

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, E, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

**Before Shri Mahavir Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.2854/Mum/2014
Assessment Year: 2009-10**

Siti Cable Network Limited (formerly Known as wire and wireless (India) Ltd. 135, Continental Building, Dr. Annie Besant Road, Worli, Mumbai-400018 (Appellant)	बनाम/ Vs.	ITO (TDS) Ward -3(5) K.G. M. Hospital Bldg. Charni Road, Mumbai-400002 (Respondent)
P.A. No.AACW6349M		

Appellant by	Shri Jay Bhansali (AR)
Revenue by	Shri T.A Khan (DR)
सुनवाई की तारीख/ Date of Hearing:	29/11/2016
आदेश की तारीख / Date of Order:	06/12/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Assessee against order of Ld. Commissioner of Income Tax(Appeals), Mumbai-40 (in short 'CIT(A)'), dated 28.01.2014 passed order against u/s 201(1)/201(1A) of the Act, dated 13.01.2011 for Assessment Year 2009-10 on the following Grounds:

- 1. The Ld. CIT(A) erred in law and facts in not deciding the appeal on merits and dismissing the belated appeal filed by the assessee even though the assessee has*

given justifiable reasons for delay in filing the appeal. The reasons given by him for doing so are wrong contrary to the facts of the case and against the provision of law.

- 2. The Ld. CIT(A) erred in law and facts in upholding order u/s 201(1)! 201(1A) wherein demand of Rs. 13,42,670/- has been raised by not adjudicating the appeal on merits thereby denying assessee proper opportunity of being heard which is against the principal of natural justice and provisions of law.*
 - 3. The Ld. CIT(A) ought to have held that the assessee cannot be treated as assessee in default u/s 201/201 (1A) of the Act as the assessee in fact has paid the alleged short/non deduction of TDS except Rs. 11,764/- and 11,825/-.*
 - 4. Without prejudice to the above, for the alleged short deduction/payment the assessee relies on Hon'ble Apex Court decision in case of Hindustan Coca Cola (293 ITR 226) hence where the deductee/recipient has already paid taxes on income received from assessee, the dept. cannot again recover tax u/s 201 of the Act from deductor on the same income.*
 - 5. The Ld. CIT (A) erred in law and facts in upholding demand on account of interest u/s 201(1A) of the Act on above referred alleged defaults without considering the fact that the deductees have paid taxes on due date on their income.*
 - 6. The above grounds are without prejudice to each other.*
 - 7. The appellate craves the leave to add, amend or alter all or any of the grounds of appeal.*
- 2.** During the course of hearing Mr. Jay Bhansali, Counsel of the assessee submitted that the assessee was not interested in pursuing this appeal and therefore this appeal may be permitted to be withdrawn. Ld. DR had no objection for withdrawing the appeal by the assessee.
- 3.** Under these circumstances, the present appeal is permitted to be withdrawn and thus dismissed as withdrawn.
- 4.** In the result, the appeals of the assessee is dismissed.

Order was pronounced in the open court at the conclusion of hearing.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 06/12/2016

Patel. P.S. नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai