

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.7082/Mum/2014 (Assessment Year 2011-12)

DCIT (TDS-1(3) Room No. 702, 7 th Floor, Smt. K.G. Mittal Ayurvedic Hospital Building, Charni Road, Mumbai- 400002.	Vs.	M/s J.M. Financial Services Pvt. Ltd. 4 th Floor, Palm Court Complex, Link Road, Malad (West), Mumbai-400064. PAN: AAACJ5977A
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Appellant

Respondent

Appellant by : Shri S.K. Bepair (Sr. DR)
Respondent by : None
Date of Hearing : 09.08.2018
Date of Pronouncement : 09.08.2018

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by Revenue under section 253 of the Act is directed against the order of Id. Commissioner of Income-tax (Appeals)-14, Mumbai [Id. CIT(A)] dated 11.09.2004 for Assessment Year 2011-12, which in turn arises from the order passed under section 201(1)/201(1A) dated 25.03.2013 by DCIT(TDS)-2(1). The appeal was initially decided vide order dated 08.07.2016. However, the Revenue filed an application under section 254(2) inter alia contended that while deciding the appeal only ground no.1 (related to non-deduction of tax at source on payment of Annual Maintenance of Equipment) raised in the appeal was decided and remaining two grounds of appeal (related with non-deduction of tax at source on payment of bank guarantee commission) left un-adjudicated. Considering the contents of application and submission of Revenue, the order dated 08.07.2016 was

recalled qua ground no.2 & 3 vide order dated 05.01.2018 passed in Miscellaneous Application No. 273/Mum/2017. With this background, the appeal came up hearing again for limited purpose.

2. Brief facts of the case are that a survey was conducted at the premises of assessee on 22.07.2011. During the survey, statement of Shri Vishwanath Subramanian, Sr. Vice-President was recorded. And on examination of record, it was noted that the assessee has made the payment of bank guarantee commission without making TDS. The DCIT(TDS)/AO noted that the assessee has paid bank guarantee commission of Rs. 1,87,34,493/- on which TDS of Rs. 16,24,433/- was liable to be deducted. The assessee failed to deduct the TDS. The AO/DCIT(TDS) worked out the amount of default of Rs. 16,24,433/- and interest under section 201(1A) @ 1% from 01.04.2010 to 31.03.2013 was worked out at Rs. 5,84,796/-. On appeal before the Id. CIT(A), the order of AO/DCIT(TDS) were set-aside/quashed. Therefore, the Revenue has filed the present appeal before us.
3. None appeared on behalf of assessee. We have noted that the notice sent through RPAD is returned back with remark "Left". Thus, we left no option except to hear the Id. DR for the Revenue and to decide the case on the basis of material available on record. The Id. DR for the Revenue supported the order of Assessing Officer/DCIT(TDS) and would submit that assessee was liable to deduct tax on payment of bank guarantee commission.

4. We have considered the submission and gone through the orders of authorities below. We have noted that the Id. CIT(A) quashed/set-aside the order of Assessing Officer/DCIT(TDS) on the basis of decision of her predecessor for Assessment Year 2010-11 in CIT(A)-12/ITO(TDS)-2(3)/TDS.256/2013-14 dated 11.07.2012. We have further noted that order of Id. CIT(A) for Assessment Year 2010-11 was passed by following the decision of Tribunal in Kotak Securities Ltd. vs. DCIT(TDS) in ITA No. 6657/Mum/2001. The coordinate bench of Tribunal in Kotak Securities Ltd. vs. DCIT(TDS) (supra) held that the expression 'commission' must be confined to a payment made to agents etc for effecting sales and carrying out business transactions and cannot extend to payments which are for services rendered or products offered on a principal to principal basis. A principal-agent relationship is a sine qua non for invoking the provisions of section 194H. As there is no principal agent relationship between a bank issuing the bank guarantee and the assessee, the payment, though termed "commission", is not covered by section 194H. Considering the decision of Tribunal, we do not find merit in the grounds of appeal no. 2 & 3 raised by Revenue. Therefore, the appeal on ground no. 2 & 3 is dismissed.
5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 09.08.2018.

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER
Mumbai, Date: 09.08.2018

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

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Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT(A)
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai**