

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2466/Del/2017
(Assessment Year: 2012-13)

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| M/S. Capital Infraprojects (P) Ltd, 313-315, Vikash Deep Building, District Centre, New Delhi PAN: AA ECC0093J | Vs. | ITO, Ward-49(3), New Delhi |
| (Appellant) | | (Respondent) |

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|-----------------------|------------------------|
| Assessee by : | Shri Amit Sharma, Adv |
| Revenue by: | Ms. Ashima Neb, Sr. DR |
| Date of Hearing | 22/10/2019 |
| Date of pronouncement | 20/01/2020 |

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-41, New Delhi dated 20.02.2017 for the Assessment Year 2012-13 relevant to FY 2011-12, wherein, order passed by the ITO, Ward-49(3), New Delhi passed u/s 201(1) read with section 201(1A) of the Act, the assessee was held to be liable for deduction of tax on lease rent paid at Rs. 1,69,92,619/- was reversed but set aside for computation of income u/s 201(1A) of the Acg.
2. The assessee has raised the following grounds of appeal:-
 - “(a) *On the facts and circumstances of case and in law the order passed under section 250(6) of the act by the Learned CIT(A)- 41 is bad in law to extent that:*
 - (i) *While giving the effect of the direction stipulated by Jurisdiction Delhi High court in the case of Rajesh Projects (India) (P.) Ltd. v. CIT (TDS)-II [2017] 78 taxmann.com 263 (Delhi) the Learned CIT (A) erred in holding the appellant to pay the penal interest under section 201(1 A) regarding the non deduction of TDS on a payment for which the CIT (A) himself did not found the appellant as assessee in default. Therefore, to that extent the order for confirming the interest liability under section 201(1 A) of the act passed by the Learned CIT (A) is liable to be bad in law and incorrect interpretation of the direction given by the Jurisdiction high court.*

- (ii) *While giving the effect of the judgment as mentioned supra the Learned CIT(A) only taken into consideration the para 21 of the judgment whereas the honorable Delhi high categorically mentioned in para 18 of the same judgment that the revenue authority should not take any coercive action against the deductor under section 201/221 of the act. Therefore the order passed by CIT (A) to that extent needs to be corrected as per the direction given by Honorable Delhi High court.*
- (b) *On the facts and circumstances of case and in law the learned CIT(A) erred in acknowledging the conclusion drawn by the Honorable Delhi court vide its judgment, as mentioned supra, where their lordship directed the NOIDA to pay all the applicable taxes including interest, penalty etc as per the provision of the Act. Hence the appellant is not coupled with any corresponding liability in nature of interest or penalty.*
- (c) *On the facts and circumstances of case and in law the learned CIT (A) erred in holding the appellant requires to pay the interest on non-payment of TDS whereas Honorable Delhi court categorically directed through its judgment the up to the cutoff date 16/02/2017 it is the NOIDA authority which needs to discharge all the applicable tax under the provision of law.*
- (d) *On the fact and circumstances of the case and in law the learned CIT (A) erred in holding that provision of section 201(1A) of the act is applicable on the appellant however while holding this he failed to acknowledged the fact that there is no amount of tax under the provision of section 201 of the act is payable on the part of appellant and specially when the appellant is found not be treated as assessee in default under the Act. Therefore, the order passed by CIT(A) requires to set aside and deserved to be quashed to that extent, as it happens to be an insurmountable burdened of interest u/s 201(1A) of the Act on the appellant.*
3. Brief facts of the case shows that the assessee is a real estate developer. It acquired a plot of land as per lease deed dated 01.09.2010 from NOIDA on perpetual lease for development of a housing project. The assessee paid lease rent to NOIDA without deduction of tax at source. The ld AO found that the appellant is duty bound to deduct tax at source on lease rent u/s 194I of the Act. He therefore, passed order u/s 201(1) read with section 201(1A) on 28.03.2014 holding that the assessee is in default and raised the demand of Rs. 944034/-. The ld AO held that the assessee has paid lease rent of Rs. 9440344/- to NOIDA on which tax should have been deducted of Rs. 944034/- and interest is chargeable u/s 201(1A) of Rs. 2,12,408/-. Thus, total demand of Rs. 11,56,442/- was raised. Subsequently, order u/s 154 was passed as it was noted that the assessee has also paid lease rent of Rs. 75,52,275/- to another such authority. Thus, additional demand of Rs. 10,62,037/- was raised thereon.

4. The assessee preferred appeal before the Id CIT(A). The Id CIT(A) held that the payment of lease rent is subject to tax deduction at source u/s 194I of the Act. He held so relying on the decision of the Hon'ble Delhi High Court dated 16.12.2017 in case of Rajesh Project India Pvt. Ltd Vs. CIT(TDS)-II 78 Taxmann.com 263. Thus, to that extent he upheld the order of the Id AO. Further, following that decision he held that appellant is not considered as 'assessee in default' in view of para No. 21 of the decision of the Hon'ble High Court. However, with respect to interest liable u/s 201(1A) the AO was directed to give opportunity to the assessee to produce a certificate in form No. 26A and thereafter to recalculate the interest. Accordingly, appeal of the assessee was partly allowed.
5. Assessee aggrieved with that order has preferred this appeal.
6. The only grievance of the assessee is with respect to payment of interest u/s 201(1A) as Id CIT(A) did not find the appellant as 'assessee in default'. The assessee further stated that such interest should not be charged as NOIDA is directed to pay the tax.
7. The Id AR appearing on behalf assessee submitted what is stated in ground of appeal. He also relied upon the decision of the Hon'ble Delhi High Court relied upon by the Id CIT(A).
8. The Id DR supported the order of the lower authorities.
9. We have carefully considered the rival contentions and find that facts in the case of the assessee are identical to the facts before the Hon'ble Delhi High Court in 78 Taxmann.com 263. The Id CIT(A) relying on that decision has correctly held that payment made towards lease rent constitute 'rent' so as to attract the provisions of section 194I of the Act. As the assessee has not deducted any tax at source, the Id CIT(A) despite holding that tax should have been deducted did not upheld the finding of the Id AO that assessee should be treated as 'assessee in default'. Thus, he did not treat the 'assessee in default'. His finding was based on the order of the Hon'ble Delhi High Court wherein, income tax authorities are directed not to pursue any coercive method for recovery of the amount or the penalty once the basic liability with interest is satisfied. Therefore, interest u/s 201(1A) was rightly been held to be chargeable from the assessee for non deduction of tax. As

the decision of the 1d CIT(A) was following the decision of the Hon'ble Delhi High Court, we do not find any infirmity in the order of the 1d CIT(A). Furthermore, the 1d CIT(A) vide para No. 4.13 has directed the 1d AO to calculate the interest if the assessee furnish certificate in form No. 26A as per Rule which is in accordance with the provisions of section 201(1A) of the Act. In view of this, we do not find any merit in the appeal of the assessee. In view of this above ground of appeal are dismissed.

10. In the result the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 20/01/2020.

-Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20/01/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi