

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S. S. Viswanethra Ravi, Judicial Member]

I.T.A. No. 1326/Kol/2016
Assessment Year: 2012-13

I.T.A. No. 1327/Kol/2016
Assessment Year: 2013-14

I.T.A. No. 1336/Kol/2016
Assessment Year: 2011-12

I.T.A. No. 1337/Kol/2016
Assessment Year: 2012-13

I.T.A. No. 1338/Kol/2016
Assessment Year: 2012-13

A.C.I.T., Circle-3(TDS), Kolkata..... Appellant
Asstt. Commissioner of Income Tax, TDS Circle-3, Kolkata
10-B, Middletown Row
8th Floor
Kolkata - 700 071

Haldia Municipality..... Respondent
Dr. B.R. Ambedkar Bhawan
City Center, Haldia
Purba Mednipore
West Bengal - 721 657
[TAN : CALH 02640 B]

Appearances by:

None, appeared on behalf of the assessee.

Shri Arindam Bhattacharjee, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : December 21st, 2017

Date of pronouncing the order : January 5th, 2018

ORDER

Per J. Sudhakar Reddy :-

All these appeals are filed by the revenue directed against the separate but identical orders of the Id. Commissioner of Income Tax (Appeals)-24, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 29/03/2016.

2. As the issues arising in all these appeals are common, for the sake of convenience, they are heard together and disposed off by way of this common order.

3. There is a petition for adjournment. As in our opinion, this is not a fit case for grant of adjournment; hence we dispose off this case *ex-parte, qua* the assessee on merits, after hearing the ld. D/R.

4. Facts in brief as stated before the ld. CIT(A), are as follows:-

Haldia Municipality (hereinafter being referred to as the Appellant) is a Municipality constituted as per provisions of Section 3 of the West Bengal Municipal Act, 1993 (hereinafter being referred to as WBMA) under order No. 658/C-4/MIM- 109/81 dated 2nd August, 1983 read with Notification No. 545/MA/O/C 4/IM 3/97 dated 5th September, 1997 of Department of Municipal Affairs, Government of West Bengal. The Notification dated 05.09.1997 notifies the municipal area so declared by the Governor under Section 381 of WBMA. The appellant is also a Municipality under Article 243P of the Constitution of India read with Article 243Q of the Constitution.

The Appellant has been filing its return of Income as required under the Income Tax Act 1961 (hereinafter being referred to as the Act).

The appellant stated that in connection with the aforesaid financial years a survey was held at the premises of the appellant on 22nd January, 2013.

Subsequently the Deputy Commissioner of Income Tax, Circle-59, Kolkata (hereinafter referred to as the A.O.) issued a show cause dated 23rd January, 2014 alleging non-deduction of tax at source under Section 201 (1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) in respect of :

(a) payment of lease rent to Kolkata Port Trust (hereinafter referred to as KOPT)

(b) Vessel hire charges to West Bengal Surface Transport corporation (hereinafter referred to as WBSTC)

(c) payment to West Bengal Waste Management Ltd. (hereinafter referred to as WBWML)

(d) payment in connection with Cultural Programmes.

The appellant stated that thereafter on 29th March, 2014 the A.O. by observing that none appeared on behalf of the appellant proceeded to consider the aforesaid issues at hand by observing that since the issues were same as that of financial year 2010-11 and that the appellant had submitted replies vide letter dated 11.03.2013 and 21.03.2013 in respect of financial year 2010-11. He proceeded to finalize the proceedings.

4.1. The Assessing Officer treated the assessee as an assessee in default for non-deduction of tax on the above payments u/s 201(1) of the Act. The order was passed u/s 201(1)/ 201(1A) of the Act. Aggrieved the assessee carried the matter in appeal.

5. On the issue of deduction of tax at source on lease rent to KOPT, the Id. First Appellate Authority held that the assessee is liable to deduct TDS. The Id. CIT(A), without any pleading from the assessee has presumed that KOPT, would have included the rent in some years in its taxable income and paid tax on the same. He relied on the decision of the Hon'ble Apex Court in the case of *Hindustan Coca Cola Beverage (P) Ltd. Vs. CIT* [293 ITR 226 (SC)], and set aside the issue to the Assessing Officer to examine whether KOPT paid tax on income contained in the rent and re-adjudicate the matter. Consequentially the interest u/s 201A of the Act, was directed to be restricted, in accordance with law.

6. We find that the Id. CIT(A) has no power to set aside the issue, post the amended clause (a) of section 251(1) of the Act with effect from 01-06-2001 by the Finance Act, 2001. Hence, the order of the Id. First Appellate Authority is bad in law. In any event, as the legal position is now clear, we set aside this issue to the file of the Id. CIT(A), for fresh adjudication, in accordance with law, after giving the assessee adequate opportunity.

7. In the result, this ground of the revenue is allowed for statistical purposes.

8. On Ground No. 2, the Id. CIT(A) had given a finding that Section 194C of the Act, applies and not Section 194J. Here also, he has not stated as to what are the judicial decisions, he relies upon or as to which clause of the agreement on which he is basing his decision on. The order is totally a non-speaking order. Thus, this issue is also set aside to the file of the Id. CIT(A), for fresh adjudication, in accordance with law.

9. On the other issues, the Id. CIT(A) has adjudicated the same in favour of the revenue.

10. In the result, the appeal of the revenue is allowed for statistical purposes.

11. **I.T.A No. 1327/Kol/2016**

The issues arising in this Assessment Year are *mutatis mutandis* similar to those of the preceding Assessment Year. Accordingly, this appeal of the revenue also stands allowed for statistical purposes.

12. **I.T.A. No. 1336/Kol/2016, I.T.A. No. 1337/Kol/2016 & I.T.A. No. 1338/Kol/2016**

The sole issue that arises for adjudication before us, in all these revenue appeals, is in respect of levy of penalty u/s 271(C) of the Act, for Short Deduction of Tax at Source on payments made to West Bengal Waste Management Ltd. (WBWML)

12.1. As on merits we have restored the issue to the file of the Id. CIT(A), we also restore this issue of levy of penalty u/s 271(C) of the Act, on short deduction of tax on payments made to WBWML, to the Id. CIT(A)

13. In the result, all these appeals of the revenue are allowed for statistical purposes.

Kolkata, the 5th day of January, 2018.

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 05.01.2018
{SC SPS}

Copy of the order forwarded to:

***1. A.C.I.T., Circle-3(TDS), Kolkata
Asstt. Commissioner of Income Tax, TDS Circle-3, Kolkata
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***2. Haldia Municipality
Dr. B.R. Ambedkar Bhawan
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3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches