

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No.5440/Del/2015
Assessment Year : 2011-12**

ACIT, TDS, Noida.	Vs.	Jaypee Ganga Infrastructure Corporation Ltd., Sector- 128, Noida.
		PAN : AABCJ9667J
(Appellant)		(Respondent)

**ITA No.1094/Del/2017
Assessment Year : 2012-13**

ACIT, TDS, Noida.	Vs.	Jaypee Ganga Infrastructure Corporation Ltd., Sector- 128, Noida.
		PAN : AABCJ9667J
(Appellant)		(Respondent)

Department by : Shri Amit Jain, Sr.DR
Assessee by : Shri Ashwini Garg, Adv.
Date of hearing : 10-01-2018
Date of pronouncement : 16-01-2018

ORDER

PER R. K. PANDA, AM :

The above two appeals filed by the Revenue are directed against the common order dated 14.05.2015 of CIT(A)- I, Noida for the assessment years 2011-12 and 2012-13 respectively. Since identical grounds have been taken by

the Revenue in both the appeals, therefore, these were heard together and are being disposed of by this common order.

2. Grounds taken in both the appeals are as under :-

ITA No.5440/Del/2015 (A.Y.2011-12)

“1. Ld. CIT(A)-I, Noida has erred in law and all facts in deleting the demand on account of payment of Bank guarantee commission ignoring the fact that notification no. 56/2012[F.No.275-53/2012-IT (B)], dated 31.12.2012 which provides that no TDS shall be done on payment like Bank guarantee commission is effect from 01.01.2013 while in the case of the assessee the payment of Bank guarantee of Bank guarantee commission was done before 01.01.2013.”

ITA No.1094/Del/2017 (A.Y.2012-13)

“1. Ld. CIT(A)-I, Noida has erred in law and all facts in deleting the demand on account of payment of Bank guarantee commission ignoring the fact that notification no. 56/2012[F.No.275-53/2012-IT (B)], dated 31.12.2012 which provides that no TDS shall be done on payment like Bank guarantee commission is effect from 01.01.2013 while in the case of the assessee the payment of Bank guarantee commission was done before 01.01.2013.”

3. After hearing both the sides, we find a survey was conducted u/s 133A in the case of the assessee on 24.02.2014 to verify the correct applicability of TDS related provisions. From the details furnished by the assessee it was found that certain payments on account of bank guarantee commission were made by the assessee to various banks on which no tax was deducted as per the provisions of section 194H of the I.T. Act. The Assessing Officer, therefore, confronted the same to the assessee. It was submitted by the assessee that the payment of commission to any banking company is exempt from TDS u/s 194A(3)(iii)(a) of the I.T. Act. However, the Assessing Officer was not satisfied with the explanation given by the assessee and treated the assessee as an assessee-in-

default and passed the order u/s 201(1)/201(1A) by raising the following demands as under :-

<i>F.Y.</i>	<i>A.Y.</i>	<i>Short charge u/s 201(1)</i>	<i>Interest u/s 201(1A)</i>	<i>Total tax liability</i>
2010-11	2011-12	2,02,17,932	74,80,635	2,76,98,027
2011-12	2012-13	21,61,402	7,53,611	29,15,013

4. The assessee preferred an appeal before the Id. CIT(A) who held that the provisions of section 194H are not applicable in principal to principal transactions. While doing so, he relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Living Media Ltd. vide ITA no.1264 of 2007 order dated 06.05.2008. He further noted that the SLP filed by the Revenue against the said decision has been dismissed by the Hon'ble Supreme Court. He further noted that similar issue had come up before him in the sister concern of the group namely M/s Jaypee Sport Pvt. Ltd. wherein he had upheld the proposition that the bank guarantee commission being principal to principal payment is not filing within the purview of section 194H of the I.T. Act. He also relied on the decision of the Hon'ble Allahabad High Court in the case of Jagran Prakashan Ltd. vs. DCIT (TDS) reported in 345 ITR 288.

5. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

6. The Id. DR strongly supported the order of the Assessing Officer.

7. The ld. counsel for the assessee on the other hand filed a copy of the decision of the Tribunal in the case ACIT vs. Japyee Sports International Ltd. and ACIT vs. Japyee Infratech Ltd. and batch of other appeals order dated 31.08.2017 and submitted that under identical circumstances the Tribunal in the case of the sister concern of the assessee has held that bank guarantee commission is not subject to withholding tax u/s 194H as it does not fall into Clause (i) of the Explanation (1) of section 194H of the I.T. Act. He accordingly submitted that this being a covered matter in favour of the assessee, the appeals filed by the Revenue should be dismissed.

8. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer held that the assessee is liable to deduct tax u/s 194H on account of bank guarantee commission paid to various banks. We find the ld. CIT(A) following the decision of the Hon'ble Delhi High Court in the case of Living Media Ltd. (supra), the decision of the Hon'ble Allahabad High Court in the case of Jagran Prakashan Ltd. (supra) and his own order in the case of M/s Jaypee Sport Pvt. Ltd. (supra) deleted the demand raised by the Assessing Officer on the ground that tax was not deductible at source against payment of bank guarantee commission to bankers u/s 194H. We find identical issue had come up before the Tribunal in the sister concern of the assessee, namely, Japyee Sports International Ltd. (supra) and Japyee Infratech Ltd. (supra). We find the

Tribunal at para 20 and 21 of the order has discussed the issue and held that bank guarantee commission is not subject to withholding tax u/s 194H. Accordingly, the appeal filed by the Revenue on this was dismissed. The relevant observation of the Tribunal at para 20 and 21 reads as under :-

“20. Ground No.3 of the appeal of the assessee is with respect to deduction of tax at source on bank guarantee commission u/s 194H of the Act. In the case before us the Id. CIT(A) has held that on bank guarantee commission no tax is required to be deducted following the decision of Hon’ble Delhi High Court in case of CIT Vs. Living Media India Ltd. dated 06.05.2008. Furthermore, the assessee is acting not as an agent but on principle-to-principle basis.

21. We have carefully considered the rival contentions and we are of the opinion that the bank guarantee commission is not subject to withholding tax u/s 194H of the Act as it does not fall into Clause (i) of the Explanation of Section 194H. In view of this Ground No.3 of the appeal of the Revenue is dismissed.”

9. Since the facts of the impugned appeals are identical to the facts of the case decided by the Tribunal in the case of sister concern of the assessee, therefore, following the decision of the Tribunal cited (supra) and in absence of any contrary material brought to our notice, we do not find any infirmity in the order of the Id. CIT(A) deleting the demand raised by the Assessing Officer in the order passed u/s 201(1) and 201(1A) of the I.T. Act. The grounds raised by the Revenue are accordingly dismissed.

10. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on this 16th January, 2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 16-01-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

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By Order

Assistant Registrar
ITAT, New Delhi