

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI B.P.JAIN, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 5794/Del /2013
Asstt. Year: 2009-10**

**ITA No. 5795/Del /2013
Asstt. Year: 2009-10**

Income Tax Officer, Ward 49(2), New Delhi.	vs	Bright Professional Pvt. Ltd., 1/53, 1 st Floor, Lalita Park, Laxmi Nagar, Delhi-110092 (PAN: AABC1766A)
(Appellant)		(Respondent)

**C.O. No. 208/Del/2015 & C.O. No. 209/Del/2015
(IN ITA No. 5794/Del /2013) (IN ITA No. 5795/Del /2013)
Asstt. Year: 2009-10 Asstt. Year: 2010-11**

Bright Professional Pvt. Ltd., 1/53, 1 st Floor, Lalita Park, Laxmi Nagar, Delhi-110092 (PAN: AABC1766A)	vs	Income Tax Officer, Ward 49(2), New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri S.K. Jain, Sr. DR
Respondent by : Shri M.K. Thakur, CA
Date of Hearing : 07.11.2017
Date of Pronouncement: 20.11.2017

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

ITA No. 5794 and 5795/Del/2013 have been preferred by the department. ITA 5794/Del/2013 challenges the order of the

ld. Commissioner of Income Tax(A)-XXX, New Delhi for assessment year 2009-10 wherein vide order dated 18.7.2013, the ld. Commissioner of Income Tax(A) has partly allowed the appeal of the assessee against the order passed u/s 201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter called 'the Act'). C.O. 208/D/2015 has been filed by the assessee against the same order.

2. ITA No. 5795/Del/2013 challenges the partial disallowance of assessee's appeal against the order passed u/s 201(1)/201(1A) of the Act for assessment year 2010-11, the date of the impugned order is 18.7.2013. C.O. 209/2015 has been filed against ITA No. 5795 by the assessee.

2.1 Brief facts of the case are that the assessee company is in the business of providing academic coaching to its students pursuing Chartered Accountancy Course. During the assessment years under consideration, the assessee allegedly had gross profit sharing arrangements with the different faculties in the field of accountancy and law for the purpose of imparting coaching to the students. As per the assessee, it had paid 70% of the total fees after deducting rent of auditorium and cost of course material to the faculties. The Assessing Officer was of the

opinion that tax was deductible at source on the payments/sharing of fees to the faculties u/s 194J of the Act. Thereafter, the Assessing Officer passed orders u/s 201(1)/201(1A) of the Income Tax Act, 1961 raising a tax demand of Rs. 19,91,446 and Rs.17,08,022 for assessment years 2009-10 and 2010-11 respectively. The Assessing Officer also raised a demand of Rs. 2,72,337/- and Rs. 1,07,187/- for failure to deduct TDS u/s 194I of the Act. On appeal before the First Appellate Authority, the ld. Commissioner of Income Tax(A) accepted the assessee's claim for non-deduction of tax at source u/s 194J of the Act but confirmed the tax payment for non-deduction of tax on rent paid u/s 194I of the Income Tax Act, 1961.

2.2 Now, the department has challenged the adjudication of the ld. Commissioner of Income Tax(A) in deleting the tax demand u/s 194J by filing these appeals and the assessee has challenged the confirmation of tax demand u/s 194I through two cross objections.

3. Ld. Sr. DR submitted that there was a search operation u/s 133A of the Act on 25.11.2010 at the business premises of the assessee situated at 1/53, First Floor, Lalita Park, Laxmi Nagar,

Delhi to verify the compliance of the tax provisions of Chapter XVII of the Act. It was submitted that due to non-cooperation of the assessee subsequent to the search operations, the Assessing Officer wrote to the ADIT(Inv) Unit III requesting him to share his findings on the violation of TDS provisions along with xerox of seized material in this case and on the basis of information gathered from the Investigation Wing, letter of demand was sent to the Directors of the assessee company. The ld. Sr. DR also submitted that during the course of survey, the Director of the company Shri S. Rashid Masood had accepted that Rs. 51.50 lakh were paid to the faculty members without deducting tax at source during the current financial year 2010-11. The ld. Sr. DR also submitted that taking into account the fact of non-deduction of tax at source on the payments made to faculty members as well as payment of rent without deduction of tax at source, demands raised for both the assessment years in question were legally correct and that the order of the A.O.(TDS) should be upheld.

4. In response, the ld. AR submitted that as far as the issue of deduction of tax at source on payments made to faculties was concerned, the same was covered by the judgment of the Hon'ble

Delhi High Court in the case of Commissioner of Income Tax vs NIIT reported in 318 ITR 289 (Del) and CIT vs Career Launcher India Ltd. reported in 207 Taxman 28 (Del), and therefore, the ld. Commissioner of Income Tax(A) had rightly allowed relief to the assessee. It was submitted that there was a sharing of profit at the gross level with the faculties and the ld. Commissioner of Income Tax(A) had duly noted that the faculties were associated with the assessee on revenue sharing basis. It was submitted that the department had proceeded on a mere suspicion that there was no revenue sharing as no such agreement was on record. On the issue of liability to deduct tax at source on rent u/s 194I of the Act, it was submitted that the prescribed threshold limit was Rs. 1,20,000 per annum in respect of each payee and it was a fact on record that no payee had been paid an amount exceeding the threshold limit during the years under consideration and as such, both the lower authorities had erred in holding that the assessee was liable to deduct tax at source on these amounts. Our attention was also drawn to the details filed before the lower authorities in this regard and now available in the Paper Book. It was submitted that the adjudication of the ld.

Commissioner of Income Tax(A) in respect of TDS u/s 194I was erroneous and the same should be reserved.

5. We have heard the rival submissions and perused the material available on record. As far as the issue of deduction of tax at source u/s 194J on payments made to faculty members is concerned, the ld. Commissioner of Income Tax(A) has held that in view of the judgments of Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs NIIT (supra) and CIT vs Career Launcher India Ltd. (supra), tax u/s 194J was not deductible at source. However, the fact remains that the assessee's plea of profit sharing with the faculty members is not evident from the facts on record. The ld. Commissioner of Income Tax(A), while deciding the issue in favour of the assessee, has not made reference to any document or evidence which enabled him to reach the conclusion that the faculty members were franchisees of the assessee company and not its employees. Although the ld. Commissioner of Income Tax(A) has held that the faculties were associated with the assessee on a revenue sharing basis, no evidence has been forthcoming from the assessee to justify this claim. Although there are numerous judgments wherein it has been held that absence of a written agreement does not *ipso facto*

give a contrary presumption, all the same, there has to be some substantiation of the claim and a mere bald statement without any corroborative evidence cannot serve the purpose of the assessee in this regard. We are of the view that the ld. Commissioner of Income Tax(A) has not examined the issue in proper perspective and the relief has been granted to the assessee only on the basis of written submissions made before him. We are of the considered opinion that the issue needs re-examination. As no evidence has been filed before us, it would be in the fitness of things if the issue is restored to the file of the ld. Commissioner of Income Tax(A) to examine this issue *de novo* and adjudicate on the same after considering evidences which the assessee may like to produce before him in this regard. We are afraid that given the factual circumstances of the case, we are unable to apply the ratio of the judgments of the Hon'ble Delhi High Court in the case of CIT vs NIIT Ltd. (supra) and CIT vs Career Launcher India Ltd. (supra) in favour of the assessee as the assessee has not discharged the initial onus cast upon it. We, accordingly, restore the issue of non-deductibility of tax at source on the payments made to faculty members to the file of

the ld. Commissioner of Income Tax(A) for fresh examination in terms of our observations as above.

5.1 In the result, the appeals filed by the department are allowed for statistical purposes.

5.2 As far as the C.O.s of the assessee are concerned which challenge the confirmation of the tax demand by the ld. Commissioner of Income Tax(A) on payment of rent, we are of the considered opinion that the interest of justice would be served if this issue is also restored to the file of the ld. Commissioner of Income Tax(A) to re-examine the claim of the assessee that no payments exceeding the threshold limit were made by the assessee in both the years under consideration. Accordingly, both the Cross objections of the assessee are also allowed for statistical purposes.

5.3 We also add that it will be in the fitness of things that the ld. Commissioner of Income Tax(A) obtains a remand report from the Assessing Officer before proceeding to adjudicate both the issues.

6. In the result, both the appeals of the department and COs of the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 20th November, 2017.

Sd/-

**(B.P. JAIN)
ACCOUNTANT MEMBER**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 20th NOVEMBER, 2017
'GS'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order

ASSISTANT REGISTRAR