

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA NO. 2076/MUM/2014 : (A.Y : 2010-11)

ITO TDS-3(1),
Mumbai (Appellant)

Vs. M/s. R.E. Infra Pvt. Ltd.,
3/73, Gagan Tara, Pestom Sagar,
Road No. 2, Chembur,
Mumbai 400 089. (Respondent)
PAN : AADPB8649M

**Appellant by : Shri Pradeepkumar Singh
Respondent by : None**

Date of Hearing : 03/05/2016

Date of Pronouncement : 06/05/2016

ORDER

PER RAJESH KUMAR, AM :

This appeal is filed by the Revenue against the order of CIT(A) -14, Mumbai dt. 10.01.2014 for the Assessment Year 2010-11 which in turn has arisen from the order passed by the Assessing Officer dated 15.11.2011 under section 201(1) & 201(1A) of the Income Tax Act, 1961 (in short 'the Act').

2. The brief facts of the case are that the assessee paid lease premium to City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO) on which no TDS was deducted. The Ld. ITO TDS, upon finding that the assessee has committed default in complying with the provisions of Sec. 194I of the Income Tax Act, 1961 (in short 'the Act'), issued show cause notice dated 8.9.2011 to the assessee calling the assessee to explain as to why it should not be treated as assessee in default under the provisions of Sec.

201(1)/201(1A) of the Act for not complying with the provisions of Sec. 194I of the Act. The Ld. ITO TDS after considering the replies and submissions filed by the assessee in response to various queries raised during the course of various hearings treated the assessee in default on the ground that the assessee failed to deduct TDS on lease premium of Rs.1,87,70,979/- paid to CIDCO for acquiring various pieces of land in Navi Mumbai and raised a demand of Rs.55,72,090/- u/s 201(1)/201(1A) of the Act.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the CIT(A) who deleted the demand raised by the Assessing Officer by observing and holding as under :

“3.3 I have perused the facts of the case, submission of the appellant and the order u/s.201(1)/201(1A). The premium is not paid under any lease but payments are made upon granting allotment of plot. No TDS was deducted by the appellant as it was considered as a payment for acquisition of Land Rights and not merely a payment of rent for the use of Land. The amount charged is equal to the rate prevalent as per Stamp Duty Ready Reckoner. Therefore, the premium paid to CIDCO is capital in nature and the same cannot be considered as rent liable for TDS u/s.194-1 of the Act.

3.4 On perusal of the Lease Agreement between the appellant and CIDCO, it is noticed that CIDCO has agreed to lease the said land to appellant under MRTP Act, 1966 including new Bombay Disposal of Land Regulations, 1975.

3.5 The Hon'ble Mumbai Tribunal in the case of M/s.Shah Group Builders Ltd. in ITA No.4523/Mum/2012 dated 14.08.2013 for A.Y. 2008-09 has held inter-alia held as under :

"6. As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of Wadhwa & Associates Realtors Pvt. Ltd. (supra) as well as Shree Naman Hotels Pvt. Ltd. (supra) decided by the Tribunal, we respectfully follow the decisions rendered in the said cases by the co-

ordinate Bench of this Tribunal and uphold the impugned order of the Ld.CIT(A) holding that the lease premium paid by the assessee to CIDCO not being in the nature of rent as contemplated in section 194-I of the Act, the assessee was not liable to deduct tax at source from the said payment and hence could not be treated as the assessee in default u/s.201(1)/201(1A) of the Act. The appeal filed by the Revenue is accordingly, dismissed.

3.6 In view of the aforesaid discussion, facts of the case and relevant judicial pronouncements, the addition on account of rent u/s.194-I of Rs.47,35,500/- stands deleted. Ground is allowed.”

4. We have considered the submissions of Ld. DR and perused the relevant material placed before us. After going through the order of the authorities below and considering the arguments of the Ld. DR, we find that the assessee acquired various plots in Navi Mumbai from CIDCO for which the assessee paid lease premium to the tune of Rs. 1,87,70,979/- and did not deduct TDS u/s. 194I of the Act. The Assessing Officer treated the lease premium as rent within the meaning of Sec. 194I and came to the conclusion that the assessee had defaulted in the matter of complying with the provisions of Sec. 194I of the Act and resultantly raised demand of TDS and interest thereon to the tune of Rs. 55,72,090/- by treating the assessee in default u/s 201(1)/201(1A) of the Act. The Ld. CIT(A) allowed the appeal of the assessee by holding that the issue is squarely covered by the decision of the coordinate bench of the Tribunal in the case of M/s. Shah Group Builders in ITA No. 4523/Mum/2012 for Assessment Year 2008-09. The Ld. DR submitted that the lease premium is also a kind of rent for the leasehold property and, therefore, was liable for deduction of TDS within the provisions of Sec. 194I of the Act. From the aforesaid facts we find that the assessee had paid lease premium which, in our opinion, is fully covered by the decision of the coordinate bench referred to above which needs no reproduction. We,

therefore, respectfully following the order of the coordinate bench uphold the order of the Ld. CIT(A) by dismissing the appeal of the Revenue.

5. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 6th May, 2016.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai, Date : 6th May, 2016

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai