

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 77 & 78/JP/2018  
निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Sandhya Gugalia F-80, Ram Path, Shyam Nagar, Jaipur	बनाम Vs.	DCIT, CPC-TDS, Ghaziabad, U.P
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABYPG0441J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Pradeip Gugalia  
राजस्व की ओर से / Revenue by : Smt Poonam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 04/06/2018  
उदघोषणा की तारीख / Date of Pronouncement: 08/06/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 27.11.2017 and 02.11.2017 for Assessment Year 2014-15. In its appeal, the assessee has challenged the levy of interest and late fees u/s 234E of the Act.

2. Briefly stated, the facts of the case are that the assessee entered into an agreement for purchase of a residential house at C-127, Rishabh Path, Bhagirath Marg, Shyam Nagar, Jaipur which was jointly owned by Smt. Rashi Harneja and Smt. Ravindra Harneja for a sum of Rs. 75,00,000/-. Thereafter, in respect of payment of Rs. 37,50,000/- to Smt. Rashi Harneja, the assessee deposited a sum of Rs. 37,500/- towards TDS vide challan-cum-Form 26QB on 25.09.2013. Similarly, in respect of payment of Rs. 37,50,000/- to Smt.

Ravindra Harneja, the assessee deposited a sum of Rs. 37,500/- vide challan-cum-Form 27Q on 25.09.2013. Thereafter, intimation u/s 200A was received by the assessee on 30.03.2015 about levy of interest of Rs. 2,250/- and late fees u/s 234E which was rectified to Rs. 15,800/- in respect of each of two filings. The said levy of interest and late payment fee u/s 234E has since been confirmed by the Id. CIT(A) and hence the assessee is in appeal before us.

3. During the course of hearing, the Id. AR submitted that as per section 194IA, the liability to deduct TDS is applicable if the consideration for transfer of any immovable property is equal to or greater than Rs. 50,000,00/-. It was submitted in the instant case, the assessee has paid a sum of Rs. 37,50,000/- to Smt. Rashi Harneja which is less than Rs. 50,000,00/-. Similarly, the assessee has paid a sum of Rs. 37,50,000/- to Smt. Ravindra Harneja which is less than Rs. 50,000,00/-. It was accordingly submitted that the provisions of section 194IA are not applicable in the case of the assessee.

4. It was further submitted that merely because the assessee has deducted TDS by mistake, the same cannot be basis for levy of interest and late fee u/s 234E of the Act.

5. It was further submitted that late fee u/s 234E is not applicable before 01.06.2015. It was submitted that the amendment made u/s 200A which has come into effect on 01.06.2015 has been held by the Courts to have prospective effect, hence, no computation of fee could have been made for TDS deducted for assessment year prior to 01.06.2015. It was submitted that the transaction occurred on 26.06.2013 and intimation u/s 200A was received on 30.03.2015 which was prior to 01.06.2015. In support, reliance was placed on the decision of the Hon'ble Karnataka High Court in case of Fatheraj Singhvi & others vs. Union of India in writ appeal no. 2663-2674/2015 (T-IT) dated 26<sup>th</sup> August, 2016.

6. Per contra, the Id. DR has relied on the order of the Id. CIT(A) and submitted that the transfer value of the immovable property is Rs. 75,000,00/- which is more than prescribed limit, hence section 194IA is clearly applicable. Further, she relied on the Hon'ble Rajasthan High Court decision in case of M/s Dundlod Shikshan Sansthan and others vide order dated 28.07.2015 where it was held that even prior to these amendments the imposition of fees u/s 234E was not illegal.

7. We have heard the rival contentions and perused the material available on record. It is an undisputed fact that the assessee has acquired an immovable property which was jointly owned by Smt. Rashi Harneja and Smt. Ravindra Harneja. It is also an undisputed fact that though the total consideration was agreed at Rs 75,00,000, the assessee has paid Rs 37,50,000/- each to the two individual and joint owners of the said immovable property.

8. Section 194-IA which has been invoked in the instant case reads as under:

***“Payment on transfer of certain immovable property other than agricultural land***

***194-IA.*** (1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon.

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

*(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.*

*Explanation.—For the purposes of this section,—*

*(a) "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;*

*(b) "immovable property" means any land (other than agricultural land) or any building or part of a building."*

9. A close reading of the above provisions provides that any person, being a transferee, responsible for paying to a resident transferor any sum by way of consideration for transfer of any immovable property shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon. It however, provides an exception that no deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees. In other words, it provides that any person responsible for paying to a resident transferor any sum by way of consideration for transfer of any immovable property exceeding Rs 50 lacs, shall be liable for deduction of tax at source at the rate of one percent of such sum. In the instant case, even though the total consideration for the immovable property has been agreed at Rs 75,00,000, the assessee is responsible for paying consideration of Rs 37,50,000 each to Smt. Rashi Harneja and Smt. Ravindra Harneja individually. In fact, the assessee has actually paid Rs 37,50,000 individually to these two individuals as demonstrated by its filings in Form 27Q which has been accepted by the Revenue authorities and subsequently processed and intimation issued under section 200A of the Act. In light of the same, in our view, the provisions of

section 194-IA are not applicable in the instant case. Given that the provisions of section 194-IA are not attracted, there is no basis for levy of interest and late fee under section 234E of the Act and the demand so raised is hereby directed to be deleted. However, we make it clear that TDS already deposited shall not be refunded to the assessee as the transferor would be entitled to claim credit of the same in their respective return of income.

In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 08/06/2018.

Sd/-

(विजय पॉल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 08/06/2018

\*Ganesh Kr

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Sandhya Gugalia, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Ghaziabad, UP
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 77 & 78/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.

