

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

Before Shri R.K. Panda, Accountant Member
and Shri Vikas Awasthy, Judicial Member

ITA Nos.1848 and 1849/PN/2013
(Assessment Years : 2009-10 & 2010-11)

M/s. Vamona Developers Pvt. Ltd.,
Phoenix Market City Mall,
Survey No.207,
Ahmednagar Road,
Pune – 411004 .. Appellant
PAN No.AACCV3425B

Vs.

Dy.CIT, TDS-II, Pune .. Respondent

ITA No.1876/PN/2013
(Assessment Year 2008-09)

Dy.CIT, TDS-II, Pune .. Appellant

Vs.

M/s. Vamona Developers Pvt. Ltd.,
Phoenix Market City Mall,
Survey No.207,
Ahmednagar Road,
Pune – 411004 .. Respondent
PAN No.AACCV3425B

Appellant by : Shri Varun Chaturvedi
Department by : Smt. Anuradha Ravi
Date of Hearing : 17-06-2015
Date of Pronouncement : 17-06-2015

ORDER

PER BENCH :

ITA No.1848 and 1849/PN/2013 filed by the assessee are directed against the separate orders dated 23-03-2013 of the CIT(A)-V, Pune relating to Assessment Years 2009-10 and 2010-11 respectively. ITA No.1876/PN/2013 filed by the Revenue is directed against the order dated 18-07-2013 of the CIT(A)-V, Pune relating to Assessment Year 2008-09. For the sake of convenience,

all these appeals were heard together and are being disposed of by this common order.

ITA No.1848 & 1849/PN/2013 :

2. The Ld. Counsel for the assessee at the time of hearing filed an application requesting the withdrawal of the above 2 appeals. The Ld. Departmental Representative has no objection for the same. In view of the above, the request of the assessee to withdraw the appeals is allowed. Both the appeals filed by the assessee are accordingly dismissed as 'Withdrawn'.

ITA No.1876/PN/2013 :

3. Grounds raised by the Revenue are as under :

"1) The Learned Commissioner of Income tax (Appeals) erred in allowing the appeal towards the short deduction of TDS and Interest thereon.

2) The Learned Commissioner of Income tax (Appeals) erred in not appreciating the fact that without support of low deduction of tax certificate the assessee company has short deducted the TDS and interest thereon.

3) The Learned Commissioner of Income tax (Appeals) erred in not appreciating the fact that as per section 201(3) the Assessing Officer can pass the order within six years from the end of the financial year in which payment is made or credit is given, in any other case; as mentioned in clause (ii) of the Sec. 201(3) of the I T Act.

4) The appellant craves leave to add, alter or amend any or all the grounds of appeal."

4. Facts of the case, in brief, are that the assessee company is engaged in the business of running a mall. A TDS survey was conducted on 15-11-2012 during which it was observed that the assessee company had deducted tax on professional fees u/s.194J at lower rate than as required by the section in respect of Market City Resources Pvt. Ltd. which provides consultancy service to the assessee company. The AO asked the assessee to show cause as to

why the assessee has deducted tax at lower rate. The assessee filed reply by submitting the lower deduction certificate from ITO, TDS, Mumbai. The AO, on perusal of the certificates, observed that the ITO, TDS has issued two certificates for F.Y. 2008-09 and 09-05-2008 on 12-11-2008. The assessee has not produced any certificate for F.Y. 2006-07 and 2007-08. For F.Y. 2009-10 the assessee has submitted the certificate dated 24-04-2009.

5. From the various details furnished by the assessee the AO observed that (1) the estimated income shown by the Market Resources Pvt. Ltd. has always got increased from the real income from Vamoma Developers Pvt. Ltd. (2) In spite of knowing that the total income has increased, the assessee is always deducting TDS at a much lower rate and (3) In the F.Y. 2008-09, the ITO (TDS) has fixed the 8% rate, but the deduction is made at a much lower rate. In view of the above discrepancies, the AO held that there is default on part of the assessee for short deduction. The AO accordingly raised a demand of Rs.18,20,760/- for F.Y. 2007-08 u/s.201(1) and 201(1A).

6. In appeal the Ld.CIT(A) annulled the order passed by the AO by observing as under :

“5. I have carefully considered the facts of the case as well as reply of the appellant. In this case as evidenced from paper book (page 4) the appellant filed quarterly statement for F.Y. 2007-08 on 12-06-2008. Therefore, as per proviso to Sec.201(3) of Income-tax Act, order u/s.201(1)/201(1A) was required to be passed on or before 31-03-2011. In this case order u/s. 201(1)/201(1A) has been passed on 30-03-2012, the same is clearly barred by limitation. Accordingly, order u/s. 201(1)/201(1A) of Income-tax Act passed for A.Y. 2008-09 is annulled. The ground is thus allowed.”

7. Aggrieved with such order of the CIT(A) the Revenue is in appeal before us.

8. We have considered the rival arguments made by both the sides and perused the orders of the AO and CIT(A). We find the provisions of section 201(3) as it stood at the relevant time reads as under :

“ No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of -

(i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed.

(ii) six years from the end of the financial year in which payment is made or credit is given, in any other case :

Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March 2011”.

9. In the instant case, the Ld.CIT(A) has given a categorical finding that the assessee filed quarterly statements for F.Y. 2007-08 on 12-06-2008. The above finding given by the Ld.CIT(A) could not be controverted by the Ld. Departmental Representative. Therefore, as per proviso to section 201(3) of the I.T. Act, the AO was required to pass the order u/s.201(1)/201(1A) on or before 31-03-2011. The finding given by the Ld.CIT(A) that the order passed u/s.201(1)/201(1A) on 30-03-2012 by the AO as against on or before 31-03-2011 and therefore the same is barred by limitation could not be controverted by the Ld. Departmental Representative. Since the order passed on 30-03-2012 is clearly barred by limitation, therefore, we do not find any infirmity in the order of the CIT(A) annulling the order passed by the AO. Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

10. In the result, the two appeals filed by the assessee as well as the appeal filed by the Revenue are dismissed.

Pronounced in the open court at the time of hearing itself, i.e. on 17-06-2015.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

satisfy

Pune Dated: 17th June, 2015

Copy of the order forwarded to :

1. Assessee
2. Department
3. CIT(A)-V, Pune
4. CIT-V, Pune
5. The D.R, "B" Pune Bench
6. Guard File

By order

// True Copy //

Senior Private Secretary
ITAT, Pune Benches, Pune