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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1504 OF 2011

Indian Newspaper Society. ... Petitioner.

V/s.

Income Tax Officer (TDS) (3) 4 & Anr. ... Respondents.

Mr. Sanjiv M. Shah for the Petitioner.
Mr. Suresh Kumar for the Respondents.

**CORAM : DR. D.Y. CHANDRACHUD &
A.A. SAYED, JJ.**

9 NOVEMBER 2011.

P.C. :-

Rule, by consent returnable forthwith. With the consent of Counsel and at their request the Petition is taken up for hearing and final disposal.

2. The Petitioner has challenged the legality of an order dated 29 March 2011 passed by the Assessing Officer for assessment year 2008-09 holding the Petitioner to be an Assessee in default under Section 201(1) read with Section 201(1A) of the Income Tax Act 1961 for failure to deduct TDS on the payment of lease premium to MMRDA under Section

194-I.

3. The Petitioner is a company registered under Section 25 of the Companies Act, 1956, and functions as an apex organization to protect and promote the interest of the press in India. According to the Petitioner, its operational, administrative and management activities are controlled and directed from New Delhi. The Permanent Account Number (PAN) and Tax Deduction Number (TAN) issued under Sections 139A and 203A were allotted by the Assessing Officer at New Delhi. The Petitioner has averred that it has consistently filed income tax returns in New Delhi and has been assessed under the Act at New Delhi which is borne out by the income tax returns for Assessment Years 2008-09, 2009-10 and 2010-11 and intimations for Assessment Years 2008-09 and 2009-10 respectively. The Petitioner lodged TDS returns in New Delhi, which are supported by TDS returns for Assessment Years 2008-09 and 2011-12. The Petitioner claims an exemption under Section 11, pertaining to which it has obtained registration under Section 12A/12AA from the Income Tax Authorities at New Delhi.

4. The Petitioner has been allotted certain land by MMRDA at Bandra Kurla Complex on lease for 80 years for the purpose of construction of an office complex. The lease premium of Rs.88.52 crores was paid on 27 December 2005 and 18 February 2008. A lease deed was executed with MMRDA on 9 April 2008. The lease deed inter-alia contains covenants for the payment of annual rent.

5. A survey was conducted under Section 133A in pursuance of which a letter was addressed to the Petitioner on 16 March 2011 by the First Respondent seeking a disclosure of why TDS has not been deducted on the lease premium paid to MMRDA. By a letter dated 29 March 2011, the Petitioner's Chartered Accountant challenged the jurisdiction of the First Respondent to issue a notice to show cause under Sections 201 and 201(1A). The First Respondent passed an order on 29 March 2011 holding the Petitioner to be an Assessee in default for not deducting tax at source and subjecting the Petitioner to the payment of interest under Section 201(1A).

6. The grievance of the Petitioner is that the First

Respondent has no jurisdiction. This submission was made on the basis that the Petitioner files its Income Tax Returns including those pertaining to TDS at New Delhi and is assessed at New Delhi. Moreover, the PAN and TAN numbers under Sections 139A and 203A have been allotted by the Assessing Officer at New Delhi. A Certificate of Registration under Section 12A/12AA for claiming an exemption under Section 11 has been issued by the CIT at New Delhi. The registered office of the Petitioner is at New Delhi from which it carries on all its administrative, operational and decision making activities. On this ground, it was urged that ex-facie, there was want of jurisdiction in the First Respondent.

7. On the other hand, Counsel appearing on behalf of the Revenue states that the only reason why the First Respondent sought to exercise the jurisdiction was that the period of limitation specified in the proviso to sub-Section 3 of Section 201 was to expire on 31 March 2011.

8. Having heard Counsel appearing on behalf of the parties, it must be noted that the facts are not in dispute. The Petitioner is assessed at New Delhi. The PAN and TAN

numbers are allotted to the Petitioner under Sections 139A and 203A by the Assessing Officer at New Delhi. All returns including the TDS returns have been filed at New Delhi. The Assessing Officer recorded the submissions of the Petitioner which advert to these facts and the contention based thereon that the jurisdiction would lie with the Income Tax Authorities at New Delhi. This was brushed aside only on the ground that the assessment was getting time barred on 31 March 2011 and it was now not possible to transfer the case papers to the Authorities at New Delhi. This, with respect, could be no ground whatsoever valid in law to pass an order under Section 201/201(1A) when there was complete absence of jurisdiction on the part of the Assessing Officer at Mumbai. Evidently, on the facts and circumstances, it cannot be denied that jurisdiction would lie not with the Assessing Officer at Mumbai, but with the Competent Authority at New Delhi.

9. We accordingly set aside the impugned order dated 29 March 2011 only on the aforesaid ground. This order shall not preclude the Competent Authority having jurisdiction over the case from adopting such proceedings as are available in law.

10. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(Dr. D.Y. Chandrachud, J.)

(A.A. Sayed, J.)