

- 1. Filing of appeal with complete knowledge of its fate by revenue only reflects mischievous adamancy to attempt to mislead Tribunal and waste time of Court and officers concerned.** The filing of instant appeal with complete knowledge of its fate by the revenue only reflects the mischievous adamancy to attempt to mislead the Tribunal and waste the time of the Court and the officers concerned. The present appeal as a part of a search cannot be a case of non-application of mind where the grounds presumably proposed by the Assessing Officer have been approved carelessly. The present appeal is a prime example of meritless litigation for reasons best known to the few Departmental Officers having powers of directing authorization for filing appeals. The filing of instant appeal with complete knowledge of its fate by the revenue only reflects the mischievous adamancy to attempt to mislead the Tribunal and waste the time of the Court and the officers concerned. The present appeal as a part of a search cannot be a case of non-application of mind where the grounds presumably proposed by the Assessing Officer have been approved carelessly. The present appeal is a prime example of meritless litigation for reasons best known to the few Departmental Officers having powers of directing authorization for filing appeals. **ACIT v. R.P.G. Credit & Capital Ltd. [2015] 155 ITD 29 (Delhi-Trib).**
- 2. While making provision for dismantling signal towers and restoration of site after termination of lease period, a telecom operator was not required to deduct tax at source.** The assessee made the provision for dismantling the towers and restoration of site to its original position after termination of the lease period. The lease period is normally 20 years and above. The assessee by placing reliance on the Accounting Standard - 29 claims that a provision would be made in respect of an obligation. In other words, the assessee had an obligation to incur the expenditure after termination of the lease period. Revenue, however, contends that due to misconception and ignorance of law and with an intention to circumvent the statutory provisions, the assessee made the provision. The fact remains that the payment was not made to anyone and it is not credited to the account of any party or individual. The account does not disclose the person to whom the amount is to be paid. The contractor who is supposed to be engaged for dismantling the tower and restore the site in its original position is not identified. As contended by the assessee, the assessee by itself engaging its own labourers may dismantle the towers and restore the site to its original position. In such a case, the question of deducting tax at source does not arise. The assessee has to pay only the salary to the respective employees. Suppose the work is entrusted to a contractor, then definitely the assessee has to deduct tax. In this case, the contractor would be identified after the expiry of lease period. Therefore, even if the assessee deducts tax, it cannot be paid to the credit of any individual as rightly pointed out by the Id. Sr. counsel. The assessee has to issue Form 16A prescribed under Rule 31(1)(b) of the Income-tax Rules, 1962 for the tax deducted at source. The assessee has to necessarily give the details of name and address of deductee, the PAN of deductee and amount credited. In this case, the assessee could not identify the name and address of deductee and his PAN. The assessee also may not be in a position to quantify the amount required for incurring the expenditure for dismantling and restoration of site to its original position. In those circumstances, this Tribunal is of the considered opinion that the provision which requires deduction of tax at source fails. Hence, the assessee cannot be faulted for non-deduction of tax at source while making a provision. Therefore, we are unable to accept the contention of the Id.

D.R. Accordingly, the orders of the lower authorities are set aside and this ground of appeal is allowed.**Dishnet Wireless Ltd.v. DCIT [2015] 172 TTJ 394 (Chennai – Trib)**