

आयकर अपीलिय अधिकरण
मुंबई पीठ " सी ", मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C ", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री नबीन कुमार प्रधान, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER
आअसं. 7303 - 7309/मुं/2018 (नि.व. 2009-10 to 2015-16)
ITA NO.7303 TO7309/MUM/2018(A.Y. 2009-10 to 2015-16)

The ACIT (TDS) -2(1),
Room No.615, th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Pan India Food Solutions Pvt.Ltd,
16th Floor, Tower 2A One India Bulls Centre,
Senapati Bapat Marg, Elphinstone Road,
Mumbai 400 013.
PAN:AADCP8747M

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Udol Raj Singh
प्रतिवादी द्वारा/Respondent by : Shri Jayesh L Dadia

सुनवाई की तिथि/ Date of hearing : 29/10/2020

घोषणा की तिथि/ Date of pronouncement : 23/11/2020

आदेश/ ORDER

PER BENCH:

These seven appeals by the Revenue are directed against the orders of Commissioner of Income Tax (Appeals)-60, Mumbai (in short 'the CIT(A)') for the assessment years 2009-10 to 2015-16 passed under section

201(1A) of the Income Tax Act, 1961 (in short 'the Act'). All the impugned orders are of even date i.e. 30/10/2018. Since the facts germane to all the appeals and grounds of appeal raised by Revenue in all the impugned assessments years are identical, these appeals are taken up together and are decided vide this composite order. For the sake of convenience the facts are narrated from ITA No.7303/Mum/2019.

ITA NO.7303/MUM/2019 – A.Y.2009-10:

2. Shri Jayesh L Dadia, appearing on behalf of the assessee submitted that the assessee is running a retail chain of restaurants. The assessee has been making purchases for its restaurant business from various suppliers under rate contract agreement. The assessee has been making payments of material on the basis of invoice raised by suppliers. For the impugned assessment years the Dy. Commissioner of Income Tax (TDS) [in short 'the DCIT(TDS)'] issued show cause notice dated 22/03/2016 under section 201(1)/201(1A) of the Act to treat the assessee as 'assessee in default' in case the assessee fails to give break-up of transport cost and the material purchased. The assessee in reply to show cause notice explained that the assessee has arrangement/understanding with suppliers of material to deliver goods at work place of assessee. The cost of material includes cost of transportation, therefore, no separate transportation cost is paid by the assessee. The DCIT (TDS) vide order dated 30/03/2016 passed under section 201(1)/201(1A) of the Act treated the entire cost on material as cost of transportation and computed TDS on same and held the assessee as 'assessee in default' under section 201(1) of the Act. The DCIT(TDS) further charged interest under section 201(1A) of the Act on the said amount. The Id.Authorized

Representative of the assessee submitted that it was explained to DCIT that payments were made to suppliers as per invoice. The break-up of material supplied and the cost of transportation is not available. The cost of materials is inclusive of transportation cost. Hence, no TDS was deducted in respect of transportation cost. The assessee challenged the order of DCIT(TDS) before CIT(A). The CIT(A) after examining facts and the submissions of assessee held that no TDS was deductible as no separate transportation cost was charged.

3. Per contra, Shri Udol Raj Singh, representing the Department vehemently defended the order of DCIT(TDS) in holding the assessee as 'assessee in default' for non-deduction of tax at source on the payment of transportation charges to the suppliers of the materials. The Id.Departmental Representative submitted that the DCIT(TDS) had given opportunity to the assessee to furnish break-up of material supplied and the cost of transportation. However, the assessee failed to comply with the directions of DCIT(TDS). The Id.Departmental Representative further pointed that the DCIT(TDS) after examining rate contract agreement observed that there was specific mention that the nature of contract between the assessee and the suppliers of the material is in the nature of 'works contract' which includes transportation charges. The transportation charges are liable for TDS under section 194C of the Act, hence, the assessee was duty bound to deduct TDS on the payment of transportation charges. The Id.Departmental Representative vehemently defended the order passed under section 201(1) and 201(1A) of the Act and prayed for reversing the findings of the CIT(A) on this issue.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. The Revenue has assailed the order of CIT(A)

in deleting the TDS liability on cost of transportation raised under section 201(1) and interest thereon under section 201(1A) of the Act. The assessee has been held to be deemed 'assessee in default' for non-deduction of TDS on cost of transportation. The assessee is running retail chain of restaurants. The assessee is receiving material from suppliers under rate contract. The invoice for supply of material does not give separate break-up of cost of transportation. The contention of the assessee is that the cost of materials supplied includes cost of transportation. The Id.Authorized Representative of the assessee has made statement at Bar that no separate transportation cost for supply of material was made and hence, no TDS was deducted for the same.

5. It is an undisputed fact that the invoices issued by suppliers of material does not separately mention cost on transportation of material. Since the assessee is not making any payments for the transportation of material separately, there is no question of deducting tax at source on such payments. In any case the entire cost on material cannot be considered as cost of transportation. The DCIT(TDS) has erred in treating the entire cost of material supplied as cost of transportation for the purpose of section 201(1) and 201(1A) of the Act. We see no error in the findings of CIT(A) in deleting the TDS liability fastened by the DCIT(TDS) by holding the assessee as 'assessee in default' for alleged violation of section 194C for non-deduction of tax at source on cost of transportation. The findings of CIT(A) on the issue are upheld and the appeal of Revenue is dismissed sans-merit.

6. In the result, the impugned order is upheld and the appeal of Revenue is dismissed.

ITA Nos.7304 to 7309/Mum/2019 – A.Ys 2010-11 to 2015-16:

7. The Id.Authorized Representative of the assessee submitted that the facts in all the appeals are identical and the grounds raised by the Revenue are also identical, therefore, the submissions made in ITA No.7303/Mum/2019 would hold good for other appeals as well.

8. The Id.Departmental Representative admitted that the facts and grounds of appeal in all these appeals are identical.

9. The facts in all the appeals are pari-materia, this has been endorsed by rival sides. Hence, the findings given by us while adjudicating ITA No.7303/Mum/2019(supra) would *mutatis mutandis* apply to the aforementioned appeals by the Revenue, as well. For the reasons stated above the appeals of Revenue in ITA Nos. 7304 to 7309/Mum/2019 for assessment years 2010-11 to 2015-16 are dismissed sans merit.

9. In the result, all seven appeals by the Revenue are dismissed.

Order pronounced in open Court on Monday the 23rd day of November, 2020.

Sd/-

(N.K.PRADHAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 23/11/2020
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai