

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

[Before Shri P.M. Jagtap, AM and Shri A.T. Varkey, JM]

I.T.A. Nos. 1234 & 1236/Kol/2016
Assessment Years: 2011-12 & 2012-13

M/s. TCG Lifesciences Pvt. Ltd.....Appellant
Block - BN, Plot - 7, Sector - V,
Salt Lake Electronics Complex,
Kolkata - 700 091.
[PAN : CALCO 3085 F]

Income Tax Officer.....Respondent
Ward 59(4) (TDS), Kolkata,
10B, Middleton Row,
Kolkata - 700 071.

Appearances by:

Shri A.K. Tibrewal, FCA appearing on behalf of the Assessee.

Shri Sallong Yaden, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : June 04, 2018

Date of pronouncing the order : June 20, 2018

ORDER

PER P.M. JAGTAP, A.M.

These two appeals filed by the assessee are directed against the common order of Ld. CIT(A) - 24, Kolkata dated 04.03.2016 whereby he upheld the orders passed by the Assessing Officer under section 201(1)/201(1A) of the Income Tax Act, 1961 treating the assessee as the assessee in default for A.Y. 2011-12 and 2012-13.

2. The assessee in the present case is a company. A survey under section 133A was carried out in the business premises of the assessee company on 13th September, 2013. Subsequently, from the relevant details furnished by the assessee, the amount of tax deducted from the payments of various expenses was verified by the A.O. On such verification, he found that payments of Rs. 29,51,709/- and Rs. 34,00,802/- were made by the assessee company to different

employees towards car running and maintenance expenses and the same were treated as exempt while computing the taxable salary income of the said employees for TDS purpose. During the course of survey and even thereafter, the assessee however failed to furnish supporting documentary evidence to establish that the said expenses were paid towards reimbursement of car expenses for official duties. The assessee company also accepted the lapse on its part in not maintaining proper log book. The A.O., therefore, held that the assessee company was liable to deduct tax at source from the amount paid to the employees towards car running and maintenance expenses of Rs. 29,51,709/- and Rs. 34,00,802/- in the F.Y. 2010-11 and 2011-12 and since the assessee had failed to do so, he treated it as the assessee in default for such short deduction amounting to Rs. 8,58,885/- and Rs. 15,75,200/- for A.Y. 2011-12 and 2012-13 respectively vide his orders passed under section 201(1) of the Act. He also charged interest of Rs. 3,26,376/- and Rs. 4,84,086/- under section 201(1A) for A.Y. 2011-12 and 2012-13 respectively and raised a total demand of Rs. 11,85,261/- and Rs. 20,59,286/- vide his order passed under section 201(1)/201(1A) of the Act for A.Y. 2011-12 and 2012-13 respectively.

3. Against the orders passed by the A.O. under section 201(1)/201(1A) for both the years under consideration, appeals were preferred by the assessee before the Ld. CIT(A) and the action of the A.O. in treating it as the assessee in default for non-deduction of tax at source from the amounts paid to the employees towards car running

and maintenance expenses was challenged by the assessee by making the following submissions:

"The aforesaid reimbursement are simply reimbursement of car running and maintenance expenses for performing official duty/work therefore the findings given by the Ld. ITO(TDS) is arbitrary, unjust, erroneous and contrary to the facts of the case and provisions of law.

The payments were made for reimbursement of car running and maintenance expenses to certain category of employees incurred by them for performing official duty/work. Most of these employees are scientists occupied with their scientific research works and therefore it was not conversant for them to maintain proper log book and this cannot be made a case for default in TDS."

4. The Ld. CIT(A) did not find merit in the submission of the assessee and proceeded to confirm the orders passed by the A.O. under section 201(1)/201(1A) for both the years under consideration for the following reasons in paragraph no 4 in his common appellate order:

"It has been admitted by the appellant that car allowance were paid without keeping records that the expenses were incurred for performing the official duty work. No material was supplied even to suggest that what was paid was for performance of official duty. In my view the appellant has treated the car allowances or reimbursement as exempt without meeting attended conditions. Somebody responsible for making payments and income calculation for the purpose of TDS liability has rushed to treat the sums as exempt from income tax. As there is no material even to suggest that the sums were for performing official work, I have no basis to interfere with the AO's order, which is confirmed. The grounds, therefore, are not allowed."

5. We have heard the arguments of both the sides and also perused the relevant material available on record. Besides reiterating the submissions made before the authorities below on behalf of the

assessee, the learned counsel for the assessee has contended that the amount in question paid by the assessee company to its employees towards car running and maintenance expenses is not covered by the definition of 'perquisite' given in section 17(2) of the Income Tax Act, 1961. We are unable to accept this contention of the learned counsel for the assessee. As per Clause (viii) of sub-section (2) of section 17, perquisite includes the value of any other fringe benefit or amenity as may be prescribed. Such other fringe benefits or amenities as mentioned in Clause (viii) of sub-section (2) of section 17 are prescribed in rule 3 of Income Tax Rule, 1962 and even the method of valuation thereof is prescribed. The method of valuation of perquisite provided by way of use of motor car to an employee is given in sub-rule (2A) of rule 3 in tabular form and as per serial no 2 of the said table, where the employee owns a motor car but the actual running and maintenance charges are met and reimbursed to him by the employer, this perquisite will have no value if such reimbursement is for the use of vehicle wholly and exclusively for official purposes provided that the documents specified in Clause (B) of this sub-rule are maintained by the employer. As per Clause (B) of sub-rule (2) of rule 3, the employer has to maintain a complete detail of journey undertaken for official purpose which may include date of journey, destination, mileage and the amount of expenditure incurred thereon. Further, the employer has to give a certificate to the effect that expenditure was incurred wholly and exclusively for the performance of official duty.

6. In the present case, the requisite details as specified in Clause (B) of sub-rule 2 of rule 3 of Income Tax Rules 1962 were not maintained by the assessee and this being the undisputed position, we find ourselves in agreement with the authorities below that the value of perquisite provided by the assessee company to its employees in the form of reimbursement of car running and maintenance charges was chargeable to tax in their hands and the assessee was liable to deduct tax at source from the said value. Since there was failure on the part of the assessee company to deduct tax at source from the value of the said perquisite, we are of the view that it was rightly treated by the A.O. as the assessee in default for such non or short deduction of tax at source under section 201(1) and interest under section 201(1A) was also correctly charged in accordance with law. In that view of the matter, we uphold the impugned order passed by the Ld. CIT(A) confirming the orders of the A.O. passed under section 201(1)/201(1A) for both the years under consideration and dismiss these appeals of the assessee.

7. In the result, both the appeals of the assessee are dismissed.

Order Pronounced in the Open Court on 20th June, 2018.

Sd/-

(A.T. Varkey)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 20/06/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. TCG Lifesciences Pvt. Ltd., Block-BN, Plot-7, Sector-V, Salt Lake Electronics Complex, Kolkata – 700 091.
2. I.T.O. Ward 59(4) (TDS), 10B, Middleton Row, Kolkata – 700 071.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata