

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(CONDUCTED THROUGH VIRTUAL COURT)**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

I.T.A. No.378/Ind/2022
(Assessment Year: 2013-14 (Quarter-1))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.379/Ind/2022
(Assessment Year: 2013-14 (Quarter-2))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.380/Ind/2022
(Assessment Year: 2013-14 (Quarter-3))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.381/Ind/2022
(Assessment Year: 2013-14 (Quarter-4))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.382/Ind/2022
(Assessment Year: 2014-15 (Quarter-2))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.383/Ind/2022
(Assessment Year: 2014-15 (Quarter-4))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.384/Ind/2022
(Assessment Year: 2015-16 (Quarter-1))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.385/Ind/2022
(Assessment Year: 2015-16 (Quarter-2))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.386/Ind/2022
(Assessment Year: 2015-16 (Quarter-3))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

I.T.A. No.387/Ind/2022
(Assessment Year: 2015-16 (Quarter-4))

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| M/s. Star Delta Transformers Ltd. 92-A, Industrial Area Govindpura, Bhopal-462016 | Vs. | ITO(TDS-2), Bhopal |
| PAN No.AACCS0399D | | |
| (Appellant) | .. | (Respondent) |

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| Appellant by : | Shri Anil Khabya, C.A. |
| Respondent by : | Shri Ashish Porwal, Sr. D.R. |

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| Date of Hearing | 16.03.2023 |
| Date of Pronouncement | 10.04.2023 |

ORDER

PER SUCHITRA KAMBLE - JM:

This bunch of appeals are filed by the same assessee against the order dated 30.09.2022 passed by the Ld. CIT(A), National Faceless Appeal Centre (in short “NFAC”), Delhi for A.Y. 2013-14 Quarter 1 to 4 A.Y. 2014-15 Quarter 2 & 4 & A.Y. 2015-16 Quarter 1 to 4.

2. At the time of hearing the Ld. A.R. submitted that ITA No. 387/Ind/2022 for A.Y. 2015-16 Quarter-4 should be taken up first as other matters are identical.

3. The grounds of appeal raised by the assessee in ITA No. 387/Ind/2022 for A.Y. 2015-16 Quarter-4 read as under:

“1. That the ld. CIT(A) erred in holding that assessee was in default u/s 201 by no deducting TDS of Rs. 33,502/- on payment made on CPRI/ERDA.

2. That the Ld. CIT(A) erred in holding that assessee was liable to pay interest u/s 201(1A) of Rs. 24,417/-.”

4. A TDS survey under Section 133A of the Income Tax, 1961 was carried out on 05.11.2019. During the course of survey and post survey verification, the Revenue notice that assessee tax deductor made various payment which attracts tax deducted at source liability under the Income Tax provisions. However, on verification it was found that assessee tax deductor failed to deduct tax at source on various payments made under Section 194-C and 194-J as required under the provisions of Income Tax Act, 1961. During the course of assessment proceedings, the Assessing Officer noticed that the deductor assessee did not deducted TDS of Rs. 33,502/- on payment made to parties especially of M/s. Electrical Research & Development Association, Mumbai (ERDA) and Central Power Research Institution (CPRI) as per the provisions of Income Tax Act, 1961. Therefore, the Assessing Officer passed an order under Section 201(1) / 201(1A) of the Act and raised demand of Rs. 57,919/- (including interest under Section 201(1A) of Rs. 24,417/-) on testing charges to Government Agencies for Quarter-4 (26Q) for A.Y. 2015-16.

5. Being aggrieved by the order dated 18.03.2021 passed under Section 201(1) / 201(1A) of the act, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. A.R. submitted that the CIT(A) erred in holding that assessee was in default under Section 201 by not deducting TDS of Rs. 33,502/- on payment made to CPRI and ERDA. The Ld. A.R. submitted that the CIT(A) as well as the Assessing Officer has not taken cognizance that TDS is deducted when there is a liability of tax on the deductee i.e. ERDA & CPRI in the present case. But these institutes are autonomous societies but

are govern by Government and there are specific norms prescribed by the Government to these institutes / organizations. The Income derived by these organizations are exempt income and they are not liable to tax. Thus, the Ld. A.R. submitted that the deductee is not under obligation to pay the taxes of its income and therefore, the question of deducting tax at source (TDS) does not arise in the present case as there is no income *per se* and taxability of income *per se* in the present scenario. The Ld. A.R. relied upon the notifications issued under the Income Tax Act, 1961 wherein both these institutes have been approved by the Central Government for the purpose of Clause 2 of sub-Section 1 of Section 35 of the Income Tax Act. The Ld. A.R. relied upon the decision of Bangalore Tribunal in case of DCIT(E) vs. M/s. Central Power Research Institute (ITA No. 364/Bang/2014 order dated 06.05.2016) and also the decision of Hon'ble Karnataka High Court in case of Hyderabad Industries Ltd. vs. ITO & Anr. 188 ITR 749. The Ld. A.R. also relied upon the decision of Hon'ble Apex Court in case of Transmission Corporation of A.P. Ltd. & Anr. vs. CIT (1999) 239 ITR 587 (SC). The Ld. A.R. also relied upon the CBDT Circular No. 736 dated 30.01.1996 wherein it has been clearly mention that no tax may be deducted at source under Section 194-I, since the income of these organizations is exempt from tax under Section 10(23AA).

7. The Ld. D.R. relied upon the order passed under Section 201(1) / 201(1A) of the Act. The Ld. D.R. further submitted that the CIT(A) has rightly observed that the CBDT Circular dated 07.04.2016 is related to exemption under Section 10(21) of the Act but the exemption certificates are issued dated 08.07.2008 and 07.04.2016 and whether the exemption has

been followed after verifying all the conditions or not been pointed out by the CIT(A) and therefore, relief was granted to the assessee subject to verification of all conditions.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the autonomous societies CPRI & ERDA both are entitled to exemption under Section 10(21) of the Act and therefore, *per se* there is no taxability on the income of these autonomous societies. When the deductee itself is not liable to tax, then the Revenue cannot take the plea that the assessee that is the deductor is in default as per Section 201(1) / 201(1A) of the Act. The decision of Hon'ble Karnataka High Court has categorically held that a benefit which is not included by total income of a person necessarily implies that the said benefit is not the income of the person. Thus, the exempt income *per se* is not taxable and to the deductee, then the said amount / income cannot be held to be deducted at source from the deductor's side. The ratio laid down by the Hon'ble Karnataka High Court is applicable in the present case. Besides this the decision of the Bangalore Tribunal is also applicable in the present case wherein the Tribunal has said that once the assessee is found to be eligible for deduction under Section 35(1)(ii) then the claim of exemption under Section 10(21) cannot be denied in view of the fact that the CBDT has already notified the assessee in the category of 'Scientific Research Association'. Thus, when there is no taxable income at the deductee's level then the assessee that is the deductor cannot be termed as defaulter under Section 201 of the Act. Thus, Ground No. 1 is allowed.

9. As regards to Ground No. 2 the same is consequential in respect of payment of interest under Section 201(1A) of the Act and hence the same is allowed relying on the observations made hereinabove paragraph for Ground No. 1.

10. Therefore, ITA No. 387/Ind/2022 for A.Y. 2015-16 (Quarter-4) is allowed.

11. As regards to ITA No. 378/Ind/2022 for A.Y. 2013-14 (Quarter-1), ITA No. 379/Ind/2022 for A.Y. 2013-14 (Quarter-2), ITA No. 380/Ind/2022 for A.Y. 2013-14 (Quarter-3), ITA No. 381/Ind/2022 for A.Y. 2013-14 (Quarter-4), ITA No. 382/Ind/2022 for A.Y. 2014-15 (Quarter-2), ITA No. 383/Ind/2022 for A.Y. 2014-15 (Quarter-4), ITA No. 384/Ind/2022 for A.Y. 2015-16 (Quarter-1), ITA No. 385/Ind/2022 for A.Y. 2015-16 (Quarter-2) and ITA No. 386/Ind/2022 for A.Y. 2015-16 (Quarter-3) the issues are identical in respect of deductee's that is CPRI and ERDA only and therefore, the finding given by us for ITA No. 387/Ind/2022 will be applicable in these appeals as well. Hence, these appeals are also allowed.

12. In result, all the appeals are allowed.

Order pronounced on 10/03/2023 by placing the result on
the Notice Board as per Rule 34(4) of the Income Tax
(Appellate Tribunal) Rule, 1963.

This Order pronounced in Open Court on 10/04/2023

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER
Ahmedabad; Dated 10/04/2023
TANMAY, Sr. PS

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,इंदौर/ DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**(Sr. Private Secretary)
ITAT, Indore**

1. Date of dictation 29.03.2023
2. Date on which the typed draft is placed before the Dictating Member 29.03.2023
3. Other Member.....
4. Date on which the approved draft comes to the Sr.P.S./P.S .03.2023
5. Date on which the fair order is placed before the Dictating Member for pronouncement .03.2023
6. Date on which the fair order comes back to the Sr.P.S./P.S .03.2023
7. Date on which the file goes to the Bench Clerk .03.2023
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....