Rajasthan High Court
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सत्यमेव जयते
RAJASTHAN HIGH COURT

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT

(1) D.B. INCOME TAX APPEAL NO.235/2011
COMMISSIONER OF INCOME TAX(TDS), JAIPUR
Vs.
M/s. RAJASTHAN URBAN INFRASTRUCTURE

WITH

(2) D.B. INCOME TAX APPEAL NO.222/2011
COMMISSIONER OF INCOME TAX(TDS), JAIPUR
Vs.
M/s. RAJASTHAN URBAN INFRASTRUCTURE

WITH

(3) D.B. INCOME TAX APPEAL NO.238/2011
COMMISSIONER OF INCOME TAX(TDS), JAIPUR
Vs.
M/s. RAJASTHAN URBAN INFRASTRUCTURE

&

(4) D.B. INCOME TAX APPEAL NO.239/2011
COMMISSIONER OF INCOME TAX(TDS), JAIPUR
Vs.
M/s. RAJASTHAN URBAN INFRASTRUCTURE

DATE:01.07.2013

HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN
HON'BLE DR. JUSTICE SMT. MEENA V. GOMBER

Ms. Parinitoo Jain, for the appellant.
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Heard the learned counsel for appellant.

2. Since common facts and law are involved in these appeals, therefore, they were heard together and are being disposed of by this common order.

3. For convenience, the facts of D.B. Income Tax Appeal No.235/2011 are being taken as leading facts. The Assessing Officer, vide its order dated 30.01.2009, raised a demand of Rs.1,70,881/- along

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with interest thereon amounting to Rs.44,776/-, on account of TDS on the amount paid as service tax. The matter relates to the Financial Year 2005-06. The assessee preferred an appeal, which was allowed by the Commissioner of Income Tax(Appeals)-III, Jaipur (for short 'the Appellate Authority'), setting aside the aforesaid demand. Being aggrieved with the same, the Revenue preferred an appeal before the Income Tax Appellate Tribunal, Jaipur Bench 'A', Jaipur, but the same was dismissed. Hence, the Revenue has preferred this appeal.

4. Submission of the learned counsel for appellant is that Appellate Authority and Income Tax Appellate Tribunal, both, have committed an illegality in relying upon the Circular dated 28.04.2008, which was in respect of Section 194-I of the Income Tax Act (hereinafter referred to as 'the Act), whereas dispute in the present case was in respect of TDS, to be deducted under Section 194J of the Act. It was further argued that the Circular dated 28.04.2008 was clarified by a subsequent Circular dated 30.06.2008, which was wrongly held to be inapplicable or contrary to law by the Appellate Authority as well as Appellate Tribunal. She, therefore, submitted that orders passed by the Appellate Authority as well as Appellate Tribunal, are illegal and same are liable to be set aside.

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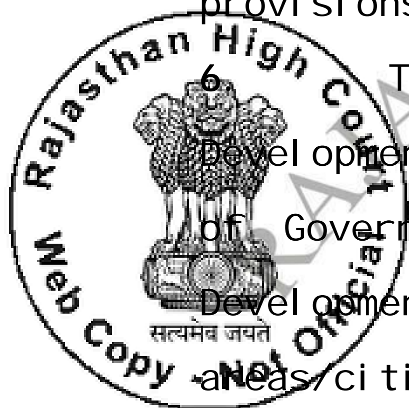
5. We have considered the submissions of the learned counsel for appellant and examined the Circulars dated 28.04.2008 and 30.06.2008 and also the provisions of Sections 194-I and 194J and other provisions of the Income Tax Act.



6. The assessee, Rajasthan Urban Infrastructure Development Project(in short 'RUIDP'), is a project of Government of Rajasthan for the Infrastructure Development and Civic Amenities in the specified areas/cities in the State of Rajasthan. The project is financially assisted by the Loan from the Asian Development Bank through the Government of India. The project is working under the Urban Development Department of the Government of Rajasthan. The accounts are maintained on cash basis of accounting and also audited by the Chartered Accountant as per the requirement of the Asian Development Bank and also audited by the Department of Accountant General of Rajasthan. The RUIDP appoint the technical and project consultants on open tender basis and the limited companies as well as corporate consulting firms of repute are selected and appointed as per the laid down procedure. The assessee deduct the income-tax at source from the payments made by it and deposit the same as per the relevant provisions of the Income Tax Act and the return for the same is filed in due time. It appears that main consultants are charging the service tax at the prevailing rates

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on the amount of fee payable as per the agreement and the same is paid by the assessee/RUIDP. The tax is deducted on fees and other payments of expenses as being part of contract, however, no TDS has been deduced on service tax in view of the term of contract.

The dispute relates to a point as to whether TDS is to be deducted on the amount payable on account of service tax or not? The Tribunal has considered the agreement and recorded a finding that as per the term of contract, the amount of service tax was to be paid separately, therefore, the same was not subject to TDS. The Appellate Authority decided the appeal on the basis of reasoned order dated 31.03.2009 passed in Appeal No.413/Jaipur/ 2008-09 of the same assessee, which is the subject matter of D.B. Income Tax Appeal No.239/2011. The relevant para 02.3 of the above referred order dated 31.03.2009, passed by the Appellate Authority, is reproduced as under:-

"02.3 मैंने दोनों पार्टियों के तर्कों का अवलोकन किया एवं पाया कि माननीय सीबीडीटी के स्पष्टीकरण एफ नंबर 275/73/2007-आईटी(बी) दिनांक 30.06.2008 के अनुसार तकनीकी एवं व्यावसायिक गतिविधियों के बदले किए जाने वाले कुल भुगतान पर जिसमें सर्विस टेक्स भी शामिल है, टीडीएस की कटौती धारा 194जे के तहत करनी चाहिए। परन्तु यदि सेवा प्रदाता एवं सेवा ग्रहिता निर्धारितियों के बीच अनुबंध में सेवा के बदले भुगतान की राशि का ही अनुबंध होता है तथा उस राशि पर नियमानुसार सर्विस टेक्स देय होना माना जाता है, परन्तु सर्विस टेक्स की राशि अनुबंध की राशि के अतिरिक्त हो, तो उस स्थिति में सर्विस टेक्स को टीडीएस की कटौती योग्य नहीं माना जा सकता । परन्तु यदि अनुबंध की कुल राशि में सर्विस टेक्स

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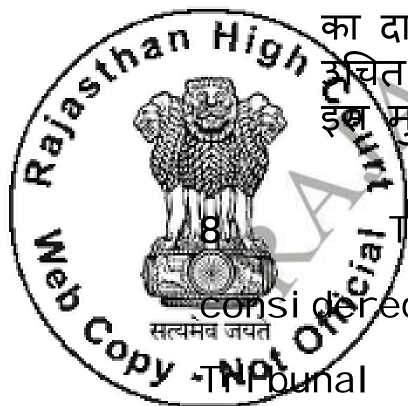
भी शामिल है, तो उस स्थिति में सर्विस टेक्स को भी शामिल करते हुए टीडीएस कटौती की जाने योग्य है । अपील की सुनवाई के दौरान वि.अ. ने विभिन्न पार्टियों से किए गए अनुबंधों की प्रतियां पेश की, जिनके अवलोकन पर पाया कि सर्विस टेक्स अनुबंध की राशि में शामिल नहीं है, बल्कि अनुबंध की राशि के अतिरिक्त सर्विस टेक्स देय है । इसलिए सर्विस टेक्स, टीडीएस की कटौती के योग्य नहीं है, बल्कि अनुबंध की राशि टीडीएस का दायित्व अपीलार्थी का है । अत: नि.अ. के इस निर्णय को उचित नहीं माना जाता हटाया जाता है । अपीलार्थी की अपील इस मुद्दे पर स्वीकार की जाती है ।"



8. The aforesaid finding was discussed and considered, in detail, by the Income Tax Appellate Tribunal and vide order dated 30.10.2009, the Tribunal dismissed the appeal of the Department. The said order is also under challenge in D.B. Income Tax Appeal No.239/2011, preferred on behalf of the Revenue.

9. So far as submission of the learned counsel for appellant, that the Circular dated 28.04.2008 was not applicable as it was in respect of Section 194-I of the Act relating to rent and not technical fees, therefore, it was wrongly relied upon is concerned, we have considered the provisions of Section 194J of the Income Tax Act, in the light of Circulars dated 28.04.2008 and 30.06.2008. The words, "any sum paid", used in Section 194J of the Act, relate to fees for professional services, or fees for technical services. As per the terms of agreement, the amount of service tax was to be paid separately and was not included in the fees for professional services or fees for technical services. In these circumstances,

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we are satisfied that the orders passed by the Appellate Authority as well as the Appellate Tribunal, are in accordance with the provisions of Section 194J of the Income Tax Act. The service tax was to be paid separately or not, is purely a question of fact and as per the agreement entered in the present case, it was to be paid separately and there is a finding of fact in this regard, recorded by the Appellate Authority as well as the Appellate Tribunal also. Even if the Circular dated 28.04.2008, is held to be not applicable in the present case, we find that the orders passed by both the authorities below, are in accordance with the provisions of Section 194J of the Income Tax Act, looking to the facts and circumstances of the present case.

10. In view of above discussion, we find that no substantial questions of law are involved in all these appeals. It is a settled law that Income Tax Appeal before the High Court is maintainable only on the substantial questions of law, which are not involved in the present appeals.

11. In these circumstances, we find no force in any of the appeals and the same are, accordingly, dismissed.

12. Registry is directed to place a copy of this order on record in each connected file.

(DR.MEENA V. GOMBER),J. (NARENDRA KUMAR JAIN),J.

/KKC/

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Certificate:

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

KAMLESH KUMAR
P.A.

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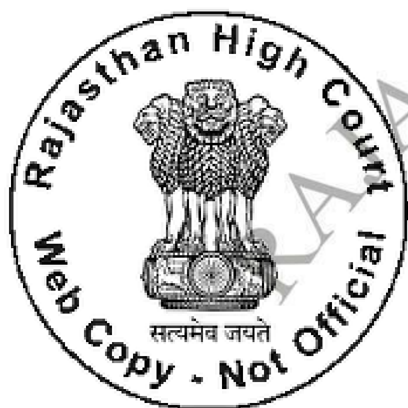

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