

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**ITA Nos. 75 & 76/Jodh/2020**  
**(ASSESSMENT YEARS- 2011-12 & 2012-13)**

The Deputy Conservator of Forest (South), Chetak Circle, Udaipur.	Vs	Income Tax officer TDS, Udaipur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. JDHD01240B</b>		

**ITA Nos. 84/Jodh/2020**  
**(ASSESSMENT YEARS- 2011-12 )**

The Deputy Conservator of Forest, Tulsi Sadhan, Shikhar Road, Rajsamand.	Vs	Income Tax officer TDS, Udaipur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. JDHD01870B</b>		

**ITA Nos. 85 & 86/Jodh/2020**  
**(ASSESSMENT YEARS- 2011-12 & 2017-18)**

The Deputy Conservator of Forest ( North), Near Govt. Press, Udaipur.	Vs	Income Tax officer TDS, Udaipur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. JDHF00101D</b>		

<b>Assessee By</b>	Shri Amit Kothari-C.A.
<b>Revenue By</b>	Ms. Nidhi Nair, JCIT-DR

**ITA Nos. 103/Jodh/2020**  
**(ASSESSMENT YEARS- 2011-12 )**

The Deputy Conservator of Forest, Gandhi Ashram Road, Dungarpur (Raj.)	Vs	Income Tax officer TDS, Udaipur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. JDHD02304B</b>		

**ITA Nos. 116 & 117/Jodh/2020**  
**(ASSESSMENT YEARS- 2011-12 & 2012-13**

The Deputy Conservator of Forest, Dahod Road, Custom Choraha, Banswara (Raj.)	Vs	Income Tax officer TDS, Udaipur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. JDHD03104D</b>		

<b>Assessee By</b>	Shri Amit Kothari - CA
<b>Revenue By</b>	Ms. Nidhi Nair, JCIT-DR
<b>Date of hearing</b>	19/01/2023
<b>Date of Pronouncement</b>	13/03/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

These are eight appeals filed by the assessee arising out of the order of the learned Commissioner of Income Tax (Appeals)-1, Udaipur [hereinafter referred to as Id.'CIT(A)'] passed on dates as mentioned here in below for the assessment year mentioned as tabulated here in below which in

turn arises from the order passed by the Income Tax Officer, TDS, Udaipur under the provision of Income Tax Act, 1961 (in short 'the Act') and dated referred here in below:

Asstt. Year	Department Appeal No.	Reference to the dated of order of the ld. CIT(A)	Reference to the order of the ld. AO date and section under which the order is passed	
2011-12	75/Jodh/2020	24.01.20209	28.03.2018	U/s 201(1) & 201(1A)
2012-13	76/Jodh/2020	24.01.2020	30.01.2019	U/s 201(1) & 201(1A)
2011-12	84/Jodh/2020	24.01.2020	20.03.2018	U/s 201(1) & 201(1A)
2011-12	85/Jodh/2020	12.03.2020	20.03.2018	U/s 201(1) & 201(1A)
2017-18	86/Jodh/2020	12.03.2020	29.12.2017	U/s 201(1) & 201(1A)
2011-12	103/Jodh/2020	27.01.2020	23.03.2020	U/s 201(1) & 201(1A)
2011-12	116/Jodh/2020	27.01.2020	20.03.2018	U/s 201(1) & 201(1A)
2012-13	117/Jodh/2020	27.01.2020	07.02.2019	U/s 201(1) & 201(1A)

2. As it is seen that for all these appeals grounds are similar, facts are similar and arguments were similar and were heard on the same day we consider the facts and ground taken in ITA No. 84/Jodh/2020 for A. Y. 2011-12 and considering the said case as lead case.

3. For deciding these appeals, we taken ITA No. 84/Jodh/2020 for the A.Y. 2011-12 as lead case for wherein following grounds have been raised by the assessee:

*“ 1.The ld. CIT(A) has erred in sustaining the order passed by ld. AO under section 201(1)/201(1A)/ The order passed by ld. AO was bad in law and bad on facts.*

*2. The ld. CIT(A) has erred in sustaining the action of ld. AO that there was liability of deduction of tax at source on reimbursement to various EDC/VFMC under the instruction of Government of Rajasthan. There was no contract liable to TDS under section 194C.*

*3. There was no liability of TDS also in view of the fact that the same is also not taxable even in the hands of the recipient and the appellant cannot be treated as assessee is default.*

*4. The appellant pray for suitable costs.*

*5. The Appellant crave, leave or reserving the right to amend modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

4. Briefly the facts of the case are that the assessee is an office of State Government of Rajasthan, Forest Department for conservation of forest and increasing the forest area through re-forestation. A Spot verification was conducted u/s 133A(2A) of the Act in the office of the assessee on 22.01.2018. During the course of spot verification, statement of Shri Kumar Swami Gupta, who as the incumbent officer in the seat of the Deputy

Conservator of Forest, Rajasamand was recorded. The AO found that the assessee-deductor was paying large sums of money to some association of persons which are called Eco Development Committee (EDCs) or Van Suraksha and Prabandh Samiti (VFPMC), but no TDS was made on these payments. The AO issued show cause notice and after considering the assessee's reply, passed order u/s 201(1)/201(1A) of the Act creating a demand of Rs. 40,51,180/- vide order dated 20.03.2018.

5. The relevant part of the assessment order is reproduced as under:-

“In view of the above discussion and facts in this case, the deductor is treated as assessee in default u/s 201(1)/201(1A) for non deduction and deposition of tax deducted at source on which IDS of Rs. 21,63,960/- and interest thereon u/s 201(1A) of the I.T. Act of Rs.18,87,221/-, totaling demand to Rs. 40,51,180/- (details as under) in FY 201011 is hereby levied. Issue demand notice and challan accordingly.

MONTH FOR FY	Amount paid to VFPMCs	Months	TDS to be Made @20%	Interest on late payment upto date of
Jun-10	1422991	94	284598	267522
July-10	43000	93	8600	7998
Aug-10	175935	92	35187	32372
Sep-10	144525	91	28905	26304
Oct -10	1537632	90	307526	276774
Noy-10	0	89	0	0
Dec-10	127217	88	25443	22390
<b>Jan-11</b>	82750	87	.16550	14399
Feb-11	442666	86	88533	76139
<b>Mar-11</b>	6843082'	85 85	1368616	1163324
<b>TOTAL</b>	<b>10819798</b>		<b>2163960</b>	<b>1887221</b>

Since deductor failed to deduct tax at source his case is referred for penalty u/s 271C to office of additional CIT, TDS Range, Udaipur with separate covering letter.”

6. Being aggrieved by the AO the assessee preferred appeals before the ld. CIT(A) and he confirmed the orders of AO with the following observations:-

*“Keeping in view the facts and circumstances of the case, provisions of section 194C of the Act and judicial precedents cited (supra), it is held that the assessee deductor was obliged to deduct TDS as per section 194C of the Act on payment made to VFPMCVs, the AO has correctly levied the liabilities u/s 201(1)/201(1A) of the Act for non-deduction of tax, the total demand of Rs. 40,51,180/- raised on this account is confirmed. The grounds of appeal raised by the appellant regarding this issue are dismissed.”*

7. Now the assessee is in appeal before us . The Ld AR for the assessee submitted that there is no element of profit and the income is not taxable in the hands of the assessee as the grant was being received towards reimbursement of expenses. He further submitted that the assessee was acting as agent of Government of Rajasthan and acted in collaboration with state Government. Accordingly, he submitted the assessee herein is not liable to deduct TDS from these payments. He submitted that the assessee would be in a position to explain these details before the AO, if one more opportunity is given.

8. Per contra, the ld. DR relied upon the orders of the lower authorities. She submitted that the letter given by the State Government appears to be a contract given to the assessee. In that case, the responsibility to deduct TDS

shall lie upon the assessee. However, in view of the contentions raised by Ld A.R, the Ld D.R also agreed that these issues may be remanded back to the file of AO for examining the claim of the assessee with regard to its relationship with the Government of Rajasthan and deciding the issues afresh.

9. We have heard both the parties, perused materials available on record. In view of the submissions made by Ld A.R, we are of the view that, in the interest of equity and justice, all the issues need to be restored to the file of the AO to examine them afresh, by providing adequate opportunity of being heard to the assessee. The assessee is also directed to produce the documentary evidences concerning the issues in question and to cooperate with the AO for completing the proceedings in expeditious way. Thus the appeal of the assessee is allowed for statistical purposes

10. In ITA Nos. 75,76, 84 to 86, 103, 116 & 117/Jodh/2020 pertaining to A.Ys 2011-12, 2012-13 & 2017-18, the Bench noted that the facts and circumstances of the case are exactly identical to the facts and circumstances of the case in ITA No. 84/Jodh/2020. Therefore, our findings and directions contained therein shall apply *mutatis mutandis* to these appeals also.

11. In the result, all the appeals of the assessee are treated as allowed for statistical purpose .

Order pronounced on 13/03/2023.

Sd/-

(B. R. BASKARAN)  
ACCOUNTANT MEMBER

Sd/-

(Dr. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 13/03/2023

*\*Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench