

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील स / ITA Nos.297 and 298/PUN/2016
निर्धारण वर्ष / Assessment Years : 2007-08 and 2008-09

Dy.Commissioner of Income Tax (TDS),
Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

Bajaj Allianz Insurance Co., Ltd.,
Ground Floor, GE Plaza,
Airport Road, Pune.

..... प्रत्यर्थी /
Respondent

PAN : AADCA1701E.

Assessee by : Shri Nikhil Mutha

Revenue by : Shri Ajay Modi.

सुनवाई की तारीख / Date of Hearing : 29.01.2018	घोषणा की तारीख / Date of Pronouncement: 31.01.2018
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

These two appeals filed by the Revenue u/s 253 of the Act are emanating out of separate orders of Commissioner of Income Tax (A) – Pune – 10, dt.23.12.2015 for the assessment years 2007-08 and 2008-09.

2. Before us, at the outset, both the parties submitted that though the appeals filed by the Revenue are for two different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus,

both the appeals can be heard together. In view of the aforesaid submissions of both the parties, we, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order but however, proceed with narrating the facts for assessment year 2007-08.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is a company engaged in the business of Life Insurance. A survey action u/s 133A of the Act was conducted in the office premises of the assessee on 03.01.2008 for verification of compliance to the various provisions of TDS / TCS. During the course of survey, it was noticed that during the year assessee had made payments amounting to Rs.1,66,82,034/- to various parties as DG set hire charges - and had deducted TDS at 2% plus applicable surcharge and education cess u/s 194C of the Act. AO was of the view that in view of the amendment to the definition of 'rent' w.e.f. 13.07.2006, assessee ought to have deducted tax at 20% plus applicable surcharge and cess u/s 194I of the Act. AO also noticed that assessee had paid a sum of Rs.76,00,000/- to TBWA Anthem Pvt. Ltd., towards cost of production of three films and assessee had deducted tax at 1% plus applicable surcharge and cess u/s 194C of the Act. AO was of the view that assessee ought to have deducted tax u/s 194J of the Act as the services involved technical, managerial and professional services. It was also noticed by him that assessee had made payment to various parties towards AMCs and other charges (the details of which are listed at page 3 of the order). In respect of all those payments, assessee had deducted tax u/s 194C of the Act whereas according to AO, assessee ought to have deducted tax u/s

194J of the Act as the services were in the nature of technical, managerial and professional. After considering the submissions of the assessee, AO held that assessee was in default and there was short deduction of tax. He accordingly worked out the short deduction of tax of Rs.56,75,161/- as non / short deduction and interest u/s 201(1A) of the Act of Rs.31,22,147/- and thus determined an aggregate amount of Rs.87,39,749/- as payable by assessee by order dt.28.03.2011 passed under Sec.201(1A) of the Act. On account of the aforesaid short / non deduction of tax, AO initiated penalty proceedings u/s 271C of the Act and vide order dt.24.03.2014 levied penalty of Rs.31,36,697/- u/s 271C of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who (in appeal No.PN/CIT(A)10/Addl.CIT(TDS)/ 619/14-15) vide order dt.23.12.2015 decided the issue in favour of the assessee by holding as under :

“5. I have carefully considered the submission of the appellant. In fact, in instant case, the A.O. had levied penalty u/s 271C of I.T. Act for violation of non/short deduction of TDS under the provisions of section 194I and 194J, however, the appellant had deducted tax u/s. 194C of I.T. Act. The A.R. of appellant, during the appeal proceeding, has brought to the notice that ITAT, Pune, A-Bench vide order dated 21.3.2014 has decided the matter in favour of appellant on quantum issue. wherein I.T.A.T. had viewed that the appellant had correctly deducted the tax u/s 194C of I.T. Act, against the claim of department u/s 194I and 194J of I.T. Act. Accordingly, there was no short deduction. Hence, considering the above judgment. since quantum issue is deleted on merit, penalty levied for such violation deserves to be also deleted.

4. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. The Ld.CIT(A) erred in allowing the appeal towards the levy of Penalty u/s 271C of the IT Act, 1961.

2. The Ld.CIT(A) erred in not appreciating the fact that though the quantum issue has been allowed by the ITAT in favour of assessee, the department is in appeal on the issue before Hon'ble High Court, Bombay.

3. The Ld.CIT(A) erred in not appreciating the fact that as the quantum issue in the case is still disputed, the Penalty levied u/s 271C of the Act should not be deleted.”

Identical grounds have been raised by Revenue in ITA No.298/PUN/2016 for A.Y. 2008-09.

5. Before us, Ld.D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further submitted that on the quantum issue, assessee had preferred appeal before Hon'ble Tribunal and the Hon'ble Tribunal of Pune Bench vide order dt.21.03.2014 in ITA Nos.116 & 117/PN/2013 and ITA Nos.153 & 154/PN/2013 has decided the issue in favour of the assessee and since the quantum has been decided in favour of the assessee, the penalty u/s 271C on such quantum does not survive. He further submitted that against the order of Tribunal, the Revenue preferred appeal before Hon'ble Bombay High Court. Hon'ble High Court vide order dated 01.08.2017 in ITA Nos.170 and 171 of 2014 has dismissed the appeals of Revenue. He therefore submitted that in view of these facts, the appeals of the Revenue needs to be dismissed.

6. We have heard the rival submissions and perused the material on record. We find that Ld.CIT(A) while deleting the penalty has noted that the Tribunal vide order dt.21.03.2014 has decided the matter in favour of the assessee on quantum issue and had held that the assessee has correctly deducted TDS u/s 194C of the Act as against the claim of the Department that assessee ought to have deduct TDS u/s 194I and 194J of the Act and that there was no short deduction of tax. The aforesaid finding of Ld.CIT(A) has not been controverted by Revenue. We further find that against the order of Tribunal,

Revenue preferred appeal before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide order dt.01.08.2017 in ITA Nos.170 and 171 of 2014 has dismissed the appeal of Revenue for A.Y.2007-08 and 2008-09. In such a situation, we find no reason to interfere with the order of Ld.CIT(A) and thus, the grounds of the Revenue are dismissed.

7. In the result, the appeal of the Revenue in ITA No.297/PUN/2016 for A.Y. 2007-08 is dismissed.

8. As far as the grounds raised in appeal in ITA Nos.298/PUN/2016 for A.Y. 2008-09 is concerned, in view of the submission of both the parties that the facts of the case in the years being identical to the facts and issue of the case in ITA No.297/PUN/2016 for A.Y. 2007-08, we therefore for the reasons stated herein while disposing of the appeal in ITA No.297/PUN/2016 for A.Y. 2007-08 and for similar reasons, dismiss the grounds of appeal of Revenue. **Thus, the grounds of the Revenue are dismissed.**

9. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 31st day of January, 2018.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 31st January, 2018.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A) – Pune-10, Pune.
4. The Pr.CCIT, Pune.
5. The CIT(TDS), Pune.
6. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” / DR,
ITAT, “B” Pune;
7. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.