IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER

ITA NO.4058/MUM/2016 (A.Y: 2012-13)

Dy. Commissioner of Income-Tax (TDS) – 1(3) Room No. 604, K.G. Mittal Ayurvedic Hospital Building, Charni Road, Mumbai – 400 002	*v.*	M/s. K. Raheja Corporate Services Pvt. Ltd. Raheja Tower, Plot No. C-30, G-Block, Bandra, Kurla Complex, Bandra (E), Mumbai 400 051 **PAN.No: AABCN 9309 B**
(Appellant)		**(Respondent)**

Assessee by	**:**	**Shri Nitesh Joshi**
Department by	**:**	**Shri Saurabh Kumar Rai**
Date of Hearing	**:**	**25.10.2017**
Date of Pronouncement	**:**	**31.10.2017**

O R D E R

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 59, Mumbai dated 11.03.2016 for the Assessment Year 2012-13.

2. The Revenue in its appeal has raised the following grounds.

> "1. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the amount*

paid by the Lesssee (M/s. K. Raheja Corporate Services Pvt. Ltd.) to the Lessor (MMRDA) was not in the nature of rent, as defined in the explanation (i) to section 194-I of the Act for the purpose of deduction of tax at source.

2. On the facts and in the circumstances of the case and in law, the Learned Counsel for the assessee has erred in not confirming the order of the Assessing Officer treating the assessee as an assessee in default u/s. 201(1) in respect of the amount of tax which has not been deducted u/s. 194-I from the payment made to MMRDA and levying interest u/s. 201(1A).

3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in ignoring the definition of rent, as contained in section 194-I and in resorting to interpretative reasoning whereas as per the settled principle of jurisprudence, this exercise is required only when the law is unclear.

4. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in going into the question of taxability of the payment made by the assessee to MMRDA despite the decision of the Apex Court in the case of The Aggarwal Chambers of Commerce v. Ganpat Rai Hiralal, 33 ITR 245, where it has been held that the persons who are responsible for deduction of tax at source are not concerned with the ultimate result of assessment.

3. The Learned Counsel for the assessee, at the outset submits that the issue in appeal is squarely covered in favour of the assessee in assessee's own case for the Assessment Year 2010-11 in ITA.No.5807/Mum/2012 dated 04.02.2015, wherein the Coordinate Bench held that the payment of premium to MMRDA for purchase of additional FSI cannot be treated as rent as stipulated u/s. 194-I and hence no TDS was required to be deducted. The Learned Counsel for the

assessee further submits that the Ld.CIT(A) in fact followed the decision of the Tribunal for the Assessment Year 2010-11 and allowed the claim of the assessee. The Learned Counsel for the assessee further refereing to Para 2.6 of the Ld.CIT(A) order submits that, the Assessment Year 2010-11 is the first year where the assessee had paid first installment for the additional FSI and since the issue is decided in the first year i.e. Assessment Year 2010-11 in favour of the assessee by the Coordinate Bench, the same may be followed.

4. The Ld.DR vehemently supported the order of the Assessing Officer.

5. Having heard both the parties and on perusal of the Ld.CIT(A) order and the Coordinate Bench decision in assessee's own case, we find that the issue in appeal as to whether the payment of premium to MMRDA for purchase of additional FSI can be treated as rent as stipulated u/s.194-I or not has been decided in favour of the assessee by the Coordinate Bench in assessee's own case holding that the premium paid for additional FSI is not rent as stipulation u/s. 194-I and consequently no TDS was required to be made. While holding so, the Coordinate Bench held as under: -

"3. The brief facts of the case are that the assessee company is engaged in the business of real estate development and leasing. A survey operation under section 133A of the I.T. Act was carried out by Addl. CIT (TDS) in the case of Mumbai Metropolitan Regional Development Authority (MMRDA) on 09.02.2011 to ascertain the TDS compliance of MMRDA. During the survey it was found that the assessee had made payment amounting to Rs.3,58,39,905/- on 24.12.2009 and Rs.7,28,87,534/- on 31.12.2009- towards lease premium and fees for additional FSI to the MMRDA, in respect of the plot of land allotted to the assessee on long term lease basis for construction of building. Since, the assessee had not deducted and paid any tax under section 194-I in respect of the said payments made to MMRDA, the Assessing Officer (hereinafter referred to as the AO) issued notice u/s 201(1)/201(1A) requiring the assessee to furnish details/ explanations as to why no TDS has been deducted on such payments made to MMRDA. In response to the above show cause notice, the assessee submitted its explanation and details.

4. However, the AO was not satisfied with the reply given by the assessee, he, therefore, held that the payments made to the MMRDA were in the nature of rent and hence, the assessee was liable to deduct tax under section 194-I of the Act. Hence, orders under section 201(1)/201 (1A) of the Act had been passed by the AO, determining the liability u/s 201(1) at Rs.1,11,98,926/- and further interest thereupon u/s 201(1A) at Rs. 25,75,753/- totaling Rs.1,37,74,679/- on account of non-deduction of tax and interest on payment of lease premium and other fees made to MMRDA.

5. Aggrieved against the order of the AO, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), after hearing the Ld. Representatives of the parties and in view of the detailed discussion made in his order, deleted the additions finally holding as under:

> *"4.11 In the present case, the written submissions furnished by the appellant and the*

orders passed by the AO have been considered by me. It is seen that the facts in the case of the appellant are similar to the facts in the case of Shree Naman Developers Ltd and other cases cited in Para 4.6 above. Hence, it is evident that premium of Rs.10,87,27,439/- in respect of the leased plot, paid by the appellant for allotment of additional built up area and allotment of staircase, lift, lobbies etc. counted free of FSI is not in the nature of rent as contemplated u/s 194-I of the Act. It is thus also evident that the Appellant was not required to deduct tax at source u/s 194-I of the Income-tax Act, 1961. I hold accordingly. The demands of Rs.1,37,74,679/- raised by the AO by invoking the provisions of section 201(1)/201(1A) is deleted."

6. The Revenue has thus come in appeal before us.

7. At the outset, the Ld. A.R. of the assessee has submitted that the issue involved is squarely covered by the decision of the Tribunal in the case of "M/s. Starlight Systems Pvt. Ltd." wherein, the Tribunal has held that the lease premium paid to MMRDA, in the facts and circumstances of the case, does not fall within the ambit of rent under section 194-I and, hence, no TDS is required to be deducted. The relevant paragraph of the order dated 27.09.13 passed in ITA No.1794/M/2012 is extracted as under:

"6. Before us, the learned Departmental Representative strongly relied upon the order passed by the Assessing Officer and the learned Counsel for the assessee submitted that point in issue is squarely covered by the following decisions:-

(i) Shree Naman Hotels Pvt. & Shree Naman Developers Ltd., order dated 14.8.2013, ITA No. 688 to 691/Mum/2012.

(ii) M/s Wadhwa & Associates Realtors Pvt. Ltd, order dated 3.7.2013, ITA No. 695/Mum/2012

7. After carefully considering the rival submissions and the relevant findings of the learned Commissioner (Appeals), we find that this issue is covered by a series of decisions of the Tribunal, Mumbai Bench. Moreover, we have also decided identical issue against the Revenue following the aforesaid decisions, as relied upon by the learned Counsel in an appeal filed by the Revenue in Trent Limited, ITA no.1730/Mum./2012, vide order of even date. Consistent with the view taken by the Tribunal, we hold that such payment of premium on account of additional FSI cannot be treated as rent as stipulated under section 194-I and, hence, no TDS was required to be deducted. Consequently, interest under section 201(1)/201(1A) cannot be levied.

8. In the result, Revenue's appeal is treated as dismissed."

8. From the above, we find that the Tribunal has taken the view in favour of assessee following the series of decisions of the Tribunal on this issue. The Ld. D.R. could not bring, before us, any new fact or case law which may justify departure from the view taken by the Tribunal in the above referred cases. Hence, respectfully following the decision on the issue given by the Tribunal in numerous cases, the issues under consideration is decided in favour of the assessee. The appeal of the Revenue is thus accordingly dismissed."

6. Therefore, respectively following the said decision, we uphold the order of the Ld.CIT(A) in holding that the amount paid for additional FSI does not fall within the meaning of rent as stipulated u/s. 194-I of the Act,

and thus the assessee was not required to deduct TDS in respect of such payments.

7. In the result appeal of the Revenue is dismissed.

Order pronounced in the open court on the 31st October, 2017.

Sd/-	Sd/-
(N.K. PRADHAN)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai / Dated 31/10/2017
VSSGB, SPS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum