

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
(समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 932/Kol/2015
Assessment Year: 2012-13

Assistant Commissioner of Income-tax, Circle-2, TDS, Kolkata.	Vs.	M/s. ITD-ITD CEM JV (Consortium of ITD-ITD Cementation) PAN: AAAAL2382Q)
Appellant		Respondent

&

I.T.A. No. 713/Kol/2016
Assessment Year: 2011-12

Assistant Commissioner of Income-tax, Circle-2, TDS, Kolkata.	Vs.	M/s. ITD Cementation JV (PAN: CALIO 0312 E)
Appellant		Respondent

Date of Hearing	11.04.2018
Date of Pronouncement	14.06.2018
For the Appellant	Shri G. Hangshing, CIT
For the Respondent	Mrs. Disha Kedia, AR

ORDER

Per Shri A.T.Varkey, JM

Both these appeals filed by the Revenue is against the separate orders of Ld. CIT(A)-24, Kolkata dated 02.02.2015 and 21.01.2016 for AYs 2012-13 and 2011-12. Since facts are identical and grounds are common except variance in amount, we dispose of both these appeals by this consolidated order for the sake of convenience by taking the ITA No. 932/Kol/2015 as the lead case.

2. The first ground of appeal of revenue is against the order of Ld. CIT(A) in deleting the charge of TDS and interest on account of non-deduction of TDS u/s. 194I of the Income-tax Act, 1961 (hereinafter referred to as the “Act” on payment of land rent amounting to Rs.80,15,529/- to Airport Authority of India Ltd. (in short AAIL).

3. Briefly stated facts are that a survey u/s. 133A(1) of the Act was conducted on 18.01.2013 on the assessee firm. The assessee has been awarded a contract for constructing a new Airport Terminal at NSCBI, Kolkata by Air Port Authority of India. According to AO, the assessee did not make TDS on various payments for the assessment year under consideration and accordingly, notice u/s. 201(1)/201(1A) of the Act dated 19.03.2014 was issued to the assessee. From the records/documents it was observed by the AO that the assessee had paid a sum of Rs.80,15,529/- as land rent to M/s. Airport Authority India Ltd. but had not deducted tax on those payments. The assessee was asked to explain as to why sec. 194I for deduction of TDS on land rent had not been complied with. The assessee gave a detailed reply which was reproduced by the AO in order passed u/s. 201(1)/201(1A) of the Act. After considering the submission of the assessee the AO treated the assessee in default vide his order dated 28.03.2014 passed u/s. 201(1)/201(1A) of the Act. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who allowed the assessee’s ground of appeal by observing as under:

“4.2. I have examined the assessment order, the remand report as well as various submissions of the AR of the appellant. I find that the facts and circumstances of the instant case for AY 2012-13 are similar to that of AY 2011-12 which has already been adjudicated by LD. CIT(A)-1, Kolkata, as discussed earlier. I, therefore, endorse the view of LD. CIT(A)-1, Kolkata, that the appellant could not be held liable for tax u/s. 101(1) of the Act for not deducting tax on payment of land rent of Rs.80,15,529/- made to the Airport Authority of India. Ground no. 1 of the appeal is allowed.”

Aggrieved, revenue is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the identical issue came up before the coordinate bench of this Tribunal in assessee’s own case in ITA No. 1462/Kol/2014 for AY 2011-12 and the Tribunal vide its order dated 12.07.2017 has held as under:

“8. Heard rival submissions and perused the relevant material available on record. We find that the CIT(A) held the ITA No. 1462/KOL/2014 7 impugned amount does not

constitute rent which attracts deduction of TDS under section 194I of the Act by placing reliance on the decision of Hon'ble High Court of Delhi in the case of CIT vs NIIT reported in 318 ITR 289.

9. We note that the CIT(A) placed reliance on the decision of Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage Pvt. Ltd. reported in 293 ITR 226 and held that the assessee is not in default for non-deduction of TDS as the payment alleged to have been paid to AAI was in turn offered by AAI as income in its account and paid the tax. In view of the ratio laid down by the Hon'ble High Court of Delhi in the case of NIIT (supra), we hold that the amounts alleged to have been paid to AAI does not constitute rent, therefore the application of provisions under section 194I does not arise at all. Even otherwise we are in agreement with the opinion rendered by the CIT(A) in placing reliance in the case of Hindustan Coca Cola Beverage (supra), assessee cannot be held in default as the recipient AAI is a Govt. Public Sector Enterprise which is stated to have offered this receipt to tax. The burden lies on the AO to verify whether the said AAI offered the payment received from the assessee to tax or not. Therefore, we find no infirmity in the impugned order of CIT(A) and it is justified. Accordingly ground no. 1 raised by the Revenue is dismissed."

Since the issue is squarely covered in favour of the assessee by the decision cited supra and the Ld. DR could not point out any change in facts or law, we respectfully following the order of the coordinate bench of this Tribunal in assessee's own case, cited supra dismiss this ground of appeal of revenue.

5. Ground no. 2 of Revenue's appeal is against the order of Ld. CIT(A) in deleting the charge of TDS and interest on payment of bank guarantee commission and bank charges amounting to Rs.42,72,657/- (correct figure is Rs.36,79,083/-) u/s. 194A/194H of the Act.

6. Briefly stated facts are that the AO found that the assessee had paid a consideration of Rs.36,79,083/- as administrative expenses to the ITD Cementation India Ltd. on account of bank guarantee commission of Rs.23,52,172/- and bank charges of Rs.11,96,402/-. The AO asked the assessee to explain as to why TDS was not deducted on these payments. The assessee replied vide letter dated 25.03.2014 which was reproduced by the AO in the assessment order dated 28.03.2014 passed u/s. 201(1)/201(1A) of the Act. Before the AO the assessee also submitted that M/s. ITD Cementation India Ltd. is a Co-venturer of assessee and the expenses were reimbursed by the assessee to its Co-venturer, therefore, reimbursement cannot be subject to TDS. Assessee's submission was not accepted by the AO and, therefore, he opined that the said payments cannot be treated as reimbursement as the assessee company is making payment to another company and accordingly treated the

assessee as default u/s. 201(1) of the Act. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who allowed the assessee's ground of appeal by observing as under:

"6.2. I have examined the submissions of the AR of the appellant and the AO. I am in agreement with the view of Ld. CIT(A)-1, Kolkata as discussed earlier. As the stated payments were not for services rendered but only for reimbursement of expenses, the appellant was not liable to deduct TDS on these expenses. Accordingly ground no. 3 of the appeal is allowed."

Aggrieved, revenue is before us.

7. We have heard rival submissions and gone through the facts and circumstances of the case. We note that identical issue came up before the coordinate bench of this Tribunal in assessee's own case in ITA No. 1462/Kol/2014 for AY 2011-12 and the Tribunal vide its order dated 12.07.2017 has held as under:

"14. Heard rival submissions and perused the relevant material available on record. We find that the CIT(A) examined the payments and found the said payments were made not for any services but only reimbursement of expenses and placed reliance in the case of Kotak Securities Ltd. vs DCIT reported in 50 SOT 158 for the proposition, the payments made to bank guarantee and the payments of commission paid for bank guarantee are not covered by the provisions of section 194H of the Act. In the present case, ITD Cementation India Ltd. is a sister concern of the assessee. The said sister concern arranged loan from IDBI to the assessee and the impugned amount is to be paid to IDBI towards bank guarantee, commission, bank charges and interest by the sister concern and the same were reimbursed by the assessee to its sister concern. There is no element of income in such payments. Therefore, we see reason to interfere in the order of CIT(A) and it is justified."

Since the issue is squarely covered in favour of the assessee by the decision cited supra and the Ld. DR could not point out any change in facts or law, we respectfully following the order of the coordinate bench of this Tribunal in assessee's own case, cited supra dismiss this ground of appeal of revenue.

8. In the result, both the appeals of revenue are dismissed.

Order is pronounced in the open court on 14.06.2018

Sd/-

(A.L. Saini)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 14th June, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circle-2 TDS, Kolkata.
2. Respondent – (i)M/s. ITD-ITD CEM JV (Consortium of ITD-ITD Cementation), ii) M/s. ITD Cementation JV, 10B, Middleton Row, 7th floor, Kolkata-700 071.
3. The CIT(A) -24, Kolkata (e-mailed)
4. CIT Kolkata.
5. DR, ITAT, Kolkata. (e-mailed)

/True Copy,

By order,

Sr. Pvt. Secretary