

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

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

I.T.A. No. 1519/Kol/2016
Assessment Year: 2013-14

DCIT(TDS), Circle-1, Kolkata.....Appellant
10B, Middleton Road
Kolkata - 700 071

M/s. Earnest Towers Pvt. Ltd.....Respondent
9B Wood Street
4th Floor
Kolkata - 700 016
[PAN : AABCE 8612 N]

Appearances by:

Shri Santosh Kumar Bajaj, FCA, appeared on behalf of the assessee.
Shri S. Dasgupta, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : January 04th, 2018

Date of pronouncing the order : March 9th, 2018

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the revenue is directed against the order 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. 31/05/2016.

2. After hearing rival contentions, we find that the only issue for our consideration is as to whether tax need to be deducted at source on lease premium paid by the assessee to MMRDA against lease of land. The Tribunal on the very same issue in the assessee's own case for the Assessment Year 2008-09, in *ITA NO. 265/Kol/2012*, at page 16 para 5 held as follows:-

"5. As regards ground no. 2 of the revenue the said issue is covered against the revenue in various judicial pronouncements as mentioned herin above. In the case of ITO vs Indian Newspaper Society (supra) ITAT Delhi Bench has held that in case the lease premium paid by the assessee is held to be capital in nature and the assessee is not liable ot deduct TDS on payment of lease premium to MMRDA. The issue is therefore decided against the revenue. Thus ground no. 2 of the revenue is dismissed."

3. The Hon'ble Delhi High Court in the case of *Krishak Bharati Cooperative Ltd. vs Deputy CIT, ITA No. 205/2010, judgement dt. 12/07/2012*, took a view that lease premium paid was capital expenditure and not allowable as

expenditure. Hence T.D.S. provisions have no application on the facts of this case.

4. Respectfully following the same, we uphold the order of the Id. CIT(A) that the order passed by the Assessing Officer u/s 201/201(1A) of the Act, is bad in law, and dismiss this appeal of the revenue.

5. In the result, appeal of the revenue is dismissed.

Kolkata, the 9th day of March, 2018.

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Dated :09.03.2018
{SC SPS}

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

**1. DCIT(TDS), Circle-1, Kolkata
10B, Middleton Road
Kolkata – 700 071**

**2. M/s. Earnest Towers Pvt. Ltd
9B Wood Street
4th Floor
Kolkata – 700 016**

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