

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ ITA No.24 & 25 /Chny/2024
निर्धारण वर्ष /Assessment Years: 2015-16 & 2016-17

M/s.Binny Limited
No.1, Cooks Road, Otteri,
Perambur, Chennai-600 012.
[PAN: AAACB2529G]

The Deputy Commissioner of Income
Tax,
TDS Circle-1(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri B.Ramakrishnan, F.C.A

प्रत्यर्थी की ओर से /Revenue by

: Ms.R.Anita, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 06.11.2024

घोषणा की तारीख /Date of Pronouncement

: 11.12.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

These appeals are filed against the order bearing DIN & Order No.ITBA / APL / M / 250/2023-24 / 1057748856(1) & No.ITBA / APL / M / 250 / 2023-24 / 1057750319(1) dated 07.11.2023 for the assessment years **2015-16 & 2016-17** Through the aforesaid appeal the assessee has challenged order u/s 250 dated 07.11.2023 passed by CIT(A), Chennai.

2.0 The afore mentioned two appeals are contesting the order u/s 201 / 201A passed by the Ld. AO in the case of the assessee for the

assessment years **2015-16 & 2016-17**. Both the appeals are having nearly common grounds and hence are adjudicated together.

3.0 The only issue arising in the two appeals is regarding the action of the Ld. AO in holding the assessee in default u/s 201 / 201A.

ITA No.24 /Chny/2024 for Assessment Year- 2015-16

3.1 The assessee has raised four grounds of appeal, out of which grounds of appeal no. 1 is general in nature and does not require a specific adjudication.

3.2 Since the twin appeals are having identical grounds of appeal therefore they are adjudicated together. The AY-2015-16 is taken as lead year and the figures available therein are referred herein below and considered. The only issue arising from the ground of appeal no.2 and 3 is regarding the action of the Ld. AO in treating the assessee as an assessee in default under for contravention u/s 194 IA r.w.s. 201 /201(1A) qua AY-2015-16. Brief facts of the case are that the assessee is involved in real estate development. A TDS survey was conducted upon its premise on 26.10.2021. During the course of the survey it was noted that the assessee had entered into a transaction for purchase of land admeasuring about 7.07 acres of land during financial year with one M/s.

Mohan Breweries and distilleries Limited(MBDL), a sister concern of the assessee. For the purpose the assessee had given a “land advance” of Rs.107,10,72,455/-. The said transaction was undertaken in FY 2014-15. Further the assessee had entered into another transaction for “purchase of 320MW wind farms” in FY 2014-15 with MBDL. For this transaction also “a purchase advance” of Rs.63,41,26,761/- was given by the assessee to MBDL. It was noted by revenue authorities that requisite TDS deduction u/s 194 IA was not done by the assessee before making the impugned advances to MBDL. Thus, concluding contravention u/s 194 IA r.w.s. 201 /201(1A), the Ld. AO proceeded to treat the assessee in default and raised a demand u/s 201 of Rs.1,70,52,092/- and 201(1A) of Rs.1,49,83,273/- aggregating to Rs.3,20,35,365/- for AY-2015-16.

4.0 We have heard rival submissions in the light of material available on records. It is the case of the assessee that a decision was taken by the company management to consider purchasing a piece of land admeasuring about 7.07 acres and “purchase of 320 MW wind farms” during financial year 2014-15 from one MBDL a sister concern of the assessee. For the purpose the assessee had given a “land advance” of Rs.107,10,72,455/- and “a purchase advance” of Rs.63,41,26,761/- respectively. The assessee submitted that the decision to purchase the

Wind farm was taken in the board meeting dated 03.05.2014. In support of its contentions for the purchase of the said wind farm, the assessee relied upon an MOU dated 03.05.2014. Copies of above have been placed by the assessee in its paper book. In the board's resolution dated 03.05.2024 decision was taken that 25% of amount be given to MBDL against the offered sale price of Rs.120 Crs app. Accordingly, in in terms of clause-2 of the MOU of even date an amount of Rs. 30 lakhs was paid to MBDL. The Ld. Counsel argued that a stipulation was made in the MOU that the amount of advance would be returned in case the agreement is not finally consummated.

4.1 The assessee further submitted that the decision to purchase the parcel of land admeasuring 7.07 acres was taken in the board's meeting dated 11.02.2015. In support of its contentions for the purchase of the said parcel of land, the assessee relied upon an MOU dated 11.02.2015. Copies of above have been placed by the assessee in its paper book. In the board's resolution dated 11.02.2015d decision was taken that 75% of amount be given to MBDL against the offered sale price of Rs.155.4 Crs app. Accordingly, in in terms of clause-2 of the MOU of even date an amount of Rs.116,65,50,000/- app. was paid to MBDL. The Ld. Counsel argued that a stipulation was made in the MOU that the amount of

advance would be returned in case the agreement is not finally consummated and also that possession of the property would be only received from MBDL upon registration and payment of 100% of the amount. The Ld. Counsel for the assessee argued that the deals in respect of purchase of wind farm and the impugned parcel of land did not finally materialized. It was argued that the board's resolution and the MOUs were towards tentative proposal to purchase the wind farm and the parcel of land and therefore as it was not a purchase simpliciter within the meanings of section 194 IA no prescribed TDS deduction was made. The Ld. Counsel further argued that actually the deals could not materialize and therefore the assessee by way of its cancellation letter dated 02.04.2018 to MBDL r.w. Board's resolution dated 26.03.2018, had asked MBDL that the advance paid would be treated as interest bearing loan carrying interest @ 15%/pa effective from March-2018. As regards the deal concerning purchase of 7.07 acres of land, the Ld. Counsel referred to its letter dated 14.05.2021 conveying cancellation of deal and requesting for return of advance hitherto paid. The Ld. Counsel further relied upon its audited financial statement for FY- 2017-18 and submitted that interest income from MBDL has been shown as income. The Ld. Counsel also argued that 194 IA provisions in any case would not be attracted in respect of purchase of wind farm which is actually for a Wind

Mill of 37 MW. The Ld. Counsel for the assessee submitted that the non-deduction of TDS was also attributable to assessee's fears of not getting back its refund of TDS, in the event of the agreement getting failed. Copies of all the impugned documents have been placed on records by way of hefty paper book.

4.2 The Ld. DR vehemently argued in favour of the order of lower authorities. It was contended that the provisions of 194 IA are duly attracted in the case of the assessee the moment it signed the MOU for purchase of said parcel of land of 7.07 acres and the wind farm. It was therefore argued that there is no concept of any tentative purchase in law. The Ld. DR also submitted that the assessee apprehension of not being able to get back the TDS deducted by it in the event of agreement not getting consummated, unfounded as it could have claimed refund. In support of its contentions the Ld. DR filed CBDT instructions stipulating the process of claim of refunds by deductors TDS in specific circumstances. The Ld. DR would therefore make us believe that the order of lower authorities does not suffer from any infirmity and is in strict conformity with the contemporaneous statute governing the matter and hence deserves to be sustained.

4.3 The only issue which is seminal to the controversy is as to whether the reported purchase of land by the assessee through the MOUs dated 11.02.2015 and 03.05.2015 would constitute an agreement for the sale of property. We have noted that Section 5 of the Transfer of Property Act, 1882 defines 'transfer of property' as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself [or to himself] and one or more other living persons; and "to transfer property" is to perform such act. Further Section 54 of the TP Act defines 'sales' as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Again it is to be noted that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

4.4 Facts of the case discussed herein above indicate that the MOUs entered by the assessee dated 03.05.2014 and 11.02.2015 would constitute agreements for sale of immovable property by MBDL to the assessee. To the extent the provisions of section 194 IA would be attracted in the case of the assessee. At this stage we deem it

necessary to reproduce the provisions of section 194 IA introduced by finance act 2013 and effective from 01.06.2013:-

“.... 1[194-IA. Payment on transfer of certain immovable property other than agricultural land—(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon. (2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees. (3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section. Explanation.—For the purposes of this section,— (a) —agricultural land means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2; (b) immovable property means any land (other than agricultural land) or any building or part of a building.]”

4.5 A bare reading of the above statute shows that law casts responsibility upon the buyer to deduct TDS equal to 1% of the amount of sale price qua the seller only consideration for transfer of the immovable property. It is noted that the law is clear in as much as it says that the liability would arise the moment the amount of consideration is credited to the account of the seller or at the time of payment of such some by cash or cheque. The point which is required to be noted is that the law mandates “any sum” which means that even advances are covered for TDS. It is clear in the case that therefore the MOU assumes the character of a sale document in respect of the parcel of land of 7.07 acres and the impugned Wind Farms. Thus, the provisions of section 194 IA are evenly attracted in the case of the assessee.

4.6 The argument of the assessee that the TDS deduction would not be attracted in this case of Wind Mill since TDS provisions are only for immovable property in the case of land. The hypothesis is not supported by facts on record as the assessee had agreed to purchase "Wind Farm" and not a Wind Mill. The Wind Farm includes transfer of all part and parcel of land upon which a Wind Mill was existing. A farm denotes a piece of land. In this case as the assessee has purchased all the part and parcel of land along with an Wind Mill erected thereupon, TDS provisions of section 194 IA would be evenly attracted.

Pertinently the Ld. First Appellate Authority has analyzed these issues in elaborate details in para 7.20 of his order. Therefore argument of the assessee fails.

4.7 Another argument of the assessee that TDS was not deducted as in the event of non-consummation of the agreement it would not have been able to take refund of the same from the department has also been found to be devoid of any worthwhile consideration. The law postulated by the parliament is required to be complied by a tax payer as prescribed therein. Individual convenience or inconvenience has no role to play in matters of compliance. It is also noteworthy that the fears of the assessee were premature and imaginary since as indicated by the Ld. DR CBTD

has issued instructions mandating refund of TDS to the deductor in specific circumstances.

4.8 Similarly the argument of the assessee that no TDS liability would fall upon its shoulder since subsequently upon cancellation of the impugned MOUs, the land advances were converted into interest bearing loans and also that the assessee duly offered the interest earned therein in its return of income for subsequent years. We have noted that as discussed elsewhere also, the mandate of law prescribed in section 194 IA is that the assessee being a buyer of an immovable property, is required to deduct TDS at the time of payment of any sum of money w.r.t. the purchase transactions. The liability to deduct TDS under section 194 IA is contemporaneous. Any events or actions occurring subsequent to the point of arisen of said liability cannot dilute the accountability to deduct TDS. It is trite law as reiterated by Hon'ble High Courts and Supreme Courts that whenever the provisions of an statute are unambiguously clear, no interpretation thereof is permissible. The arguments of the assessee therefore cannot be accepted and are rejected.

4.9 We have also noted that the order of the Ld. CIT(A) is quite exhaustive on the matter. All the various facets of the case have been extensively analyzed in the light of evidences on record and therefore

there is no case of any interference in the order of the Ld. First Appellate Authority at this stage. **Accordingly, the order of Ld. CIT(A) is sustained and the grounds of appeal no. 2 & 3 raised by the assessee are dismissed.**

5.0 The next issue raised by the assessee through ground of appeal no.4 is regarding the decision of the Ld. CIT(A) in upholding the action of the Ld. AO in raising demand qua purchase amounts paid to MBDL for Wind Mill purchase by ignoring the fact that the respective ledger account had credit that ought to have been reduced from the payment for considering applicability of TDS and interest thereupon. It is the case of the assessee that there were certain credits in the ledger account that ought to have been reduced while calculating the applicability of TDS and interest thereupon. The Ld. DR in this regard submitted that the impugned credits did not had any relevance with the land advances and / or Wind Farm purchase advances having a direct nexus with the MOUs and therefore were not considered for reduction.

5.1 We have heard rival submissions in the light of material available on records. We have noted that the Ld. CIT(A) analyzed the issue comprehensively in para 7.21.1 and 7.21.2 of her order. During the

appellate proceedings before her, the appellant was requested to provide details of credit. It was noted that the impugned credits were in the nature of purchase of car, travelling expenses, professional fees, scrap advance, tax on liquidated damages etc paid by assessee to MBDL and that the same were expenses for which reimbursements were made to MBDL. Since the impugned credits do not have any direct connection with the land advances and / or Wind Farm purchase advance there cannot be any case for giving credit by the Ld. AO. The Ld.CIT(A) has also rightly noted that TDS is required to be made u/s 194 IA at the time of credit or payment of an amount of money and therefore no amounts received were credited by the party later can be factored in. The argument taken by the Ld.CIT(A) has therefore found to be in order and no interference is required at this stage. **Accordingly, the order of Ld. CIT(A) is sustained and the grounds of appeal no. 4 raised by the assessee is dismissed.**

ITA No.25 /Chny/2024 for Assessment Year- 2016-17

6.0 The facts of the case for AY-2016-17 vide ITA No.25 supra are identical except for changes in the figures. Therefore the decision taken in ITA No.24 / Chny/2024 shall apply mutatis mutandis. In the result the order of Ld. CIT(A) is sustained and all the grounds of appeal raised by the assessee are dismissed.

6.0. In the result, the appeals of the assessee for ITA No.24 & 25 for the Assessment Years-2015-16 and 2016-17 are dismissed.

Order pronounced on 11th, December-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 11th, December-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF