आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM AND SHRI PRADIP KUMAR KEDIA, AM

आयकर अपील सं. / ITA No. 2001/PN/2014

निर्धारण वर्ष / Assessment Year : 2012-13

The Income-tax Officer (TDS)-3,
Pune …. अपीलार्थी/Appellant

Vs.

Siddhivinayak Institute of Medical
Science & Research Centre Pvt. Ltd.,
21/459 A Yamuna Nagar, Nigdi ,
Pune – 411044 …. प्रत्यर्थी / Respondent

PAN: AAPCS1261H

अपीलार्थी की ओर से / Appellant by : Shri Anil Chaware
प्रत्यर्थी की ओर से / Respondent by : None

सुनवाई की तारीख / **Date of Hearing : 30.05.2016**		घोषणा की तारीख / **Date of Pronouncement: 30.05.2016**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This appeal filed by the Revenue is against the order of CIT(A)-V, Pune, dated 11.08.2014 relating to assessment year 2012-13 against order passed under section 201(1)/201(1A) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised the following grounds of appeal:-

> *1. The learned Commissioner of Income Tax (Appeals)-V, Pune erred in deleting the demand raised of Rs.23,25,212/- u/s 201(1) / 201(1A) of the Income Tax Act, 1961 in respect of payment made towards lease agreement for 99 years with (PCNTDA) since the deed entered into by the deductor with PCNTDA is not a transfer deed but a lease deed and there is no transfer of ownership rights of the property but the same is leased for use either for commercial or residential purposes as approved by lessor/deductee.*
>
> *2. The deductee / lessee has put several restrictions on the lessee which makes it clear that this is not a freehold transfer but is only a lease.*

> 3. *The learned Commissioner of Income Tax (Appeals)-V, Pune erred in not appreciating the fact that the payment in question was covered by the definition of rent as per proviso of section 194I of the Income Tax Act and TDS u/s.194I was required to be deducted since the 'rent' as defined in explanation to section 194I clearly makes the case of TDS default against the lessee, as any payment by whatever name called under any lease deed / agreement is to be taken as rent for TDS purposes.*

3. Despite service of notice, none appeared on behalf of the assessee nor any application was moved for adjournment. However, we proceed to decide the present appeal since the issue involved in the present appeal is squarely covered by the order of Tribunal itself.

4. The learned Departmental Representative for the Revenue put forward his contentions.

5. The issue raised in the present appeal vis-a-vis is the demand raised under section 201(1) and 201(1A) of the Act at Rs.23,25,212/- in respect of lease premium paid to Pimpri Chinchwad New Township Development Authority (PCNTDA).

6. Briefly, in the facts of the case, the assessee was a private limited company incorporated under the Companies Act, 1956. During the course of TDS verification in the case of Pimpri Chinchwad New Township Development Authority (PCNTDA) on 07.11.2012, it was noted that the assessee had entered into lease agreement for 99 years with PCNTDA on the terms and conditions laid down by the lessor in the lease deed dated 28.04.2011 for plot No.1 in Sector No.13, within the village limits of Ravet, Tal-Haveli, Dist - Pune. The Assessing Officer was of the view that as per the lease deed, the premium paid for acquisition of leasehold rights for 99 years was nothing but rent and

hence, the provisions of section 194I of the Act were applicable. Accordingly, he raised the demand under section 201(1) and 201(1A) of the Act.

7. The CIT(A) considered the arguments of the assessee and the views taken by various Benches of Tribunal and held that the payment of lease premium made to PCNTDA was a pre-condition for entering into lease agreement and therefore, it could not be said that the same was paid under the terms of lease agreement. Further, the stamp duty had been paid on the market value of plot represented by lease premium, therefore, the demand raised under section 201(1) and 201(1A) of the Act by the Assessing Officer was directed to be deleted.

8. The Revenue is in appeal against the order of CIT(A).

9. We find that similar issue whether tax should be deducted at source under section 194I of the Act and for such non-deduction of tax at source demand should be raised under section 201(1) of the Act and interest under section 201(1A) of the Act is chargeable in respect of lease premium paid to PCNTDA by the assessee, arose before the Tribunal in ITO vs. Camp Education Society in ITA No.2134/PN/2013 relating to assessment year 2013-14, order dated 27.10.2014. The Tribunal held as under:-

> *"6. We have heard the rival contentions and perused the record. The assessee was an educational society registered under section 12A of the Act. The assessee was running various schools and colleges in the city of Pune. During the year under consideration, in order to establish another school in Pimpri Chinchwad area, the assessee in reply to an advertisement by PCNTDA, applied for a plot on leasehold basis. As per the Bid document, where the Bid quoted by a party accepted, the said party was required to pay the quoted amount i.e. the premium within 3 months of the letter of allotment. In case such premium was not paid within period of 3 months, 25% of the Tender deposit was to be fortified and balance amount was to be refunded without any interest. The Tender document stated that the Tender was for the purpose of sale of reserved plots and as per the document full premium was to be paid to PCNTDA and lease agreement would be entered with the party. The assessee entered into a lease agreement with PCNTDA for 99 years and the*

lease rent was Rs.100/- per annum for the period of 99 years. The assessee accordingly, deposited the premium amount of Rs.2,20,24,860/-. After receiving the premium amount, the licenser i.e. PCNTDA agreed to execute Lease Deed to convey / transfer / assign the leasehold rights. The Lease Deed authorizes the assessee to build / construct any building on the said plot of land. The case of the assessee was that the payment of premium was a pre-condition for obtaining the lease rights and it was only after payment of the lease premium, the lease agreement was entered into and bundle of rights were obtained by the assessee.

7. The Assessing Officer held the assessee to be default in respect of the TDS payable on such lease rent payment to PCNTDA. Reliance was placed on the ratio laid down by the Chennai Bench of the Tribunal in Fox Conn India Developer (P) Ltd. (supra). The assessee was held to be in default for non-deduction of tax on source under section 194I of the Act on the lease premium paid to PCNTDA and demand under section 201(1) of the Act was raised and interest under section 201(1A) of the Act was charged, raising a demand of Rs.22,90,585/-.

8. The CIT(A) vide para 8 referred to the preliminary clauses of the agreement entered into between assessee and PCNTDA and pointed out that the lease premium finds mention in the Lease Deed but the said payment of lease premium was a pre-condition for entering into lease agreement. The CIT(A) thus, held that same was not under the lease deed and the payment of lease premium falls outside the purview of definition of rent as specified in section 194I of the Act. The CIT(A) further observed from the ratio laid down in the case of Fox Conn India Developer (P) Ltd. (supra) was distinguishable on the facts as in that case issue in question was upfront payment and not lease premium. Further, upfront payment was part of consideration for acquiring leasehold rights unlike the present case where payment of lease premium was pre-condition for entering into lease agreement and therefore the facts of the case were clearly distinguishable. Further reliance was placed on the series of decisions, under which such similar payment of lease premium was held to be not subject to deduction of tax at source under section 194I of the Act.

9. We find that similar issue of payment of lease premium arose before the Mumbai Bench of the Tribunal in the case of Navi Mumbai SEZ (P) Ltd. in ITA Nos.738 to 740/Mum/2012 for assessment years 2006-07 to 2009-10, wherein the Tribunal in its order dated 12.08.2013, held that lease premium paid by the assessee to the City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) for acquiring development and leasehold rights for a period of 60 years, was not required to be subject to deduction at source under section 194I of the Act. Further another Bench of the Mumbai Tribunal in the case of M/s. Wadhwa Associates in ITA No.695/Mum/2012, vide order dated 03.07.2013, held that TDS was not required to be deducted under section 194I of the Act in respect of payment of lease premium to M/s. MMRD Ltd.

10. In view of above said facts and circumstances, wherein the lease premium was paid to PCNTDA by the assessee as a pre-condition for entering into a lease agreement, the same cannot be said to have been paid consequent to the lease agreement executed between the parties. Further, the CIT(A) has given a finding that stamp duty had been paid on the market value of the plot represented by the lease premium, which has not been controverted by the learned Departmental Representative for the Revenue. Relying upon the ratio laid down by the Mumbai Bench of the Tribunal in three different cases, we uphold the order of CIT(A) in holding that the lease premium paid by the assessee is outside the purview of section 194I of the Act and the Assessing Officer was not justified in raising the demand under section 201(1) and 201(1A) of the Act. The grounds of appeal raised by the Revenue are thus, dismissed."

10. The issue arising in the present appeal before us is identical to the issue before the Tribunal in ITO vs. Camp Education Society (supra) and following the same parity of reasoning, we hold that the assessee is not liable to deduct tax at source out of the lease premium payments paid to PCNTDA. Accordingly, we uphold the order of the CIT(A) in holding that the lease premium paid by the assessee was outside the purview of section 194I of the Act and the Assessing Officer was not justified in raising the demand under section 201(1) of the Act and charging interest under section 201(1A) of the Act. The grounds of appeal raised by the Revenue are thus, dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 30th day of May, 2016.

Sd/-	**Sd/-**
(PRADIP KUMAR KEDIA)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 30th May, 2016.

GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u> :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-V, Pune;
4. आयकर आयुक्त / The CIT(TDS), Pune,;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pu ne;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune