

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.4905 to 4907/Del/2019
A Y 2012-13 to 2014-15

Jaiprakash Associates
Ltd., Sector-128, Noida,
U. P.
PAN No. AABCB1562A

Vs DCIT(International
Taxation), Noida-201301

(Appellant)

(Respondent)

Appellant by :	Sh. Ashwani Garg, Advocate
Respondent by:	Ms. Shefali Swaroop, CIT DR
Date of Hearing	27/11/2019
Date of pronouncement	28/11/2019

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER

These three appeals are filed by the assessee, against the common order dated 14.01.2019 passed by the CIT(A)-2, Noida for A.Y. 2012-13, 2013-14 and 2014-15.

2. The grounds of appeal are common in all the three appeals therefore, we are taking up Grounds of appeal in ITA No. 1309/Del/2017 for A.Y. 2012-13 which are as follows:

1. That the learned CIT(A) has erred in not quashing as null and void the impugned order under s. 201 of the Act (for non deduction of tax at source) passed by the AO; ignoring that -

1) The show-cause notice under s. 201 was issued by the AO to the non-existent Jaypee Sports International Ltd which already stood amalgamated (with Jaiprakash Associates Limited).

2) The order under s. 201 too was passed on the said non-existent company pursuant to the notice issued and proceedings conducted on the same. The AO did not substitute the amalgamated company as the assessee despite proper intimation of amalgamation given by the amalgamated company.

3) The AO did not substitute the amalgamated company as the assessee despite proper intimation of amalgamation given by the amalgamated company.

1.1 That, therefore, the order of the learned CIT (A) is liable to be set aside and the impugned order of the AO under s. 201 quashed as null and void.

LIABILITY OF TAX UNDER S. 201(1)

2. That the learned CIT(A) has erred in not deleting the tax demand on the appellant under s. 201(1) for non-deduction of tax from the fee paid to a non resident foreign company; ignoring that -

1) The foreign company had already been assessed in respect of its income chargeable in India including income from the fee received from the appellant; and had discharged its Indian tax liability by direct payment.

2) Therefore, following *Hindustan Coca Cola Beverage Pvt. Ltd. v. CIT* [2007]293 ITR 226 (S.C.), *CIT v. Eli Lilly & Co. (India) Pvt. Ltd.* [2009] 312 ITR 225 (S.C.) and the CBDT Circular No. 275/201/95-IT(B) dated 29.1.1997, the same tax could not be doubly collected the appellant as well.

2.1 That, therefore, the AO should be directed to delete the demand on the appellant under s. 201(1) of the Act.

LIABILITY OF INTEREST UNDER S. 201(1A)

3. That the learned CIT (A) has erred in not holding that the interest payable by the appellant under s. 201 (1A) shall be computed with reference to the tax on the chargeable income paid and assessed in the hands of the foreign company.

3.1 That, therefore, the order of the learned CIT(A) is liable to be set aside and the AO directed to compute the interest payable by the appellant with reference to the aforesaid tax; and up to the date of payment of such tax by the appellant or the foreign company whichever is earlier.

All grounds are without prejudice to each other. Further, the appellant craves leave to add, amend or forgo any of the grounds.

3. Jaypee Sports International Limited (JPSI) during FY 2011-12, merged with Jaiprakash Associates Limited paid USD 40,124,120 to Formula One World Championship Ltd (FOWC). The payment was in respect of the Motor-Racing event held in India in 2011 (GP-2011) under the detailed terms of the relevant Race Promotion Contract. The payment was made without deduction of tax under bonafide belief that it was business income and, in the absence of any PE of FOWC in India, was not chargeable. JPSI applied to AAR (26.09.2011) for advance ruling on the issue of chargeability. AAR held that FOWC had no PE in India but the fee paid was in the nature of royalty under the DTAA and hence was chargeable. This AAR ruling was altered by the Hon'ble Delhi High Court vide order dated 30.11.2016 wherein it is held that the payment to FOWC constituted business income under Art. 7 of the DTAA and the JPSI Racing Circuit constituted fixed-place PE of FOWC in India. Hence the Court held that the income paid was chargeable. Thus, one part of the JPSI contention was upheld by the AAR and the other part by the Hon'ble High Court. Post the

order of the Hon'ble High Court, the Assessing Officer under s. 195(2) determined the chargeable income (comprised within the aforesaid gross payment) at USD 11,451,023. The Assessing Officer applied the Proportionate Method to the global turnover & operating profit of FOWC and attributed 100% operating profit of GP-2011 to their alleged Indian PE. The Assessing Officer passed the Assessment Order under Section 201 dated 10.2.2017 on JPSI holding it liable for tax under Section 201(1) and interest under Section 201(1A).

4. Being aggrieved by the order dated 10.02.2017 passed u/s. 201 (1)/201 (1A) of the Income Tax Act, 1961 by the DCIT (International Taxation), Noida, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. As regards Ground No.1 in respect of maintainability of the Assessment order, the Ld. AR submitted that the Assessing Officer issued show cause notice u/s. 201 on the non-existent Jaypee Sports International Ltd. which already stood amalgamated. Thus, the assessment order itself is bad in law. As regards Ground No.2

and 3 liability of tax u/s. 201 (1) and liability of interest u/s. 201 (1A), the Ld. AR submitted that foreign company i.e. Formula One World Championship Ltd.” had already been assessed in respect of its income chargeable in India including income from the fee received from the assessee and had discharged its Indian tax liability by direct payment as per the decision of the Hon’ble Apex Court in case of Formula One World Championship Ltd. vs. CIT-International Taxation 394 ITR 80 (SC). The Ld. AR further submitted that the assessee had deducted the TDS and interest thereon and paid the said amount, therefore, by following Hindustan Coca Cola Beverage Pvt. Ltd. Vs. CIT [2007] 293 ITR 226 (S.C.), CIT Vs. Eli Lilly & Co. (India) Pvt. Ltd. [2009] 312 ITR 225 (S. C.) the same tax could not be doubly collected from the assessee as well. The Ld. AR further submitted that the question of interest payable by the assessee u/s. 201 (1A) does not arise as the income tax was assessed in the hands of the foreign company which was done by the revenue authority by passing assessment order in M/s. Formula One World Championship Ltd. and has been taxed in the hands of the foreign entity. Therefore, in the light of these the Ld. AR submitted that the matter may be remand back to the file of the

Assessing Officer to modify demand as per the decisions of the Hon'ble Supreme Court in the case of M/s. Formula One World Championship Ltd. (supra)

6. The Ld. DR relied upon the order u/s. 201(1)/ 201 (1A) of the Income Tax Act and the order of the CIT(A).

7. We have heard both the sides and perused all the relevant material available on record. As regards Ground No.1 the assessment order has clearly mentioned the name of the amalgamated company and, therefore, the assessment proceedings are valid. Thus, Ground No.1 does not sustained and hence dismissed. As regards to Ground No. 2 and 3, since the foreign company i.e. Formula One Championship Ltd. (supra) has already been taxed and the Hon'ble Supreme Court has confirmed the same in foreign company's case, it will be appropriate to remand back this issue for modifying the demand if any arise after verifying the records as per decisions of the Hon'ble Supreme Court in foreign company's case, as the assessee has already deducted the TDS and paid the same with interest. Needless to say the assessee be given

an opportunity of hearing by following the principles of natural justice. Ground No.2 and 3 are partly allowed for statistical purposes. All the three appeals are identical hence, all the three appeals are partly allowed for statistical purpose

8. In result, all the three appeals filed by the assessee are partly allowed for statistical purpose.

Order pronounced in the open court on 28.11.2019.

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Dated: 28/11/2019

Neha

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	27.11.2019
Date on which the typed draft is placed before the dictating Member	27.11.2019
Date on which the typed draft is placed before the Other member	28.11.2019
Date on which the approved draft comes to the Sr.PS/PS	28.11.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	28.11.2019
Date on which the fair order comes back to the Sr. PS/ PS	28.11.2019
Date on which the final order is uploaded on the website of ITAT	28.11.2019
Date on which the file goes to the Bench Clerk	28.11.2019
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	