

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

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SMT. DIVA SINGH, JM & SHRI VIKRAM SINGH YADAV, AM  
आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर

आयकर अपील सं./ITA No. 391/JP/2016  
निर्धारण वर्ष/Assessment Years : 2011-2012

Rajasthan Avas Vikas & Infrastructure Ltd., 4 SA 24, Jawahar Nagar, Jaipur, Rajasthan, India 302004	बनाम Vs.	ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCA3281B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 392/JP/2016  
निर्धारण वर्ष/Assessment Years : 2012-13

Rajasthan Avas Vikas & Infrastructure Ltd., 4 SA 24, Jawahar Nagar, Jaipur, Rajasthan, India 302004	बनाम Vs.	ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCA3281B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.S. Gogara(Adv.)&  
Shri S.K. Gogara (CA)  
राजस्व की ओर से / Revenue by : Shri O.P. Bhateja

सुनवाई की तारीख / Date of Hearing : 24/03/2017  
उदघोषणा की तारीख / Date of Pronouncement : 12/05/2017

आदेश / ORDER

PER SH. VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against two separate orders passed by Id. CIT(A)-2, Jaipur of even date i.e, 29/01/2016 for A.Y. 2011-12 & 2012-13 respectively. Since common issues are involved, both the appeals were heard together and disposed off by this consolidated order. The grounds of appeal taken by the assessee are as under:-

ITA No. 391/JP/2016:

- "1. *The Ld. AO has erred in withholding TDS of Rs. 38,440/- deducted by Bank on Interest income held by the assessee in fiduciary capacity which was not income of the assessee.*

*Since, the funds received from HUDCO were held by the assessee in Trust/in fiduciary capacity on behalf of State Government for disbursement, hence the Ld. AO erred in treating the income of interest on such funds temporarily deposited in bank as taxable income and further erred in withholding the TDS of Rs. 38,440/-. The interest income being not taxable and TDS therefore is allowable to assessee.*

*The assessee was acting as nodal agency for and on behalf of State Government in receiving and repaying loan from HUDCO and as such interest income on such idle funds which were held in trust by the assessee was exempt income of State Government, hence, the Ld. AO erred in not allowing the TDS amount of Rs. 38,440/-*

2. *That the application of section 199 of the Income Tax Act of Rs. 38,440/- on TDS amount is illegal, unjustified and without any basis."*

ITA No. 392/JP/2016:

"1. The Ld. AO has erred in withholding TDS of Rs. 12,43,682/- deducted by Bank on Interest income held by the assessee in fiduciary capacity which was not income of the assessee.

*Since, the funds received from HUDCO were held by the assessee in Trust/in fiduciary capacity on behalf of State Government for disbursement, hence the Ld. AO erred in treating the income of interest on such funds temporarily deposited in bank as taxable income and further erred in withholding the TDS of Rs. 12,43,682/. The interest income being not taxable and TDS therefore is allowable to assessee.*

*The assessee was acting as nodal agency for and on behalf of State Government in receiving and repaying loan from HUDCO and as such interest income on such idle funds which were held in trust by the assessee was exempt income of State Government, hence, the Ld. AO erred in not allowing the TDS amount of Rs. 12,43,682/-*

2. That the application of section 199 of the Income Tax Act of Rs. 12,43,682/- on TDS amount is illegal, unjustified and without any basis."

2. The brief facts of the case are that the assessee was appointed as a nodal agency by the Government of Rajasthan for Police Housing Scheme and funds were received by the assessee from HUDCO on behalf of State Government for disbursement to various agencies for construction of houses for the Police department. The funds so received from HUDCO till the time the same was disbursed to the various agencies were placed in FDRs with the bank and TDS was deducted by the bank on interest earned on such FDRs. The funds so received belonged to the

Government of Rajasthan and any interest on such funds placed in the form FDR also belongs to Government of Rajasthan. As a result, the assessee did not offer the interest income for tax while filing its return of income. At the same time, it claimed credit of TDS deducted on such interest income against its tax liability while filing its return of income. The Assessing Officer agreed with the assessee's contention that interest on FDR has been received by the assessee in fiduciary capacity and the same was not brought to tax. However, as far as the claim of credit of TDS on such interest income was concerned, the same was not allowed to the assessee following the provisions of Section 199 of the Act and the relevant I.T rules. The Assessing Officer also mentioned that a similar issue was involved in the A.Y 2010-11 wherein credit of TDS was not allowed to the assessee.

2.1 Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) after noting the facts of the case referred to the order passed by his predecessor for A.Y 2010-11 and confirmed the AO's order in not allowing credit of TDS to the assessee. Now, the assessee is in appeal before us against the said order passed by the Id. CIT(A).

2.2 At the outset, the Id. AR drawn our attention to the decision passed by the Coordinate Bench in ITA No. 247 & 248/JP/2014 dated

18.3.2016 in assessee's own case for A.Y 2009-10 and 2010-11 and submitted that issue was decided in favour of the assessee by the said decision passed by the Coordinate Bench and hence, the same should be followed in respect of impugned matters before us.

2.3 The issue under consideration before the Coordinate Bench for for A.Y 2009-10 and 2010-11 are as under:-

ITA No. 247/JP/2014 (Assessment Year 2009-10):

"In the facts and circumstances of the case the learned Commissioner (Appeals) has erred in not allowing credit of TDS of Rs. 4502798, deducted by our Bank on interest and deposited to the Income Tax Department and holding that the interest belongs to Police Department and the provisions of section 199 are applicable.'

ITA No. 248/JP/2014 (Assessment Year 2010-11)

*"In the facts and circumstances of the case the learned Commissioner (Appeals) has erred in not allowing credit of TDS of Rs. 1741463, deducted by our Bank on interest and deposited to the Income Tax Department and holding that the interest belongs to Polce department and the provisions of section 199 are applicable."*

The facts under consideration before the Coordinate Bench were that during the year under consideration the assessee deposited funds received from HUDCO in FDRs with the Bank as the same were lying idle and got the interest of Rs. 2,18,15,365 and on the said interest the Bank of Rajasthan had deducted TDS of Rs. 45,02,798. The assessee did not

offer the interest income of Rs. 2,18,15,365 for the purpose of tax in the return of income as the assessee was merely acting as a nodal agency for the State of Rajasthan and has deposited the amount with the bank for and on behalf of State of Rajasthan. It was also the case of the assessee that the interest income accrued on the FDRs was not taxable. The assessee has submitted that the assessee is entitled to the refund of entire amount of Rs. 45,02,798 in the assessment year 2009-10.

In the context of above facts, the Coordinate Bench relied on the decision of Hon'ble Delhi High Court in case of CIT vs. Relcom (2015) 234 Taxman 693 (Delhi) and its relevant findings are as under:-

*"In the present case the amount was deposited as FDR's by the assessee on behalf of State of Rajasthan with the Bank of Rajasthan and on the FDR's deposit the interest has been accrued. The TDS was deducted by the Bank on the interest accrued on the FDRs. In our view, the Revenue is taking the hyper technical plea of not returning the TDS to the assessee on the pretext that the amount has been deposited with the bank on behalf of State of Rajasthan. Since the State of Rajasthan is not a taxable entity, therefore, refund of TDS cannot be given to the State of Rajasthan. It is not disputed that the assessee after realizing the interest income from the bank has given back the amount to the State of Rajasthan. Similarly it is also undisputed that the refund of TDS has not been claimed by the State of Rajasthan and is only claimed by the assessee being the nodal agency of the State of Rajasthan for this project. In our view, no prejudice will be caused to any person if the TDS is refunded to the assessee being the nodal agency with the undertaking to return the amount to the State of Rajasthan. In view of thereof and also in view of the judgment referred hereinabove, the TDS deducted by the Income Tax Department is directed to be paid to the assessee and we accordingly hold the same. In this view of the matter, the appeal of the assessee is allowed"*

2.4 The facts of the instant case are pari materia to the facts of the case before the Coordinate Bench in respect of assessee's own case for A.Ys 2009-10 and 2010-11. The Revenue has not brought to our notice any contrary authority on the said issue. Hence, we do not see a reason to deviate from the view taken by the Coordinate Bench in assessee's own case.

2.5 Undisputedly, the interest income has not been brought to tax by the Revenue accepting the assessee's contention that the receipt of funds and interest thereon is in the fiduciary capacity on behalf of the State of Rajasthan. The State of Rajasthan being not a taxable entity, there should not be any TDS at first place. For reasons best known to the assessee and the bank, the TDS has been deducted. Given that interest income is not taxable either in the hands of the assessee or the state of Rajasthan, the TDS has to be refunded. Since the assessee is acting as the nodal agency and all funds have been routed through it, the refund of TDS has to be routed through it to the State of Rajasthan. Accordingly, we direct the Revenue to refund the TDS of Rs. 38440/- to the assessee with the undertaking to return the said amount to the State of Rajasthan.

ITA No. 392/JP/2016

2.6 In ITA No. 392/JP/2016, the facts are pari-materia to the facts of the case in above appeal in ITA No. 391/JP/2016. Accordingly, our findings and directions contained therein shall apply mutatis mutandis to this appeal as well.

In the result, both the appeals of assessee are allowed.

Order pronounced in the open court on 12/05/2017.

Sd/-  
(Diva Singh)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 12/05 /2017

\*Ganesh

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

1. अपीलार्थी / The Appellant- Rajasthan Avs Vikas & Infrastructure Ltd.,
2. प्रत्यर्थी / The Respondent- ACIT, Circle-6, Jaipur.
3. आयकर आयुक्त / CIT –TDS, Jaipur
4. आयकर आयुक्त(अपील) / The CIT(A)-III, Jaipur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.391 & 392 /JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar