

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 4 DELHI

BEFORE SHRI S. K YADAV, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA.No.4448/Del./2015
Assessment Year 2014-15

M/s. Jaypee Infratech Ltd. Sector-128 Noida	vs.	Asstt. Commissioner of Income Tax (TDS), Aayakar Bhawan, Noida-201301
(Appellant)		(Respondent)

For Assessee :	Sh. Ashwani Kumar Garg, Advocate
For Revenue :	Sh. Manoj Kumar Chopra, Sr. DR

Date of Hearing :	29.10.2018
Date of Pronouncement :	31 .10.2018

ORDER

PER ANADEE NATH MISSHRA, A.M.

This appeal by assessee has been directed against the order of Learned Commissioner of Income Tax (Appeals)-I, Noida (for short hereinafter referred to as the 4d. CIT(A)4) dated 14.05.2015 for AY 2014-15 on the following grounds of appeal: -

1. *That the Learned Assessing Officer [Ld. AO] has erred on facts and in law in holding the appellant as assessee in default u/s 201(1) of the Income Tax Act,1961 (the Act) for a sum of Rs. 43,997/- for non-deduction of tax at source from lease rent payments to Yamuna Expressway Industrial Development Authority (YEIDA) and further holding it liable for interest u/s 201(1 A) of Rs. 9,239/- and the Learned CIT (Appeals) [Ld. CIT(A)] has erred in sustaining the same.*
 2. *That the order involved of the Ld. AO is unlawful and against principles of natural justice without providing sufficient and proper lawful opportunity to the appellant and the Ld. CIT(A) has erred in not quashing the same.*
 3. *That the order of Ld. CIT(A) holding the appellant as assessee in default u/s 201(1) for Rs. 43,997/- and further holding it liable for interest u/s 201(1 A) of Rs. 9,239/- are based on erroneous views, non appreciation of facts and law contrary to binding case laws in the appellant's favour, without proper consideration and rebuttal of filings and submissions on record.*
 4. *That the Ld. AO has erred on the fact and in law in holding the appellant as assessee-in-default u/s 201 of the Act for non deduction of tax at source (in the sum of Rs 43,997/-) from lease rent payments to the YEIDA in respect of the 90 years leases of land. The Ld. CIT(A) has erred in upholding the view of the Ld. AO.*
 5. *That the Grounds of Appeal, as herein are without prejudice to each other.*
 6. *That order of the Ld. CIT(A) is against law and facts of the case involved.*
 7. *That the appellant respectfully craves leave to add, amend, alter and / or forego any ground(s) at or before the time of hearing.*
4. In the course of appellate proceedings in ITAT, a synopsis was filed on behalf of the assessee by Ld. Counsel for the

assessee ; and in his oral submissions he reiterated the contents of the synopsis. The relevant portion of synopsis is as under :-

Identical issue was involved in appeals filed for AYs 2012-13 & 2013-14 (ITA Nos. 3844 & 3845 of 2015), namely whether the assessee was liable to deduct TDS from annual lease rent paid to Yamuna Expressway Industrial Development Authority ("YEIDA") in respect of 90-years' leases of land.

2. The above appeals were decided in favour of the Revenue by ITAT Delhi Bench 'D' order dated 31.8.2017 relying on *Rajesh Projects (India) Pvt. Ltd. v. CIT (TDS)* [2017] 392 ITR 483 (Del) . However, the AO was directed to give benefit of the proviso to s. 201(1) if the assessee provides the necessary details to the AO (regarding the relevant income having been declared and tax thereon having been paid by YEIDA). Kindly refer paras 28 & 29 of the enclosed order.

3. Present appeal is on identical facts and arises from CIT (Appeals) order passed by following his own order for AYs 2011-12, 2012-13 & 2013-14. Kindly refer p. 42 of the CIT (Appeals) order.

Hence the Hon'ble Bench may follow the Delhi Bench "D" order dated 31.8.2017 to hold that tax was deductible under s. 1941 from the lease rent paid to YEIDA in respect of the 90-year lease of land. However, the Assessing Officer may be directed to give the assessee opportunity in terms of the proviso to s. 201(1) to show if the recipient of income (YEIDA) had filed their returns (disclosing the lease rent) and paid the tax payable by them.+

5. The Departmental Representative relied on *Rajesh Projects (India) Pvt. Ltd V. CIT (TDS) [2017] 392 ITR 483 (Del.)*, for his contention that the issue in dispute in the present appeal is squarely covered in favour of Revenue by the aforesaid order of the jurisdictional High Court. He also relied on order dated 31.08.2017 of coordinate bench of ITAT, Delhi in assessee's own case for assessment years 2012-13 and 2013-14 in ITA Nos. 3844 to 3845/Del/2015 for the contention that the issues in dispute in this appeal are also covered in favour of Revenue by the order of coordinate Bench of ITAT, Delhi in assessee's own case for aforesaid earlier years on identical facts.

6. We have heard both the sides and we have also perused the materials on record. There is no dispute that the facts of the case disputed issues in the present appeal before us are identical to the facts in assessee's own case for earlier years, namely assessment years 2012-13 and 2013-14. Further, that the disputed issues are covered in favour of Revenue by the order of jurisdictional High Court in the case of *Rajesh Projects (India) Pvt. Ltd (supra)* which was followed by coordinate Bench of Income Tax Appellate Tribunal, Delhi in aforesaid order dated

31.08.2017 for A. Y. 2012-13 and 2013-14, wherein it was ordered as under :-

in both these appeals the assessee has challenged short deduction of tax on rent payment of Rs.44067/- and Rs.43948/- respectively u/s 1941 of the Act. These payments are pertaining to lease rent paid to Yamuna Development Authority. The issue is squarely covered in favour of the Revenue by the decision of Honble Delhi High Court as discussed in ground No.1 of the appeal of the Revenue in appeals of the Japee Sports International Ltd. therefore, as the issue is squarely covered in favour of the Revenue we dismissed both these appeals of the assessee.+

However, it is made amply clear that proviso to section 201 of the Act is beneficial and applied retrospectively as held by the Honble Delhi High Court was direct the Assessing Officer to grant the benefit of the same if assessee provides requisite details.+

7. Respectively following the order of the Jurisdictional High Court in the case of Rajesh Projects (India) Private Ltd. (supra) and also in the order of coordinate bench of Income Tax Appellate Tribunal, Delhi in assessee's own case for A. Y. 2012-13 and 2013-14 on identical facts; we also hold that the disputed issues are covered in favour of Revenue in view of aforesaid precedents. However, following the aforesaid order of ITAT in assessee's own case for A.Y. 2012-13 and 2013-14, we direct

the Assessing Officer to grant benefit of the proviso to section 201 of IT Act if the assessee provides requisite details and if this benefit is allowable to the assessee in accordance with law and facts of the case.

8. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on 31.10.2018.

Sd/-
(S.K. YADAV)
JUDICIAL MEMBER
 Delhi,
 Dated 31.10.2018
 Neha

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.

Date of dictation	30.10.2018
Date on which the typed draft is placed before the dictating Member	30.10.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	31.10.2018
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

