



IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI PAWAN SINGH, JM

ITA No.2196/Mum/2016
(Assessment Year :2012-13)

ITA No.2197/Mum/2016
(Assessment Year :2010-11)

ITA No.2198/Mum/2016
(Assessment Year :2011-12)

ITO (TDS) – 1(3)(4) Room No.708, 7 th Floor Smt. K.G. Mittal Ayurvedic Hospital Building Charni Road, Mumbai- 400 002	Vs.	Mumbai Pune Motor Malak Shramjivan Premises Soc. Ltd., B-5, Phase-I Wadala Truck Terminal Mumbai – 400 037
PAN/GIR No.		AAAAM8387M
Appellant)	..	Respondent)

Revenue by	Shri V. Vidyadharan
Assessee by	Shri Mandar Vaidya
Date of Hearing	01/06/2018
Date of Pronouncement	29/06/2018

आदेश / ORDER

PER R.C.SHARMA (A.M):

These are the appeals filed by Revenue against the order of CIT(A)-59, Mumbai dated 21/01/2016 for A.Y.2010-11, 2011-12 and 2012-13, in the matter of order passed u/s.201(1A) of the IT Act.

2. The grievance of Revenue in all the years are common which pertains to not treating the assessee in default u/s.201 (1) in respect of

the amount of tax which has not been deducted u/s.194-I from the payment made to MMRDA and levying interest u/s.201(1A) of the IT Act.

3. At the outset, learned AR placed on record the order of the Tribunal in assessee's own case for the A.Y.2009-10 dated 04/12/2015, wherein similar levy u/s.201(1), 201(1A) was set aside. The precise observation of the Tribunal was as under:-

4. We have heard the arguments advanced by the learned representative of the parties and have gone through the case files carefully. Mainly, the revenue has contended that assessee has paid lease premium in the nature of rent to MMRDA, therefore, the assessee was liable to deduct the income tax at source payable to the department. Lease agreement dated 17th January 2007 and lease agreement (rectification) dated 13th September 2007 lies in the paper book speaks about the lease agreement of the assessee firm with MMRDA. The receipt which also lies at page 28 in the paper book speaks about the payment to MMRDA to the tune of Rs.20,25,416/- on account of lease premium which had been paid by the assessee in view of receipt attached with the paper book at page 30. Whether the lease premium can be treated as rent or not, this question the come before the Mumbai, Tribunal in case of M/s. Wadhwa Associates Realtors (P) Ltd. (2013) 36 Taxman 526, Mumbai wherein it is held that the lease premium paid to the MMRDA is not liable to be taxed u/s 194I of the Act. On the basis of aforesaid order the learned CIT(A) has passed the order in question dated 07.03.2014. The relevant para in case of M/s. Wadhwa Associates Realtors (P) Ltd. (2013) 36 Taxman 526, Mumbai is hereby held as under:

"We have carefully perused the lease deed as exhibited from page 1 to,42 o the Paper Book. A careful reading of the said lease deed transpires that the premium is not paid under a lease but is paid as a price for obtaining the lease, hence it precedes the grant of lease. Therefore, by any stretch of imagination, it cannot be equated with the rent which is paid periodically. A perusal of the records further show that the payment to MMRDA is also for additional built up area and also for granting free of FSI are, such payment cannot be equated to rent. It is also seen that MMRDS in exercise of power u/s.43 r.w.s. 37(1) of the Maharashtra Town Planning Act, 1966, MRTP Act and other powers enabling the

same has approved the proposal to modify regulation 4A(ii) and thereby increased the FSI of the entire 'G' block of BKC. The Development Control Regulations for BKC specify the permissible FSI. Pursuant to such provisions, the assessee became entitled for additional FSI and has further acquired/purchased the additional built up area for construction of additional area on the aforesaid plant. Thus the assessee has made. payment to MMRDA under Development Control for acquiring leasehold land and additional built up area. The decision of the Tribunal in the case of National Stock Exchange [supra] and M/s. Mukund Ltd. [supra] have been well discussed by the Id. CIT(A) in his order. The decision of the Hon'ble jurisdictional High Court in the case of M/s.Khimline Pumps Ltd. [supra] squarely and directly apply on the facts of the case wherein the Hon'ble jurisdictional High Court has held that payment for acquiring leasehold land is a capital expenditure. Considering the entire facts in totality in the light of the judicial decision vis a vis provisions of section 194I, definition of rent as provided under the said provisions, we. do not find any reason to tamper or interfere with the findings of the Ld CIT(A) which we confirm."

5. Subsequently, the matter was again considered by the Hon'ble Tribunal of Mumbai in ITA 1298/M/14 order dated 24.11.2015 in case titled as ITO(TDS) 2(5) Vs. Palton Yarn Pvt. Ltd., Mumbai vide which the order passed by the Mumbai Tribunal mentioned above has been followed. The learned CIT(A) has passed the order on the basis of Tribunal order and we are also by honoring the order of the Mumbai Tribunal, nowhere found any ground to interfere with.

6. Accordingly section 194I is not applicable to this case hence, the question of interest in view of the provision u/s. 201(1)/201(1A) also does not arise.

4. We have carefully gone through the orders of the authorities below as well as the order of the Tribunal in assessee's own case, wherein the facts and circumstances are same as prevailing in the present years before us. Respectfully following the decision of the Tribunal in assessee's own case, we do not find any infirmity in the order of CIT(A) for not treating the assessee in default u/s.201 in respect of the amount of tax

which has not been deducted u/s.194-I from the payment made to MMRDA and levying interest u/s.201(1A) of the IT Act.

5. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on this 29/06/2018

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 29/06/2018

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai