IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

| ITA No.404/Bang/2014 |
|---|
| Assessment year : 2010-11 |

| | | |
|---|---|---|
| Hewlett-Packard India<br>Sales Private Ltd.,<br>24, Salarpuria Arena,<br>Hosur Main Road,<br>Adugodi,<br>Bangalore – 560 030.<br>**PAN: AAACC 9862F** | Vs. | The Income Tax Officer (TDS),<br>LTU,<br>Bangalore. |
| APPELLANT | | RESPONDENT |

| | | |
|---|---|---|
| Appellant by | : | S/Shri Sharath Rao & Srinivas Maddury, CAs |
| Respondent by | : | Shri Bipin C.N., Jt. CIT(DR) |

| | | |
|---|---|---|
| Date of hearing | : | 04.07.2016 |
| Date of Pronouncement | : | 29.07.2016 |

## O R D E R

*Per Sunil Kumar Yadav, Judicial Member*

This appeal is preferred by the assessee against the orders of the CIT(Appeals) *inter alia* on the following grounds:-

> "Based on the facts and circumstances of the case, Hewlett-Packard India Sales Private Limited ("HPISPL" or "Appellant" or "Company"), respectfully submits in respect of the order passed by the learned Commissioner of Income Tax (Appeals), Large

Taxpayers Unit [UCIT(A), LTU"] under section 250 of the Income Tax Act, 1961 ("the Act"):

1. The learned CIT(A) has erred in passing an order, which is bad in law and on facts.

2. The learned CIT(A) has erred in law and on facts by not appreciating that the impossibility of performance is a valid reason for inability to perform an act, as held by various courts which is a complete disregard of the submission made by the Appellant.

3. The learned CIT(A) has erred in law and on facts in failing to appreciate that the methodology for computation of fair market value as specified in Explanation to section 17(2)(vi) of the Act was notified on December 18, 2009, therefore, it could not have been possible for the Appellant to deduct tax at source ("TDS") under section 192 of the Act for the payments made to its employees under the Employee Stock Option Plan ("ESOP").

4. The learned CIT(A) has erred in law and on facts in not appreciating that thirteen employees by whom the ESOP was exercised during the Assessment Year ("AY") 2010-11 resigned before December 18, 2009, and therefore, in the absence of a prescribed methodology to determine the fair market value, the Appellant could not have deducted taxes on the ESOPs and therefore ought not to be held to have defaulted in deducting taxes.

5. The learned CIT(A) has erred in law and on facts in failing to appreciate that though twenty two employees by whom the ESOP was exercised during the AY 2010-11 who resigned after December 18, 2009, the amount available at the credit of such employees as on the last working day was not sufficient to discharge the liability.

6. The learned CIT(A) has erred in law and on facts by not appreciating that in the case of the twenty two employees mentioned above, the amount available as credit was deducted by the Appellant and for the balance amount and the Appellant has specifically mentioned on the Form 16 of such employees, that ESOP benefit perquisite was included in the

taxable salary and had also indicated the amount of taxes payable by such employees the balance amount.

7. The learned CIT(A) has erred in law and on facts by disregarding the submission dated December 26, 2013 made by the Appellant wherein inability for not having deducted the TDS on the payments made to its employees under ESOP along with the necessary documents were provided.

The Appellant prays that directions be given to grant all such relief arising from the preceding grounds as also all reliefs consequential thereto.

The Appellant submits that the above grounds are independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Tribunal to decide this appeal according to law."

2. During the course of hearing, the ld. counsel for the assessee has contended that though the assessee sought for deduction of tax at source, but the payee has already paid the taxes on the same receipts. Therefore, the assessee cannot be held to be in default u/s. 201(1A) of the Act in the light of the judgment of the Hon'ble Apex Court in the case of *Hindustan Coca Cola Beverage (P) Ltd. v. CIT, 293 ITR 226 (SC)* and the Hon'ble Allahabad High Court judgment in the case of *Jagran Prakashan Ltd. v. DCIT, 345 ITR 288 (All)*.

3. The ld. DR, on the other hand, has submitted that the assessee has not filed any evidence in this regard and for this purpose, the matter can be sent to the Assessing Officer for verification.

4. Having carefully examined the orders of the lower authorities, we find that there was shortfall in deduction of taxes at source, whereas the contention of the assessee is that the recipients have already paid the taxes thereon; but these facts have to be verified from the record. We, therefore, set aside the order of the CIT(Appeals) on this issue and restore the matter to the Assessing Officer, with a direction to examine whether the recipients have paid the taxes or not. If the recipients have paid the taxes, the assessee cannot be held to be in default. But so far as charging of interest u/s. 201(1A) of the Act is concerned, the assessee is liable to pay the interest for the delay in making the payment of TDS. Accordingly, the matter is restored to the Assessing Officer for readjudication in the terms indicated above.

5. In the result, the appeal is allowed for statistical purposes.

Pronounced in the open court on this 29th day of July, 2016.

| | |
|---|---|
| Sd/- | Sd/- |
| ( INTURI RAMA RAO ) | (SUNIL KUMAR YADAV ) |
| Accountant Member | Judicial Member |

Bangalore,
Dated, the 29th July, 2016.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.