

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No. 3097/Del/2015  
Assessment Year: 2011-12**

DCIT (TDS) 13-A, Subhash Road, Dehradun.	vs	The Joint Secretary, Organising Committee for Winter Games 2009, IHM Campus, Garhi Cantt., Dehradun <b>MRT000485C</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Revenue by</b>	<b>Sh. N.K. Bansal, Sr. DR</b>
<b>Assessee by</b>	<b>Sh. Ashwani Taneja, CA Sh. Saurabh Goyal, CA</b>

<b>Date of Hearing</b>	<b>22.01.2019</b>
<b>Date of Pronouncement</b>	<b>23.01.2019</b>

**ORDER**

**PER SHRI BHAVNESH SAINI, J.M.**

This appeal by Revenue has been directed against the order of Ld. CIT(Appeals)-Dehradun dated 25/02/2015 for AY 2011-12 on the following ground:

*“Ld. CIT(A) has erred in law and on facts in setting aside the matter to the file of AO and directing the AO to re-compute the demand after accepting fresh evidence and its verification of documents produced by the assessee, instead of deciding the issue under Rule 46A, which is not permissible as per provisions of the IT Act, 1961.”*

2. Briefly the facts of the case are that the deductor is the Joint Secretary, Organizing Committee for Winter Games for 2009. During the course of assessment proceedings, assessee was asked to provide details of total payments made to various parties/organizations for various jobs undertaken in connection with organizing the Winter Games and to furnish details of deduction of tax at source and payment into Central Government account of the same. It was observed that payments were also being made to certain foreign companies for EPC contract and technical consultancy contract. During the course of assessment proceedings, the AO observed that no TDS was deducted by the assessee against such payments. Show cause notice was issued to assessee as to why assessee should not be held as the assessee in default u/s 201 of the Act and why short deduction should not be charged alongwith interest u/s 201(1A). In response it was submitted by the assessee that gross contractual payments had been made to the following companies as under:

- |                               |   |                 |
|-------------------------------|---|-----------------|
| i. M/s Pomagalski S.A. France | - | Rs. 8,54,550/-  |
| ii. M/s Snow Star SPA         | - | Rs. 85,88,220/- |
| iii. M/s Space Age Pvt. Ltd.  | - | Rs. 75,12,309/- |

3. The AO passed the order considering short deduction and interest on short deduction and passed the order u/s 201(1)/201(1A) of the Act which was challenged before Ld. CIT(A). The Ld. CIT(A) noted the submissions of the assessee in detail and noted plea of assessee that concerned agencies have included the

amount in their return and paid tax. The Ld. CIT(A) after considering the same, AO was directed to recompute the short deduction and assessee was also directed to present the evidence before AO and if AO satisfied that payments have duly been accounted for by the organization in their return of income, will grant relief to the assessee.

4. Ld. DR contended that CIT(A) has no power to set aside the matter to the AO and to direct to recompute the demand after accepting fresh evidence and its verification of the documents produced by the assessee, instead of deciding the issue under Rule 46A of the IT Rules. Ld. Counsel for the assessee, however, submitted that appeal of the assessee for same AY 2011-12 have been decided by the Tribunal in ITA No. 2941/ 2015 vide order dated 10/12/2018, whereby the similar matters have been restored to the file of AO with direction to assessee to produce the bills etc. before AO who will examine the same. Ld. Counsel for assessee submitted that however in cases of the payments made to M/s Snow Star SPA and M/s Pomagalski S.A. France (supra) directed to delete the addition made u/s 195 of the Act and for others it was directed to follow order of the Tribunal in other appeals. Ld. Counsel for assessee submitted that since the appeal of the assessee on the same matter is already restored the AO, therefore, departmental appeal may be dismissed.

5. After considering the rival submissions, we are of the view that no interference is called for in the matter. Though it is well

settled that Ld. CIT(A) should not set aside the issue to the AO as per law but in the present case the Tribunal while deciding the appeal of the assessee vide order dated 10/12/2018 has already restored the issue to the file of AO for deciding the issue afresh, therefore, following the order of the Tribunal for the same assessee for same assessment year, no further directions are required in the matter. The Departmental appeal has become infructuous on deciding the appeal of the assessee separately.

6. In the result, Departmental appeal fails and is dismissed.

Order pronounced in the open court.

Sd/-

**(O.P. KANT)**

**ACCOUNTANT MEMBER**

Dated: 23.01.2019

\*Kavita Arora

Sd/-

**(BHAVNESH SAINI)**

**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	22/01/2019
Date on which the typed draft is placed before the dictating Member	22/01/2019
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	23/01
Date on which the final order is uploaded on the website of ITAT	23/01
Date on which the file goes to the Bench Clerk	23/01
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	