/s 194C of the Act and not under section 194J of the Act as no technical services were rendered by the parties. Still assessee aggrieved by the order of the Id.CIT(A) and hence filed appeal before this Tribunal.

10. After hearing both the parties, we find that in this case payment has been made to M/s Urvi Communication and Prop. Urvi Deshmukh for the purpose of telecasting short film on Doordarshan on Air Pollution and Noise Pollution on ETV and Sub-TV at the time of Deewali. The Id. AR submitted that the payment was made for telecasting short film on Doordarshan and no TDS was required to be deducted at all and prayed that the order of the Id.CIT(A) be set aside on this issue and the ground raised by the assessee be allowed by allowing the appeal of the assessee. On the contrary, the Id.DR heavily relied on the orders of authorities below. We find that the payment is made through intermediary for further making payment to Doordarshan and therefore we are in agreement with the findings recorded by the Id. CIT(A) that the payment made to these parties were of the nature of contractual

and the TDS was to be deducted u/s 194C of the Act. Accordingly, the ground no 4 raised by the assessee stands dismissed.

11. The issue raised in the fifth grounds of appeal is against passing of non-speaking order by the Id.CIT(A) for charging Interest u/s 201 up to date of order even though proof of filing Return were submitted to Assessing Officer.

12. While passing the order u/s 201(1)/201(1A), the AO charging interest from 1.4.2004 to 31.3.2011 for a period of 84 months whereas as per the assessee the same should have been charged from 1.4.2005 to the date of furnishing the return by the deductees. The Id. AR also submitted that the proofs of filing were filed before the AO which were totally ignored and interest was charged for a period of 84 months. During the appellate proceedings before the Id.CIT(A) directed the AO to charge interest up to the date of filing of the return of income of the deductees by considering the various proof and details filed by the assessee by observing as under :

*"9. By taking ground no.10 appellant agitated that interest has been charged only up to the date of filing return by deductee which they say have furnished before AO, whereas it has been charged up to the date of order. In principle I am in agreement with the appellant on the issue and hence AO is directed to ascertain that interest is charged up to the date of filing return by deductee"*

13. We have considered the rival submissions and perused the material placed on record. It has been submitted by the Id. AR that the interest has been charged from 1.4.2004 i.e. from the first day of financial year to 31.3.2011 which was modified by the Id. CIT(A) to the date of filing of the

return of income of deductees. The grievance of the assessee is that the Id.CIT(A) has not passed speaking order as to the starting date of charging of interest. We have perused the provisions of section 201(1) and 201(1A) of the Act which provide that interest has to be charged where a person fails to deduct the whole or any part of the tax or after deducting fails to pay such tax as required under the Act shall pay interest on the specified rate from the date on which the tax was deductible to the date on actual paid. For the sake of convenience and for better understanding the provisions of section 201(1A) are reproduced below:

**"201. [(1) .....**

*[(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—*

*(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and*

*(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,*

*and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200.]*

*[**Provided** that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.]"*

After going through the provisions of section 201(1A), we find some merit in the argument of the Id. AR that the interest was not to be charged from the beginning of the financial year the argument of the Id.AR that the same was to be charged from the date of assessment year is not convincing. It has been clearly provided in the section that interest has to be calculated from the date on which the TDS is deductible to the date of actual payment of such TDS. But in the instant case, the Id. CIT(A) has held that the interest be calculated up to the date of filing of return by the deductee. In our opinion, the interest should be calculated from the date on which such TDS was deductible to the date of filing of return of income by deductees. Accordingly, we direct the AO to charge interest from the date on which the TDS was deductible to the date of filing of return of income of the deductees. The order of the Id.CIT(A) is set aside and the AO is directed accordingly. The ground taken by the assessee is partly allowed.

**Now, we shall take the appeal bearing ITA No.903/Mum/2014 relating to assessment year 2006-07.**

14. Grounds of appeal taken by the assessee are read as under :

*"1. Learned CIT(A) 13 erred in not giving speaking order with regards to calculating T.D.S. Demand on Deemed Service Tax added by Assessing Officer. Appellant prays that since Appellant maintain accounts on payment basis, hence question of T.DS on deemed service tax do not arise and Appellant prays for deletion of same*

*2. Learned CIT{A} 13 erred in discussing but not giving specific speaking order for payment made to Envirotech Instruments Pvt. Ltd. amount to Rs. 444840/- for purchase of instruments, where CST is charged in bill hence not liable to TDS. Appellant prays to delete*

*Demand of Rs. 25178/- levied u/s 194J as payments are for purchase of instruments not liable to T.D.S.*

*3. Learned CIT{A} 13 erred in not discussing and not passing specific speaking order for Advance payment made to Abhinav Natyadham Pratisthan of Rs. 200000/- and creating TDS Demand of Rs.11320/- u/s 194J for payment on account of Grant for making documentary film for public awareness. Appellant prays to delete Demand of Rs.11320/- as such payments are not liable to TDS being Grant.*

*4. Learned CIT{A} 13 erred in confirming T.D.S. deduction u/s 194C for payment made to Urvi Communication for telecasting short film on Air pollution and Noise Pollution for benefit of public in General and not for individual benefit hence not liable to TDS. Appellant prays for deletion of Demand u/s 194C.*

*5. Learned CIT{A} 13 erred in discussing but not giving specific speaking order for payment made to United Industries of Rs.48908/- for purchase of material not liable to T.D.S.Appellant prays for deletion of TDS Demand of Rs. 2768/- u/s 194J on such payment for Goods not liable to T.D.S.*

*6. Learned CIT (A) 13 erred in not giving speaking order for charging Interest u/s 201 up to date of order even though proof of filing Return were submitted to Assessing Officer. Appellant prays that Interest is chargeable up to date of filing Return by deductee where proof of filing Return by deductee are submitted.*

*7. Appellant prays to Add, Amend, substitute above Grounds of Appeal on or before date of hearing."*

15. The issue raised in the ground of appeal No.1 is similar to that of the issue raised in grounds of appeal No.1,2 and 3 in ITA No.902/Mum/2014 which we have decided in favour of the assessee in this order vide paras 7 0 and 8, and therefore , our decision in ITA No.902/Mum/2014 would mutatis mutandis apply to ground no 1 of this appeal. Accordingly the appeal of the assessee is allowed and the AO is directed accordingly.

16. The issue raised in ground No.2 is against the non-speaking order passed by the Id.CIT(A) on payment made to Envirotech Instruments Pvt. Ltd. amount to Rs. 4,44,840/- for purchase of instruments, where CST is charged in bill and the assessee challenged the levy of TDS u/s 194J on the ground that the purchase of instruments were made from the said party. During the course of survey, the AO noted that the assessee has made payments to Envirotech Instruments Pvt. Ltd. amounting to Rs. 4,44,840/- and the assessee has not deducted TDS u/s 194J on an amount of Rs.4,44,840/- which comprises of three bills for supply of RDHBS Machines and accordingly, raised a liability of TDS of Rs. 25,178/-. During the appellant proceedings, the Id. CIT(A) did not give any specific finding for deduction of TDS and hence the assessee is in appeal before us.

17. After hearing both the parties, we find that the assessee has made payment of Rs.4,44,840/- to Envirotech Instruments Pvt. Ltd. for supply of machines. The details and invoices were produced before the AO. The Id. AR submitted before us that out of the three bills of the said parties two bills pertinent to supply of machines and third one related to payment of advance amounting to Rs.44480/- and submitted that this was for sale of goods to the assessee which was supported by the bills and vouchers of the sale and therefore the TDS was not required to be deducted. After perusing the order of Id.CIT(A) ,we find that the FAA has not given any specific findings on this issue. Therefore, we are of the considered opinion, it would meet

ends of justice if the issue is restored to the file of Id. CIT(A) for passing speaking order after considering the facts and documents as submitted by the assessee during the re-appellate proceedings as per law. The issue is set aside to the file of Id.CIT(A). This ground is allowed for statistical purposes.

18. Ground No.3 is against the non-speaking order passed by the Id.CIT(A) where the TDS was deductible on payment made to Abhinav Natyadham Pratisthan as grant of Rs. 2,00,000/- for making documentary films for public awareness, whereas the AO has held that same was liable for TDS u/s 194J and accordingly raised a demand of Rs.11320/-.

19. The facts of the case are that the assessee being a government body is engaged in carrying out the work of Air, Water and Noise pollution control on its own and also by giving financial assistances to NGOs and other organizations who are carrying such type of work. The AO was of the opinion, that the payment of Rs.2.00 lakhs made to these organizations are liable for TDS u/s 194J and accordingly raised demand. During the appellant proceedings,, the Id.CIT(A) did not pass any speaking order on this issue. After hearing both the parties and considering the material on record, we find that the work under taken by the Government Body is assigned to other NGO and institution /bodies engaged in similar type of activities to which the assessee releases grant in aids . In our opinion, the payments in the form of assistances or grant in aid assessee is not liable to deduct TDS as the same

is not rendering any technical services and it is just financial assistance for carrying out such type of work in the public interest. In our opinion, such type of payment is not liable to TDS and therefore, we direct to delete the demand raised. Ground taken by the assessee is allowed.

20. The issue raised in the ground of appeal No.4 is similar to the issue as decided in grounds of appeal No.4 of No.902/Mum/2014 which has been decided in favour of the assessee in this order vide paras 9 and 10 and therefore, our decision in ITA No.902/Mum/2014 mutatis mutandis would apply to this ground as well. The AO is directed accordingly.

21. The issue raised in ground No.5 is regarding not passing speaking order on the issue of TDS on payment made to United Industries of Rs.48,908/- against the purchase of materials from United Nations by the Id. CIT(A) as the AO held that the same was liable for TDS u/s 194J thereby raising demand of Rs. 2768/- u/s 194J.

22. We find that the Id.CIT(A) has not passed a speaking order on this issue, therefore, we are of view that it would meet ends of justice if the issue is restored to the file of Id. CIT(A) for passing speaking order after considering the facts and documents as submitted by the assessee during the re-appellate proceedings as per law. The issue is set aside to the file of Id.CIT(A). This ground is allowed for statistical purposes.

23. The issue raised in ground no.6 is identical to issue decided in ground No.5 in ITA No.902/Mum/2014 vide para 13 of this order which has been decided in favour of the assessee. Therefore following same reasoning, our decision in ITA No.902/Mum/2014 mutatis mutandis would apply to this ground as well. The AO is directed accordingly.

**Now, we shall take the appeal bearing ITA No.904/Mum/2014 relating to assessment year 2007-08.**

24. Grounds of appeal taken by the assessee are as under :

*"1. Learned CIT(A) 13 erred in not giving speaking order with regards to calculating T.D.S. Demand on Deemed Service Tax added by Assessing Officer. Appellant prays that since Appellant maintain accounts on payment basis, hence question of T.DS on deemed service tax do not arise and Appellant prays for deletion of same*

*2. Learned CIT{A} 13 erred in confirming deduction of TDS u/s 194J instead of u/s 194C for payment made to Chemtrol Engineers Ltd on account of AMC of mobile monitoring vans and raising TDS demand of Rs.17251/- appellant prays to delete demand of Rs.17251/- as such services are liable to TDS u/s 194C being contract and taxes paid u/s 194C.*

*3 Learned CIT{A} 13 erred in not giving specific speaking order for charging interest u/s 201 up to date of order even though proof of filing return were submitted to AO. Appellant prays that interest is chargeable up to date of filing return by decuctee where proof of filing return by deductee are submitted.*

25. The issue raised in the ground of appeal No.1 is similar to the issue raised in ground No.1,2 and 3 of appeal in ITA No.902/Mum/2014 which we have decided in favour of the assessee in this order in paras 7 and 8, and therefore, our decision in ITA No.902/Mum/2014 would ,mutatis mutandis,

would apply to this ground as well. The AO is directed accordingly.

26. The issue raised in the ground of appeal No.2 is against the confirmation of TDS paid u/s 194J instead of section 194C for payment made to Chemtrol Engineers Ltd on account of AMC of mobile monitoring vans and raising TDS demand of Rs.17,251/-. The AO during the course of survey proceedings found that the assessee has made payment of Rs.4,48,960/- on 12.7.2006 to Chemtrol Engineers Ltd on account of payment for maintenance of Mobile monitoring vans and raised a remand of Rs.17251/- for non deducting TDS u/s 194J of the Act as against the actual deduction by the assessee u/s 194C of the Act. During the appellate proceedings, the Id. CIT(A) also upheld action of the AO.

27. After considering the rival submissions and perusal of the record, we find that the said repair services rendered by M/s Chemtrol Engineers Ltd are not technical as it is a AMC contract for maintenance of machines. Therefore we are not in agreement with the view of the Id.CIT(A) on this issue that AMC is a technical service and liable to TDS u/s 194 of the Act . There is merit in the submissions of the Id.AR that the payment made to M/s Chemtrol Engineers Ltd are covered by the provision of section 194C which is applicable to general contract. In our opinion M/s Chemtrol Engineers Ltd providing services for installation of quality monitoring system and operation and maintenance and installation of machinery and maintenance of contracts are covered by the provision of section 194C of the Act. Accordingly, we set

aside the order of Id. CIT(A) on this issue by holding that the section 194C is applicable in this case and not 194J. The AO is directed accordingly and this ground is allowed.

28. In the third ground of appeal, the assessee has raised the issue regarding non passing of speaking order for charging interest u/s 201 up to date of order even though proof of filing return were submitted to AO.

29. An identical issue has been raised by the assessee in ITA No.902/Mum/2014 in ground no.5 and therefore, our decision in ITA No.902/Mum/2014 would ,mutatis mutandis, apply to this ground as well. The AO is directed accordingly. This ground is allowed.

**Now, we shall take the appeal bearing ITA No.905/Mum/2014 relating to assessment year 2008-09.**

30. Grounds of appeal raised in this appeal are as under :
- 1. Learned CIT(A) 13 erred in not giving speaking order with regards to calculating T.D.S. Demand on Deemed Service Tax added by Assessing Officer. Appellant prays that since Appellant maintain accounts on payment basis, hence question of T.DS on deemed service tax do not arise and Appellant prays for deletion of same.*
  - 2. Learned CIT(A)13 erred in directly Assessing Officer to delete on Deemed Service Tax after verifying bill that no service tax is charged in bill of M/s. ARK Designs Pvt. Ltd.Appellant prays that Appellant follows payment (cash) system of Accounts hence there is no question of T.D.S. on Deemed Service Tax. Appellant prays deletion of same.*
  - 3. Learned CIT(A) 13 erred in not giving speaking order with regard to Advances of Rs.23420984/- given to M/s. Ashtech Infotech Pvt. Ltd. for IMIS Project Implementation and calculating TDS u/s 194J amounting to Rs.2114854/- Appellant prays that Advances are liable to TDS u/s 194C being composite contract and tax deducted u/s 194C.Appellant prays to delete Demand of Rs. 2114854/-.*

4. *Learned CIT(A)13 erred in not discussing and not giving speaking order with regard to*

*Advance payment of Rs. 8917658/- given to Concept Creator and calculating TDS Demand of Rs. 792824/- u/s 194J. Appellant prays that Advance are against composite contract of furniture & fixtures cess fund for infrastructure for Housing New equipment etc. being liable to T.D.S. u/s 194C Appellant deducted and paid taxes u/s 194C. Appellant prays to delete Demand of Rs.792824/-.*

5. *Learned CIT(A) 13 erred in not discussing and not giving speaking order with regard to Advance payment of Rs. 374018/- to La Plume Services and calculating TDS Demand of Rs. 35519/- u/s 194 J Appellant prays that Advances are for Annual maintenance contract for service and maintenance of Desktop computer and Laser printers. Appellant prays that such services are liable to TDS 194C only being under contract and Demand is on account of difference between Demand u/s 194J & u/s 194C Hence Appellant prays to delete demand of Rs.35519/-.*

6. *The Id. CIT(A)13 in not discussing and not passing speaking order with regard to Advance Payment of Rs. 1786473/- to following parties*

a	11.1.07	CRISIL for municipal waste management	solid	500000	Financial Assistance
b	23.01.2007	Abudhabi Exhibition Booking	stall	579240	Booking Amt. for stall booking
c	1.3.2007	Shivaji University		84833	Financial assistance for punch Ganga river report
d	26.3.2007	B.B.Nimarte for CRISIL Adv		622400	Payment to staff for CRISIL

*Appellant prays that since payment do not relate to year in Appeal and pertains to earlier year, Appellant prays for deletion of TDS Demand of Rs. 202407/- on above advances u/s 194J.*

7. *Learned CIT(A) 13 erred in not discussing and not passing speaking order with regard to Advance payment of Rs. 953280/- paid to civil surgeon CRP Hospital, Kolhapur and calculated TDS Demand of Rs. 100807/- u/s 194J. As Advance payment is as financial Assistance for Bio medical Waste Treatment Plant, Appellant prays to delete demand of Rs. 100807/- as payment are as Financial Assistance not liable to TDS.*

8. *Learned CIT(A) 13 erred in not discussing and not passing speaking order with regard to Advance payment of Rs. 2923000/- to Executive,*

*Jeevan Pradhikaran work and calculated TDS Demand of Rs. 331171/- u/s 194J. Appellant prays to delete Demand of Rs. 331171/- as Advance payment are for Financial Assistance for Affluent Treatment Plant, not liable to T.D.S.*

*9. Ld.CIT(A) 13 erred in not discussing and not passing speaking order with regard to Advance payment of Rs. 260000/- to SRO Solapur and calculated TDS Demand of Rs.29458/- u/s 194J. Appellant prays to delete Demand of Rs. 29458/- as Advances are given to sub Regional Office of MPCB only, hence not liable to T.D.S ..*

*10. Learned CIT (A) 13 erred in not giving speaking order for charging Interest u/s 201 up to date of order even though proof of filing Return were submitted to Assessing Officer.*

31. The issue raised in the ground of appeal No.1,2 and 3 are similar to that of the issue raised in grounds of appeal No.1,2 and 3 in ITA No.902/Mum/2014 which we have decided in favour of the assessee in this order in paras 7 and 8, and therefore, our decision in ITA No.902/Mum/2014 mutatis would mutandis apply to this ground as well. The AO is directed accordingly.

32. Ground No.4 is in respect of non-passing of speaking order by the Id. CIT(A). We find that the Id.CIT(A) has not passed a speaking order on this issue, therefore, we are of the considered opinion, it would meet ends of justice if the issue is restored to the file of Id. CIT(A) for passing speaking order after considering the documents as submitted by the assessee as per law and facts. The issue is set aside to the file of Id.CIT(A). This ground is allowed for statistical purposes.

33. Ground No.5 raised in this appeal is an identical ground to that of ground No.2 of ITA No.904/Mum/2014 which is allowed for statistical purposes. Following the same finding as taken in paragraph 26 and 27 of this order, we restore this issue to the file of the Id. CIT(A) and allow this ground for statistical purpose.

34. With respect to the ground of appeal no.6 to 9, since the Id.CIT(A) has not passed any speaking order on these issue, therefore we restore these grounds to the file of Id.CIT(A) for passing speaking order after giving fresh opportunity of hearing to the assessee. These grounds are allowed for statistical purposes.

35. With regard to the ground No.10, identical issue has been decided by us in ground no.5 in ITA No.902/Mum/2014 vide para 13 of this order and therefore, our decision in ITA No.902/Mum/2014 would mutatis mutandis apply to this ground as well. The AO is directed accordingly.

**Now, we shall take the appeal bearing ITA No.906/Mum/2014 relating to assessment year 2009-10.**

36. Grounds of appeal taken by the assessee read as under :

*"1. Learned CIT(A) 13 erred in not giving speaking order with regards to calculating T.D.S. Demand on Deemed Service Tax added by Assessing Officer. Appellant prays that since Appellant maintain accounts on payment basis, hence question of T.D.S. on Deemed service tax do not arise and Appellant prays for deletion of same.*

2. Learned CIT(A) 13 erred in directing Assessing Officer to delete T.D.S. liability on Deemed Service Tax after verifying bill that no service tax is charged in bill of M/s ARK Designs Pvt.Ltd. Appellant prays that Appellant follows cash (payment) system of Accounting hence there is no question of T.D.S. on Deemed service tax. Appellant prays for deleting same.

3. Learned CIT(A) 13 erred in not giving speaking order with regard to Advances of Rs.6377316/- given to M/s. Ashtech Infotech Pvt. Ltd. for IMIS Project Implementation and calculating TDS u/s 194J amounting to Rs. 561667/- Appellant prays that Advances are liable to TDS u/s 194C being composite contract and tax deducted u/s 194C Appellant prays to delete Demand of Rs. 561667/-.

