आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ,D,मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**

श्री अश्वनी तनेजा, लेखा सदस्य**,** के समक्ष

Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member

ITA NO.5667/Mum/2012
Assessment Year: 2010-11

ITO (TDS) 3(1) R.NO.1010, 10th Floor, Smt. K.G. Mittal, Ayurvedic Hosp. Bldg. Charni Rd(W) Mumbai-400002	**बनाम**/ Vs.	Raguleela Leasing & Real Estates Pvt. Ltd. 301, Platina, Plot C-59, G-Block Bandra Kurla Complex, Bandra(E), Mumbai-400051
(Revenue)		(Assessee)
		P.A. No.AADCR0871J

C.O. No.225/Mum/2013
(Arising Out of ITA No.5667/Mum/2012)
Assessment Year: 2010-11

Raguleela Leasing & Real Estates Pvt. Ltd. 301, Platina, Plot C-59, G-Block Bandra Kurla Complex, Bandra(E), Mumbai-400051	**बनाम**/ Vs.	ITO 22(2)-4 Mumbai.
(Assessee)		(Revenue)
P.A. No. AADCR0871J		

ITA NO.5668/Mum/2012
Assessment Year: 2011-12

ITO (TDS) 3(1) R.NO.1010, 10th Floor, Smt. K.G. Mittal, Ayurvedic Hosp. Bldg. Charni Rd(W) Mumbai-400002	**बनाम**/ Vs.	Raguleela Leasing & Real Estates Pvt. Ltd. 301, Platina, Plot C-59, G-Block Bandra Kurla Complex, Bandra(E), Mumbai-400051
(Revenue)		(Assessee)
		P.A. No.AADCR0871J

C.O. No.226/Mum/2013
(Arising Out of ITA No.5668/Mum/2012)
Assessment Year: 2011-12

Raguleela Leasing & Real Estates Pvt. Ltd. 301, Platina, Plot C-59, G-Block Bandra Kurla Complex, Bandra(E), Mumbai-400051	**बनाम**/ Vs.	ITO 22(2)-4 Mumbai-
(Assessee)		(Revenue)
P.A. No. AADCR0871J		

निर्धारिती **की ओर से /** Assessee by	Shri Mahesh O. Rajora (AR)
राजस्व **की ओर से** / Revenue by	Shri B.S. Bist (DR)

सुनवाई की तारीख / **Date of Hearing :**	**21/06/2016**
आदेश की तारीख /**Date of Order:**	**22/07/2016**

आदेश / O R D E R

Per Bench:

These appeals filed by the revenue and Cross Objections filed by the assessee pertain to same assessee for different

years involving an identical issue and therefore, these were heard together and being disposed of by this common order.

2. During the course of hearing, arguments were made by Shri Mahesh O. Rajora, Authorised Representative (AR) on behalf of the Assessee and by Shri B.S. Bist, Departmental Representative (DR) on behalf of the Revenue.

First we shall take up Revenue's appeal in A.Ys. 2010-11 & 2011-12

These appeals have been filed against the common order of Ld. CIT(A) dated 20.06.2012 passed against the separate orders u/s 201(1)/ 201(1A) of the Act, for A.Ys. 2010-11 and 2011-12.

3. The solitary issue raised in these appeals is whether the additional premium paid by the assessee to Mumbai Metropolitan Regional Development Authority (MMRDA) for allotment of additional built up area and allotment of area for staircase, lobby and lift etc. (counted free of FSI) in respect of a plot of land allotted to it, would constitute rent as invested u/s 194I and accordingly, liable for deduction of tax at source by the assessee. During the course of hearing, at the outset, it was brought to our notice by the Ld. Counsel of the assessee that this issue stands squarely covered in favour of the assessee on the basis of various judgments of Mumbai Benches of ITAT. He relied upon following judgments in his supports:

1.The ITO(TDS) Vs. M/s Wadhwa & Associates Realtors Pvt. Ltd. & Vice Versa [ITA No. 695/Mum/2012 & CO.

No.06/Mum/2012]
2.Dy. CIT(TDS) Vs. Bharat Petroleum Corporation Ltd. [ITA No.4985/M/2013]
3.ITO(TDS) LTU Vs. Reliance Industries Limited & Vice Versa [1910/Mum/2012 & 1998/Mum/2012]
4. Income Tax Officer (TDS) Vs. Shree Naman Developers Ltd & Ors [686& 687/Mum12012 & Ors]
5. Income Tax Officer (OSD)(TDS) Vs. M/s Trent Limited & Vice Versa - [ITA No.4629/Mum/2012 & Others]
6.Income Tax Officer (TDS) Vs. Trent Limited & Vice Versa [ITA No.1730/Mum/2012 & Others]
7.The ITO(TDS) Vs. M/s Parinee Developers Pvt. Ltd & Vice Versa [ITA No. 1734/Mum/2012 & Others]
8.The ITO(TDS) Vs. Naman BKC CHS Ltd. & Vice Versa [ITA No.708& 709/Mum/2012 & Others]

3.1. It was therefore requested by the Ld. Counsel that this issue should be decided in favour of the assessee company being squarely covered in its favour.

3.2. Per contra, Ld. DR relied upon the orders of the AO. He did not bring to our notice any contrary judgments on this issue.

3.3. We have gone through the facts of this case. Though revenue has raised multiple grounds in its appeal, but during the course of hearing Ld. DR appearing on behalf of the revenue fairly submitted that the only effective issue is that whether the impugned payment could be treated as rent liable for deduction of tax at source u/s 194I.

3.4. The brief facts as culled out form the orders of the lower authorities are that the assessee had made payments aggregating to Rs.107,52,00,000/- and Rs.18,67,13,083/- during the financial years relevant to AY.2010-11 and A.Y. 2011-12 respectively towards

premium on allotment of additional built up area and allotment of area for Staircase, lift, lobbies etc (counted free of FSI) in respect of the plot of land allotted to it, namely C-70 in G-block in Bandra Kurla Complex, Bandra (East), Mumbai. This plot was allotted to the assessee through lease deed dated 03.06.2008 executed by MMRDA in favour of the assessee against earlier payment of lease premium of Rs.831.60 crores. Since the assessee had not deducted and paid to the government, any tax under section 194I in respect of these payments, the AO issued a show cause notice and after considering the reply filed by the assessee in this regard, the AO held in his order u/s 201(1)/ 201 (1A) that the payment made to the MMRDA was in the nature of rent and hence the assessee was liable to deduct tax under section 194I of the Act. In the said order, the AO held that premium paid by the assessee on account of allotment of additional built up area and allotment of area for staircase, lift, lobbies etc (counted free of FSI) in financial years relevant to assessment years 2010-11 and 2011-12 to MMRDA was Rent within the meaning of section 194I of the Act. Hence, he held that the assessee was required to deduct tax under the said section in respect of the said payment of premium and pay to the Government Treasury the same within the stipulated time, and since the assessee had failed to do so, he held the assessee to be 'an assessee in default' u/s 201(1) and directed the assessee to pay the amount

of TDS, along with interest u/s 201(1A) as per demand notice issued by him.

3.5. Being aggrieved, the assessee filed an appeal before the Ld. CIT(A) against the aforesaid order and demand notice issued by the AO. In the submissions made before the Ld. CIT(A), the assessee explained in detail that impugned amount paid by the assessee for acquiring lease hold rights in respect of the impugned leased plot was not in the nature of rent as contemplated u/s 194I and therefore, assessee was not required to deduct at source u/s 194I. The Ld. CIT(A) considered the submissions of the assessee and it was held by him that identical issue has been decided by him in various other cases as per names given by him in his order, wherein claim of the assessee was accepted and it was held that the impugned payments were not in the nature of rent as envisaged u/s 194I and thus not liable for deduction of tax at source. The Relevant findings of Ld. CIT(A) are reproduced hereunder for the sake of ready reference:

> *"3.6. I have considered the facts of the case, submissions of the appellant as well as the orders passed by the AO. It is seen that the Appellant was allotted a plot of land namely C-70 in G' block of Bandra Kurla Complex by MMRDA as per lease deed dated 03.06.2008 against payment of lease premium of Rs.831.60 crores. Subsequently, during F.Y. 2009-10 and 201011. the appellant was also allotted additional built up area and area for Staircase, lift, lobbies etc counted free of FSI against further payment of premium of Rs.107,52,00,000/- and Rs. 18,67,13,083/- respectively. These payments of Rs.107,52,00,000/- and Rs.18,67,13,083/- are in*

dispute in the respective years as to tax deductibility u/s 194-I. I have passed appellate orders in the cases of Jamnaben Hirachand Ambani Foundation, Navi Mumbai SEZ Pvt. Ltd., Naman BKC CHS Ltd., Shree Naman Developers Ltd., Shree Naman Hotels Pvt. Ltd. and Wadhwa & Associates Realtors Pvt. Ltd. where identical issue was involved. In those cases, written submissions received from the Appellant were forwarded to the Assessing Officer (AO) for his comments. The AO submitted his detailed para-wise comments where he reiterated the stand that the amended definition of rent" contained in section 194-I of the Act w.e.f. 13.07.2006 is very wide and comprehensive and covers any payment by whatever name called under any lease, sub-lease, tenancy or other agreement or arrangement" and leaves no scope for any interpretation. It was stated that the lease confers the right of a specified use of land for specified period of 80 years or so. This period to use land is subjected to so many limitations and therefore, there is no right to land. The lease Agreement signed by MMRDA with the Anpellant contains various restrictive covenants which do not give any absolute right to the land but reduces it to a rental arrangement for use of the land. The AO submitted that MMRDA is neither a corporation within the meaning of sec 196 of the Act nor it is eligible for exemption u/s 10(20) and 10(20A) of the Act. The AO further stated that various case laws relied upon by the Appellant in support of its argument deal with capital or revenue nature of the payment or receipt and none of these case laws deal with definition of rent as contained in sec 194-I of the Act. The case laws cited by the appellant pertain to the applicability of the provisions of section 37(1) of the Act and none of them has been delivered in the context of TDS provisions. Hence these case laws are not applicable.

3.7 Thus all the payments under the lease by whatever name called are rent within the meaning of section 194-I. The AG stressed the argument that

payment of any sort made through a contract (by whatever nomenclature) would fall within the definition of rent u/s 194-I. The AO further submitted that one has to look at substance and not the form of the transaction while considering the provision of the law. The AO also relied upon various case laws in support of his proposition that when meaning of a section is clear, no interpretation is required and substance is much more important than form.

3.8 In those cases, the arguments of Ld. Addl.CIT were also considered during the course of personal hearing. It was submitted by him that TDS provisions are a separate code in themselves. While applying these provisions therefore, one has to look into the liability of the deductor only, irrespective of the tax liability of the deductee. Although in the case laws cited by the appellant, it may have been held that the lease premium is capital in nature, it is not necessary that capital expenditure in the hands of one party is also a capital receipt in the hands of the other party. It was also submitted that the yearly ground rent fixed by the MMRDA is so nominal that it is only a symbolic amount. Therefore, the composite amount of lease premium and the ground rent only would represent the actual rent, which is paid in advance. He also stated that the transaction is not covered under section 196 because MMRDA is neither the Government, nor Reserve Bank of India nor any Corporation of the Central Government.

3.9 In the cases mentioned above, after considering the submissions/arguments of the AO/Addl.CIT as well as that of the appellant, I have passed appellate orders holding that the amount paid by the Appellant for acquiring leasehold rights and additional FSI in respect of the leased plot is not in the nature of rent as contemplated u/s 194-I of the Act. Accordingly, the Appellant was not required to deduct tax at source u/s 194-I of the Income Tax Act, 1961."

3.6. Thus, it is noted from the above that the Ld. CIT(A) had got all requisite facts verified and it was found by him that facts in this case are similar to the other cases which were decided in its favour. Thereafter, Ld. CIT(A) reproduced and discussed his findings given in the one of the above said case namely Shree Naman Developers Ltd & Ors(supra) and decided this issue in favour of the assessee and reversed the order of the AO by holding that impugned payment was not in the nature of rent and, therefore, the assessee was not liable to deduct tax at source u/s 194I. It is noted by us all the judgments relied upon by Ld. CIT(A) reached before the Tribunal which have been disposed by the Tribunal in favour of the assessee by upholding the order of the Ld. CIT(A) in the case of ITO (TDS) vs. M/s. Wadhwa & Associates Realtors Pvt. Ltd.(supra), wherein the Hon'ble Bench had held as under:

> *"9. We have considered the rival submissions, perused the order of the lower authorities and the material evidence brought on record in the form of paper Book and the judicial decisions relied upon by the rival parties. The entire grievance revolves around the premium paid by the assessee to M/s. MMRDA Ltd. for the leasehold rights acquired by the assessee through the lease deed dt. 22nd November, 2004. It is the say of the Revenue that this lease premium was liable for deduction of tax at source failing which the assessee is to be treated as assessee in default. It is the say of the assessee that such lease premium is in the nature of capital expenditure and therefore there is no question of deduction of tax at source. Further, the said lease premium does not come within the purview of the definition of rent as provided u/s. 194-1 of the Act.*
>
> *10. We have carefully perused the lease deed as exhibited from page-1 to 42 of the Paper Book. A careful reading of*

the said lease deed transpires that the premium is not paid under a lease but is paid as a price for obtaining the lease, hence it precedes the grant of lease. Therefore, by any stretch of imagination, it cannot be equated with the rent which is paid periodically. A perusal of the records further show that the payment to MMRD is also for additional built up are and also for granting free of FSI area, such payment cannot be equated to rent. It is also seen that the MMRD in exercise of power u/s. 43 r.w. Sec. 37(1) of the Maharashtra Town Planning Act 1966, MRTP Act and other powers enabling the same has approved the proposal to modify regulation 4A(ii) and thereby increased the FSI of the entire 'G' Block of BKC. The Development Control Regulations for BKC specify the permissible FSI. Pursuant to such provisions, the assessee became entitled for additional FSI and has further acquired/purchased the additional built up area for construction of additional area on the aforesaid plot. Thus the assessee has made payment to MMRD under Development Control for acquiring leasehold land and additional built up area. The decisions of the Tribunal in the case of M/s. National Stock Exchange (supra) and Mukund Ltd (supra) have been well discussed by the Ld. CIT(A) is his order. The decision of the Hon'ble Jurisdictional High Court in the case of Khimline Pumps Ltd. (supra) squarely and directly apply on the facts of the case wherein the Hon'ble Jurisdictional High Court has held that payment for acquiring leasehold land is a capital expenditure. Considering the entire facts in totality in the light of the judicial decisions vis-à-vis provisions of Sec. 194-I, definition of rent as provided under the said provision, we do not find any reason to tamper or interfere with the findings of the Ld. CIT(A) which we confirm."

3.7. It is noted by us that in the case of ITO (TDS) v. Shree Naman Developers Ltd & Ors and also similar decision has been taken by the Tribunal following the aforesaid order in the case of Wadhwa & Associates Realtors Pvt. Ltd.

3.8. On the other hand, Ld. DR did not bring any distinction in facts or on law. Thus, we find that the issue before us is squarely covered with all the judgments as have been relied upon by the Ld. Counsel before us. We further find that Ld. CIT(A) has also verified the facts independently and findings given by him are well reasoned and based upon correct appreciation of law. Thus, we uphold the view taken by the Ld. CIT(A) that impugned payments made by the assessee to MMRDA are not in the nature of rent and thus, these are not liable for deduction of tax at source u/s 194I. Thus, both the appeals filed by the Revenue are dismissed.

Now we shall take up Cross Objections filed by the Assessee in both the years.

4. In the Cross Objection filed by the assessee has raised another contention in support of its view for not deduction of tax at source on the aforesaid payment on the ground that the State Government and legal authority have got an overriding title on payments made to MMRDA and hence these are not subject to deduction of tax at source. It is noticed by us that we have already held that assessee was not required to deduct tax at source, albeit on the other ground. Since the assessee has already been given relief, we do not find it necessary to go into all these aspects at this stage. Therefore, Cross Objections filed in both the years by the assessee are dismissed as infructuous.

5. In the result, both appeals filed by the revenue and Cross Objections filed by the assessee are dismissed.

Order was pronounced in the open court at the conclusion hearing.

Sd/-	Sd/-
(Joginder Singh)	(Ashwani Taneja)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य** / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 22/ 07 /2016
*Patel, P.S.*नि.स.

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**