

IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” Bench, Mumbai  
Before Shri Mahavir Singh (JM) & Shri B.R. Baskaran (AM)

I.T.A. No. 799/Mum/2014  
(Assessment Year 1994-95)

I.T.A. No. 800/Mum/2014  
(Assessment Year 2007-08)

ITO(TDS)-2(3) R.No 708, 7 <sup>th</sup> Floor Smt. K.G. Mittal Ayurvedic Hospital Building Charni Road Mumbai-400 002. (Appellant)	Vs.	M/s. Mumbai Pune Motor Malak Shramjivan Premises Co-op. Society Ltd. Building No. 4/212 Abhyudaya Nagar Kala Chowki Mumbai-400 033. (Respondent)
---	-----	---

PAN No.AAAAM8389M

Assessee by	Shri Bhavi Songhavi
Department by	Shri S. Ravichandran
Date of Hearing	29.8.2016
Date of Pronouncement	29.8.2016

O R D E R

Per B.R. Baskaran (AM) :-

Both the appeals filed by the Revenue are directed against the order passed by learned CIT(A)-13, Mumbai and they relate to A.Y. 1994-95 and 2007-08.

2. In both the appeals identical issues are urged by the Revenue and hence they were heard together and are being disposed of by this common order, for the sake of convenience.

3. Short issue urged in these appeals is whether the assessee is liable to deduct tax at source in respect of lease premium paid to MMRDA.

4. The Assessing Officer held that the lease premium paid is liable for deduction u/s. 194-I of the Act as the same is in the nature of rent.

Accordingly, he raised demand u/s. 201(1)/201(1A) of the Act in both the years. Learned CIT(A), by following decision rendered by the Coordinate Bench of the Tribunal in the case of ITO (TDS) Vs. Navi Mumbai SEZ P. Ltd. (2013) 38 taxamnn.com 2,1 held that the assessee is not liable to deduct tax at source on the lease premium amount paid by it u/s. 194-I of the Act. Aggrieved, the Revenue has filed these appeals before us.

5. Learned counsel appearing for the assessee submitted that identical issue was considered by the Tribunal in the assessee's own case in ITA No. 1002 to 1006/Mum/2014 relating to A.Ys. 1995-96 to 1997-98 and 2006-07 to 2007-08 and the Tribunal, vide its order dated 27.4.2016, has decided the issue in favour of the assessee. Learned Departmental Representative did not contradict the submissions made by learned AR.

6. Having heard the rival contentions, we are of the view that the issue urged by the Revenue has been decided by the coordinate Bench in assessee's own case (referred supra) in favour of the assessee. We noticed that the Coordinate Bench has followed the decision rendered in the case of M/s. Wadhwa Associates Realtors (P) Ltd. (2013) 36 Taxman 526 and also decision rendered by the Coordinate Bench in the case of ITO (TDS) Vs. Palton Yarn Pvt. Ltd. (ITA No. 1298/Mum/2014 dated 25.11.2015) to decide the issue in favour of the assessee. Accordingly we hold that the Lease premium paid by the assessee to MMRDA is not liable for deduction of tax at source u/s 194I of the Act. Accordingly the demand raised by the AO u/s 201(1)/201(1A) are liable to cancelled.

7. Since the decision rendered by learned CIT(A) is in tune of decision rendered by the coordinate Bench, we do not find any reason to interfere with the order passed by learned CIT(A) on this issue. Accordingly we uphold his order passed on this issue in both the years.

8. In the result, both the appeals filed by the Revenue are dismissed.

Order has been pronounced in the Court on 29.8.2016

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 29/8/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS