

**IN THE INCOME TAX APPELLATE TRIBUNAL, JABALPUR BENCH,
JABALPUR (SMC)**
(through Video Conferencing)

BEFORE SH. SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER

ITA Nos.15 to 17/JAB/2016
Assessment Years: 2010-11 to 2012-13

Diamond Cements, (Heidelberg Cement India Ltd.) Village & P.O. Narsingarh, District Damoh (M.P.) [TAN: JBPM 02654B]	vs.	Deputy Commissioner of Income Tax (TDS), Jabalpur M.P.
(Appellant)		(Respondent)

Appellant by	Sh. Abhijeet Shrivastava, Advocate
Respondent by	Sh. S.K. Halder, Sr. DR
Date of hearing	28/09/2021
Date of pronouncement	29/09/2021

ORDER

Per Sanjay Arora, AM

This is a set of three Appeals by the Assessee directed against the common Order dated 27/10/2015 by the Commissioner of Income Tax (Appeals)-1, Jabalpur ('CIT(A)' for short), dismissing the assessee's appeals contesting its' assessments under section 201(1) and 201(1A) of the Income Tax Act, 1961 ('the Act' hereinafter) for the Assessment Years (AYs.) 2010-11 to 2012-13 vide, again, a common order dated 07/6/2013.

2. The common issue in these appeals, for each of the three years under reference, is the correct rate at which tax at source on the payments by the assessee, a company manufacturing cement, to different parties for the operation and maintenance of sewage treatment plant, and the like, is in law deductible

and, in consequence, the validity of the demands raised on it by the Revenue toward the alleged shortfall therein, as well as interest thereon. While the assessee considers the same as contractual payment, covered u/s. 194C, and, accordingly, has deducted tax at source @ 2%, in the opinion of the Revenue the same qualifies to be regarded as payment for professional and technical service and, therefore, exigible to tax deduction at source u/s. 194J @ 10%, so that the assessee is liable to pay tax for the balance 8% u/s. 201(1) as well as interest u/s. 201(1A) for the period over which the shortfall obtains.

2. At the very outset, it was submitted by the Id. counsel for the assessee, Shri Srivastava, that even as the tax deducted at source by the assessee on the relevant sums has been consistent with its' past practice, not objected to by the Revenue, the assessee, relying on the decision by the Apex Court in *Hindustan Coca Cola Beverages (P.) Ltd. v. CIT* [2007] 293 ITR 226 (SC) presses for the relief there-under, i.e., on the ground of double jeopardy inasmuch as tax on the relevant sums has been paid by the payee-deductees. And toward which he would advert to the copies of their tax returns as well as CA certificates and self-declarations *qua* the said sums, praying for their admission under rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963. While the Id. Sr. DR, Shri Halder, did not raise any objection thereto, and only understandably so, the same being only in terms of the clear law in the matter, with the onus to prove its' claims being on the assessee, it was made clear by the Bench to the Id. counsel that the assessee would, in that case, be liable for interest u/s. 201(1A) for the period over which the shortfall in tax deduction, i.e., the due date of deposit of tax deductible at source to the date of payment of tax by the concerned payee-deductee, and to which he conveyed to the assessee being reconciled thereto. The matters, it was urged, be accordingly restored to the file of the assessing authority for adjudication afresh, i.e., considering the assessee's claims.

3. I have heard the parties, and perused the material on record.

The matter, in view of the assessee choosing to press only its' Ground C, for each of the years under reference, lies in a very narrow compass. The Apex Court in *Hindustan Coca Cola Beverage (P.) Ltd.* (supra) has clarified that when the deductee has paid the tax due on its relevant income, no further tax can be collected from the deductor toward shortfall in TDS, even as it shall be liable for interest u/s. 201(1A). The same has in fact been coopted in law by way of *proviso* to s. 201(1) by Finance Act, 2012, w.e.f. 01/7/2012.

All that therefore, even as clarified by the Bench during hearing, is required of the assessee is to establish that each of the sums on which shortfall in tax deduction at source is being claimed by the Revenue and under dispute, has been, firstly, included in the taxable income of the payee/s for the relevant year/s and, two, tax liability thereon discharged by it. The burden to prove the same is on the assessee. The documents presented for admission as additional evidence stand admitted on the premise that the same exhibit, if only *prima facie*, the assessee's case. In the absence of these documents, the assessee's claim/s would only be a bald claim/s. The assessee may toward its' claims rely on the same or, for that matter, furnish any other document it deems proper & relevant, or any that may be called for by the Assessing Officer (AO) in satisfying himself as to the veracity of the assessee's claims. The AO may also, at his option, and to whatever extent, verify or cause to verify the same; the premise being that no tax liability obtains on the relevant sums for the relevant years, so that the short deduction of tax at source by the assessee, if any, is rendered of no consequence; the Revenue being also compensated for the delay in the realization of tax dues by way of interest.

Further, the AO where, for any reason, is in disagreement with the assessee, he shall, firstly, provide reasonable opportunity to the assessee to meet his objection/s and, two, state his reason/s for disagreement per a speaking order

inasmuch as his order is appealable. Needless to add, liability to interest u/s. 201(1A) shall follow in terms of the said provision.

The Grounds not pressed by the assessee are dismissed in result.

I decide accordingly.

4. In the result, the assessee's appeals are allowed on the aforesaid terms.

Order pronounced in the Open Court on September 29, 2021

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 29/09/2021

Aks/-

Copy of the Order forwarded to:

1. The Appellant: M/s. Diamond Cement, Heidelberg Cement India Limited, Village & P.O. Narsingarh, District Damoh (M.P.)
2. The Respondent: Deputy Commissioner of Income Tax (TDS), Aayakar Bhavan, Napier Town, Jabalpur 482 001 (M.P.)
3. The Pr. CCIT, Bhopal
4. The CIT(Appeals)-1, Jabalpur
5. The Sr. DR, ITAT, Jabalpur
6. Guard File

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