

(2016) 2 JKJ 764

Jammu & Kashmir High Court

Case No: ITA No. 5 of 2004

Commissioner of
Income Tax, Panama
Chowk, Jammu

APPELLANT

Vs

Jai Beverages Pvt. Ltd.

RESPONDENT

Date of Decision: March 16, 2016

Acts Referred:

- Income Tax Act, 1961 - Section 194(1), Section 221(1)

Citation: (2016) 2 JKJ 764

Hon'ble Judges: Mr. N. Paul Vasanthakumar, C.J. and Mr. Tashi Rabstan, J.

Bench: Division Bench

Advocate: Mrs. Aruna Thakur, Advocate, for the Appellant/Petitioner; Mr. Pranav Kohli, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mr. Tashi Rabstan, J. - This Appeal, filed under Section 260-A of the Income Tax Act, is directed against the order dated 07.05.2004 passed

by the Income Tax Appellate Tribunal, Amritsar Bench in ITA No. 240 (ASR)/2001, c/w ITA No. 273(ASR)/2001, whereby, while allowing the

appeal of assessee-respondent herein, the learned Tribunal has upheld the conclusion of Commissioner of Income Tax (Appeals), though on

different reasons, in regard to payment of Rs. 54,10,800/- and set aside the order of CIT(A) as well as Assessing Officer in regard to payment of

Rs. 3,68,736/-. Consequently, the learned Tribunal cancelled the penalty levied u/s 221(1) of the Income Tax Act, 1961 being not justified.

2. The facts-in-brief are that the assessee-Company was allotted industrial land for a period of 90 years after the rights in the said land were

surrendered by the Hindustan Lever Ltd. along with the superstructure. As per the lease agreement, the assessee paid an amount of Rs.

54,10,800/- to the SIDCO, i.e., 50% of the unearned increase in the value of land. The assessee also paid annual lease rent at Rs. 3,68,376/-.

No tax was deducted by the assessee on either of the payments. The Assessing Officer was of the view that since the assessee had failed to

deduct the tax-at-source on both the amounts in terms of Section 194 of the Act, he levied penalty of Rs. 5000/-under Section 221, besides

assessee was also treated to be in default in regard to the TDS of Rs. 12,71,496/- and demand created to that extent, as also interest to the tune

of Rs. 1,43,043/- at the rate of 15% was charged for a period of nine months u/s 201(1A) of the Act.

3. On an appeal filed by the assessee, the Commissioner of Income Tax (Appeals) vide its order dated 12.03.2001 passed in Appeal No.

A235/00-01 observed that the amount of Rs. 54,10,800/- was on capital account for the acquisition of rights in the land and not for user of the

land, therefore does not fall within the definition of rent u/s 194. It, however, observed that the assessee was required to deduct tax-at-source from

the lease rent of Rs. 3,68,736/- and that interest is leviable only on this amount, on the ground that SIDCO is not a department of the State

Government nor can be treated at par with any Government, therefore, any payment to SIDCO is not exempted from the deduction of tax-at-

source. Against the said order, both, appellant as well as respondent herein, filed two cross-appeals before the learned Income Tax Appellate

Tribunal, Amritsar Bench (hereinafter, for short, learned Tribunal).

4. Appellant herein filed the appeal against the decision of CIT(A) in holding the amount of Rs. 54,10,800/- to be on capital account in respect of

which no tax was to be deducted, whereas the assessee-respondent herein filed appeal against the decision of CIT(A) in holding that tax was

required to be deducted at source from the lease rent of Rs. 3,68,736/- and that interest under section 201(1)/201(1A) was chargeable.

5. The learned Tribunal vide its detailed order dated 07.05.2004 allowed the appeal of assessee, respondent herein, upholding the conclusion of

Commissioner of Income Tax (Appeals), though on different reasons, in regard to payment of Rs. 54,10,800/-; whereas it set aside the order of

CIT(A) as well as Assessing Officer in regard to payment of Rs. 3,68,736/- and also cancelled the penalty levied u/s 221(1) of the Income Tax

Act, 1961 being not justified Hence, the present appeal on behalf of appellant.

6. We have heard learned counsel for both the sides and also gone through the file minutely. And, we do not see any reason to take a view other

than the one taken by the learned Tribunal that the payments-in-question made by the assessee are excluded from the operation of Section 194(1)

of the Act in view of the fact that the lease agreement is between the assessee and the State of Jammu and Kashmir and that SIDCO has acted

merely as an agent of the State of J&K for facilitating the allotment of land to the assessee for industrial development for a period of 90 years.

Since the payments, referred to in this order, were made by the assessee to the Government, the same are excluded from the operation of Section

194 (1) of the Act, thus are saved from deduction of tax. The judgment of the Apex Court cited by the learned counsel for appellant in case titled

as, Adityapur Industrial Area Development Authority v. Union of India delivered on 03.05.2006, does not apply to the case-in-hand as

the issue in the said judgment had arisen after the amendment of the Act, whereas in the present case the payments made were before the

amendment of the Act.

7. In the given circumstances, the appeal fails and the same is, accordingly, dismissed along With connected miscellaneous petition, if any.