4. Learned CIT(A)13 erred in not discussing and not giving speaking order with regard to Advance payment of Rs. 3292721/- given to P.K. Enterprises and calculating T.D.S.Demand of Rs. 288021/- u/s 194 J. Appellant prays that Advances are against composite contract for furniture & fixtures (cess fund) for infrastructure for housing new equipment and furnishing work being liable to TDS u/s 194C and tax deducted u/s 194C Appellant prays to delete demand of Rs. 288021/-.

5. Learned CIT(A) 13 erred in not discussing and not giving speaking order with regard to Advance payment of Rs. 3501704/- given to Concept Creator and calculating TDS Demand of Rs. 304444/- u/s 194J. Appellant prays that Advance are against composite contract of furniture & fixtures cess fund for infrastructure for Housing New equipment etc. being liable to T.D.S. u/s 194C. Appellant deducted and paid taxes u/s 194C.Appellant prays to delete Demand of Rs. 304444/-.

6. Learned CIT(A) 13 erred in not discussing and not giving speaking order with regard to Advance payment of Rs. 2574384/- given to Ascend Construction and calculated T.D.S. Demand of Rs. 250368/- u/s 194J. Appellant prays that Advances are against composite contract of furniture & fixtures cess fund for infrastructure for Housing new equipment etc. being liable to T.D.S. u/s 194C Appellant prays to delete Demand of Rs.250368/-

7. Learned CIT(A) 13 erred in not discussing and not giving speaking order with regard to Advance payment of Rs. 75000/- given to Green C GIS and calculated TDS Demand of Rs. 8498/- u/s 194J. Appellant prays that Advances are as Financial Assistant for preparation of Dist. Environment ATLAS etc. for Industrial Guidance not liable to TDS being financial Assistance. Appellant prays to delete Demand of Rs. 8498/-.

*8. Learned CIT(A) 13 erred in not discussing and not giving speaking order with regard to Advance of Rs. 420000/- to S.R. Deshmukh being employee of MPCB for expenses and calculated TDS Demand u/s 194J of Rs. 47586/- Appellant prays to delete demand of Rs. 47586/- Appellant prays to delete Demand of Rs. 47586/- as Advances to employee are not liable to T.D.5.*

*9. Learned CIT(A) 13 erred in not discussing and not giving speaking order with regard to Advance payment to Trio service and calculated TDS Demand u/s 194J of Rs. 4899/- Appellant prays to delete Demand as Advance are below limit not liable to TDS.*

*10. Learned CIT(A) 13 erred in not giving speaking order for charging interest u/s 201 up to date of order even though proof of filing return by deductee where proof of filing return by deductee are submitted. 0-discussing and not giving speaking order with regard. .*

37. Ground of 1 & 2 are identical to that of Grounds of appeal No.1 ,2 and 3 taken in ITA No.902/Mum/2014. Therefore, following the same reasoning , our decision in ITA No.902/Mum/2014<sup>th</sup> in para 7 and 8 , would mutatis mutanids, apply to ground no 1 & 2 of this appeal as well. The grounds 1 & 2 are allowed and AO is directed accordingly.

38. Issues raised in grounds of appeal No.3,4,5, 6,7,8 and 9 have not been decided by the Id.CIT(A) by passing speaking order and therefore, we set aside the issues to the file of the Id.CIT(A) and direct him to decide these issues afresh after giving reasonable opportunity of hearing to the assessee. These grounds are allowed for statistical purposes.

39. The issue raised in this ground No.10 is identical to ground No.5 taken in ITA No.902/Mum/2014 decided in para no.11,12 & 13. Our decision

findings in ITA 902/Mum/2014 would mutatis mutandis apply to ground as well. The AO is directed accordingly.

40. In the result the appeals of the revenue are dismissed and the appeals of the assessee are allowed for statistical purpose.

The above order was pronounced in the open court on 25th Aug, 2016.

घोषणा खुले न्यायालय में दिनांक: 25th Aug,2016 को की गई ।

Sd

(SHAILENDRA KUMAR YADAV)  
न्यायिक सदस्य / JUDICIAL MEMBER

sd

(RAJESH KUMAR)  
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai: 25th Aug, 2016.

व.नि.स./ SRL , Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai