

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचन्द, लेखा सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1076/JP/2016  
निर्धारण वर्ष/Assessment Year : 2011-12

M/s. Jaipur Metro Rail Corporation Ltd. Khanij Bhawan, Tilak Marg, Jaipur	बनाम Vs.	The DCIT (TDS) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JPRJ 07610 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: None  
राजस्व की ओर से / Revenue by : Smt. Poonam Rai, DCIT- DR

सुनवाई की तारीख / Date of Hearing : 14/02/2017  
घोषणा की तारीख / Date of Pronouncement : 15 /02/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the ld. CIT(A),  
35, New Delhi (Camp Office at Jaipur) dated 09-09-2016 for the  
assessment year 2011-12 raising therein grounds of appeal as under:-

“1. The ld. DCIT (TDS) had erred in law as well as  
in facts to apply 194I on the advance recoverable from  
RSMML and to raise the demand of short deduction of TDS  
and interest thereon of Rs. 5,32,340/- and Rs. 42,587/-  
respectively totaling to Rs. 5,74,927/-.

2. The DCIT (TDS) has erred in law in not providing proper opportunity of being heard to the assessee before passing the order.”

2.1 None appeared on behalf of the assessee on the date of hearing in spite of service of notice for hearing of the appeal on 14-02-2017. Consequently the Bench is left with no alternative but to decide the appeal on merits, ex parte qua the assessee, after hearing ld. DR and after perusal of the materials available on record.

3.1 Apropos Ground No. 1 and 2 of the assessee, the facts as emerges from the order of the ld. CIT(A) is as under:-

“4. Decision in appeal:-

4.1 Perusal of assessment order dated 29.12.2011 reveals that anomalies in TDS liabilities of the appellant were found as a result on the spot verification carried out at the appellants’ premises on 16.11.2011.

4.2 The Assessing Officer observed that during F.Y. 2010-11, the appellant had given a sum of Rs. 53,23,416/- to RSMM Ltd. which he concluded was payment for rent of space/office premises. Since, the appellant had not deducted any TDS on such rental, the AO raised demand u/s 194 I to the tune of Rs. 5,74,927/- u/s 201/201(1A) of the Act.

4.3 Before me during appellate proceedings the appellant has contended that the said payment to RSMML is not in the nature of rent but advance for equipment/ furniture etc.

4.4 In order to verify the exact nature of payment from assessment records etc. a remand report was called from the AO vide this office letters dated 10.09.2015 and reminder

dated 13.10.2015 vide reply dated 20.10.2015, the AO has submitted that *“TDS is applicable on payment or credit whichever is earlier. Hence, in the above case, even if it is a security deposit, or advance rent still TDS u/s 1941 is applicable in this case as held by Assessing Officer. This view has also been upheld by the Hon’ble Delhi High Court in the case of Reebok Indian Co. Vs. CIT. 291 ITR 455 (Delhi).”*

4.5 Taking the remand report into consideration as well as per the provisions of TDS liability u/s 1941 of the act following conclusions are drawn:-

- (i) The appellant is a lessee of the premise/ furniture etc. while M/s RSMML is lessor.
- (ii) These exists a rent agreement between the appellant and RSMML.
- (iii) The payments made is on account of rental whether given as advance or otherwise.
- (iv) The appellant had a liability to deduct TDS u/s 1941 I of the Act on such payment.

Thus statement of the appellant that Rs. 50 lakh out of Rs. 53,23,415/- is in the nature of security deposit ( interest free) is not correct representation of facts as the appellant is a public corporation and cannot park such huge funds, and that too as interest free.

Moreover the said payments are on account of rent, hence TDS should have been done.

4.6 Under the Income Tax Act, every person having taxable income has to pay tax. That tax on total income is collected through different means. Tax Deduction at Source (TDS) is one of the methods of collection of taxes. The statutory provisions of TDS is there to ensure that employers/deductor, do deduct taxes and submit it to the Government account within a given time frame, so that the deductee, can take credit from the taxes which, it has already

paid. TDS thus is the liability of the deductee discharged by the deductor because of the various liability cast upon him by the statute.

4.7 As per the provisions of section 201(1A) of the Act , an assessee also is liable to pay simple interest at the prescribed rate on the amount of such tax (TDS amount) from the date of which such tax was deductible to the date on which such tax is actually paid.

4.7.1 The Supreme Court in the case of Hindustan Coca Cola Beverage Pvt. Ltd. Vs. CIT (2007) 163 Taxman 355 (Hon'ble Supreme Court) has held that tax cannot be recovered from the deductor if the same has been paid by the deductee. However this would not alter the liability to charge interest u/s 201 (1A) till the date of payment of taxes by the deductee-assessee. The liability of interest would continue to accrue till tax as well as interest is actually paid and such interest is paid before furnishing the quarterly statement for each quarter in accordance with the provision of sub section (3) of section 200. The TDS amount is to be deducted and remitted belongs to the Revenue/ Govt., hence interest u/s 201 (1A) is charged, since the assessee is considered to be enjoying the TDS amount which belongs to the Govt. It is pertinent to note that the tax so deducted is given credit in the account of the deductee-assessee.

4.8 In view of the above discussion, I uphold the order of the AO dated 29.12.2011 considering the appellant an assessee in default u/s 201/201(1A) of the Act.’’

Consequently, the ld. CIT(A) upheld the action of the AO that the assessee is in default u/s 201/201(1A) of the Act.

2.2 I have heard the ld. DR and perused the orders of the lower authorities. It is noted from the record that the assessee has also not

appeared before the Id. CIT(A) during the course of hearing. However, in appellate proceeding before this Bench, the assessee has not filed any submission controverting the orders of lower authorities. In such a situation, I have no alternative except to concur with the views of the Id. CIT(A) on the issue in question. Thus Ground Nos. 1 and 2 of the assessee are dismissed.

3.0 In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 15 -02-2017.

Sd/-  
(भागचन्द)  
(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 15 /02/ 2017

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Jaipur Metro Rail Corporation Ltd. , Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT (TDS), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1076/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar