

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE MS SUSHMA CHOWLA, VICE PRESIDENT  
AND  
SHRI O. P. KANT, ACCOUNTANT MEMBER**

**ITA Nos. 3109 & 3110/DEL/2017  
(Assessment Years – 2012-13 & 2013-14)**

Prateek Buildtech (India) Pvt. Ltd., G-50, Lower Ground Floor, Lajpat Nagar-III, New Delhi-110 024 (PAN : AADCP 7864 P)  <b>(APPELLANT)</b>	Vs	ACIT, Circle – 76(1), New Delhi          <b>(RESPONDENT)</b>
--	----	--

<b>Appellant by</b>	<b>Sh Sanjay Kr Agarwal, C.A Ms Neha Agarwal, C.A</b>
<b>Respondent by</b>	<b>Sh Satish Kr Gupta, Sr. D.R</b>

<b>Date of Hearing</b>	<b>20.02.2020</b>
<b>Date of Pronouncement</b>	<b>28.02.2020</b>

**ORDER**

**PER O. P. KANT, ACCOUNTANT MEMBER**

These two appeals have been filed by the assessee aggrieved with the orders dated 23.02.2017 and 24.03.2017 passed by the Learned Commissioner of Income Tax (Appeals)-41, New Delhi upholding the liability u/s 201(1) and 201(1A) of the Income Tax Act, 1961 (in short 'the Act') for Assessment Year 2012-13 and Assessment Year 2013-14 respectively.

2. In view of the identical impugned orders and grounds raised in both the appeals, same were heard together and disposed of by way of this consolidated order for convenience. The grounds in ITA No. 3109/Del/2017 for Assessment Year 2012-13 are reproduced as under:

1. *“That the ld. Commissioner of Income Tax (Appeals) has erred in law and on facts, in holding that assessee is liable to pay interest u/s 201(1A) of the Income Tax Act, 1961 for non-deduction of tax at source u/s 194-I of the Income Tax Act, 1961 on payment of 1% of lease premium of Rs. 1,35,12,047/- (Rs.71,89,000/- and Rs.63,23,047/-) without appreciating the facts of the case and explanation furnished by the assessee. As such, the direction issued by the ld. CIT(A) to the ld. AO for re-computation of interest u/s 201(1A) of the Income Tax Act, 1961 is bad in law and the same may please be rescinded.*
2. *That the ld. Commissioner of Income Tax (Appeals) has erred in law and on facts, in holding that the assessee is liable to pay interest u/s 201(1A) of the Income Tax Act, 1961 even when the assessee has not been considered as assessee-in-default for the purpose Section 201(1) of the Income Tax Act, 1961. As such, the direction issued by the ld. CIT(A) to the ld. AO for re-computation of interest u/s 201(1A) of the Income Tax Act, 1961 is bad in law and the same may please be rescinded.*
3. *That the ld. Commissioner of Income Tax (Appeals) has erred in law, while not following the judgement of Hon’ble Delhi High Court in Rajesh Projects (India) Pvt. Ltd. Vs CIT(TDS)-II &Ors., W.P.(C) 8085/2014 in its true spirit and holding the assessee liable for interest u/s 201(1A) of the Income Tax Act, 1961. As such, the direction issued by the Ld. CIT(A) to the Ld. AO for re-computation of interest u/s 201(1A) of the Income Tax*

*Act, 1961 is bad in law and the same may please be rescinded.*

4. *That the appellant craves leave to add, alter, delete & modify any of the ground of appeal at the time of hearing.”*

3. Identical grounds have been raised in Assessment Year 2013-14 except change of the amount.

4. The solitary issue involved is levy of interest under section 201(1A) of the Act in respect of the TDS of ₹ 13,51,205/- and of ₹ 6,32,310/- for Assessment Year 2012-13 and 2013-14 respectively, on lease rent paid to New Okhla Industrial Development Authority (NOIDA), on which tax was not deducted by the assessee company.

5. Briefly stated facts of the case are that for Assessment Year 2012-13 notice under section 201(1)/201(1A) of the Act was issued on 18/03/2014 and order dated 28/03/2014 was passed by the Learned Assessing Officer holding the assessee as assessee-in-default and creating liability of ₹ 55,15,938/- (₹43,55,239/- on account of non-deduction of tax at source under section 194I of the Act on amount of ₹ 4,35,52,987/- and ₹ 11,60,699/- as interest for delayed

payment) in respect of the land acquired on lease from NOIDA having detail as under:

<b>S. No.</b>	<b>Date of Payment</b>	<b>Amount subject to TDS</b>	<b>Nature of Amount</b>	<b>Amount of TDS payable u/s 194I (Rs.)</b>	<b>Amount of Interest @1% pm, u/s 201(1A) of the Act (Rs.)</b>
1.	24.03.2012	3,00,40,340	One-time lease rent	30,04,034	7,51,008
2.	16.05.2011	71,89,000	Lease Premium in respect of F.Y. 2011-12	7,18,900	2,51,615
3.	29.03.2012	63,23,047	Lease Premium in respect of F.Y. 2012-13	6,32,305	1,58,076
<b>TOTAL</b>		<b>4,35,52,987</b>		<b>43,55,239</b>	<b>11,60,699</b>

6. Similarly for Assessment Year 2013-14, notice under section 201(1)/201(1A) of the Act was issued on 18/03/2014 and order dated 30/03/2015 was passed by the Assessing Officer holding the assessee as assessee-in-default and creating liability of ₹ 7,90,388/- (₹6,32,310/- on account of non-deduction of tax under section 194I of the Act on amount of ₹ 63,23,100/- and ₹1,58,078/- as interest for delayed payment) in respect of the land acquired on lease from NOIDA.

7. Aggrieved with the orders of the Assessing Officer, the assessee filed appeal before the first appellate authority in respective years. The Ld. CIT(A), while passing the orders deleted the TDS liability on payments stating that the assessee is not considered as assessee-in-default and had a reasonable cause for non-deducting TDS on the payments made to NOIDA following the decision of the Hon'ble Delhi High Court in the case of Rajesh Projects (India) Ltd. versus CIT (2017) 392 ITR 483 (Delhi), but the Ld. CIT(A) further directed the Assessing Officer to re-compute the interest as per first proviso to section 201(1A) from the date on which tax was deductible till the date of filing of the return of income by the deductee (i.e. NOIDA) in respect of the TDS of ₹ 13,51,205/- on lease rent paid to NOIDA for Assessment Year 2012-13 and TDS of ₹ 6,32,310/- on lease rent paid for Assessment Year 2013-14.

8. Before us, the assessee is aggrieved with the direction of the Ld. CIT(A) for raising liability of interest on the amount of TDS for the period from the due date to the date of the filing of the return of income by the NOIDA in respect of assessment years.

9. The Learned Counsel of the assessee before us submitted that the Learned CIT(A) has not followed the decision of the Hon'ble Delhi High Court in the case of Rajesh Projects (India) Private Limited (supra). According to him, in view of the decision of the Hon'ble Delhi High Court, once the payment made prior to the date of the said judgement to the NOIDA, the entire responsibility of making tax and interest toward such TDS liability is of the NOIDA and not of the assessee. Accordingly submitted that the direction of the Ld. CIT(A) might be cancelled.

10. The Learned DR on the other hand supported the order of the Ld. CIT(A) and submitted that Hon'ble Delhi High Court has said that to the extent no recovery should be made from the assessee if the liability in respect of the TDS along with the interest has been satisfied by the NOIDA. He submitted that in the instant case, the assessee has not submitted any evidence that interest liability has been satisfied by the NOIDA, therefore the Ld. CIT(A) is justified in raising the said liability on the assessee, following the decision of the Hon'ble Delhi High Court in the case of Rajesh Project (India) Private Limited (supra).

11. We have heard the rival submission and perused the relevant materials on record. The only dispute in the case of the assessee is whether the interest liability under section 201(1A) of the Act has to be paid by the assessee or not. We find that the Hon'ble Delhi High Court in the case of Rajesh Project (India) Private Limited (supra) on the issue of liability to pay TDS on lease rentals to the GNOIDA has directed as under:

*“In view of the above conclusions, it is hereby directed that wherever amounts have been paid by the petitioners, towards TDS as a result of the coercive process used by the Revenue, the GNOIDA shall make appropriate orders to credit/reimburse such payments. In case payments are made through deposit, over and above the rental amounts paid to the GNOIDA, without TDS, the income tax authorities shall not pursue any coercive proceedings; GNOIDA shall duly reimburse the petitioners for such amounts. Any amounts deposited in the court or with the Revenue, shall, to the extent of TDS liability only be appropriated for such purpose. It is clarified that GNOIDA shall ensure that reimbursement is made to compensate the petitioners' excess payments; the income tax authorities shall not pursue any coercive methods for recovery of the amounts, or penalty, once the basic liability (with interest, to be paid by GNOIDA) is satisfied. The impugned orders are quashed; the Revenue shall make consequential orders, to give effect to this judgment, after duly hearing the petitioners and those likely to be affected, within 12 weeks from today.”*

12. In the above case lease rentals payment have been made to Greater NOIDA, wherein the instant case lease rentals been paid to NOIDA. Thus only difference is of the authority to whom payment have been made, otherwise

all the facts and circumstances of the instant case are identical to the case of Rajesh Project (India) Private Limited. In above case four situations have been summarised by the Hon'ble Delhi High Court.

13. Firstly, wherever the amounts have been paid by the buyer (assessee), towards TDS to the Income-Tax Department in the process of coercive measures used, the GNOIDA has been directed to credit or reimbursed the said amount to the Buyer. Because, the buyer has already paid full payment to the GNOIDA and again the TDS amount has been recovered by the Income Tax Department from the assessee.

14. Secondly, where the payment have been made though deposit over and above the rental paid to GNOIDA, without TDS, the Income-Tax Authorities has been directed not to issue any coercive proceedings and GNOIDA has been directed to reimburse the assessee for such amounts and any amount deposited in the court or with the Revenue to the extent of TDS liability.

15. Thirdly, the Income-Tax authorities have been directed not to take any coercive method for recovery of the amounts or the penalty, once the basic liability (with interest to be paid by the GNOIDA) has been satisfied.

16. In the instant case, the Ld. CIT(A) in Assessment Year 2012-13 has directed the Learned Assessing Officer as under:

*“7.11 This claim of the appellant has some merit. The appellant had a reasonable cause for not deducting tax on the payments as it was guided by the advise given by the deductee, NOIDA. Hence, following the observation of the Hon’ble High Court, it is not treated as an assessee-in-default. However, it does not absolve the appellant from the interest liability u/s 201(1A), even if it is not considered to be an assessee-in-default. Hence, in view of the provisions of the First Proviso to section 201(1), the Assessing Officer is directed to give opportunity to the appellant to produce the Certificate in Form 26A as per Rule and modify the demand after ascertaining that the deductee has taken into account such sum for computing its income. The AO is further directed to re-calculate the interest u/s 201(1A) from the date on which tax was deductible till date of filing of Return by the deductee. This claim of the appellant is therefore partly allowed.”*

17. Identical direction have been issued in Assessment Year 2013-14.

18. Thus, the Ld. CIT(A) has directed to reduce or delete the demand u/s 201(1) of the Act to the extent, the deductee (i.e. the NOIDA) has paid tax on the income under reference but directed to raise interest under section 201(1A) of the Act from the date on which tax was deductible till the date of filing of the written by the deductee (i.e NOIDA).

19. In our opinion, it was the responsibility of the assessee to furnish documentary evidence in support that the NOIDA has paid tax to the Income-Tax department on lease rental income i.e. for the amount of the tax which was deductible on lease rental payment under reference, along with the interest. If the said interest has already been paid by the NOIDA, no recovery can be made from the assessee for the said amount of the interest. The Hon'ble High Court has directed that if the basic liability along with interest to be paid by the GNOIDA has been satisfied, no recovery shall be pursued from the buyer. In view of the facts and circumstances, we feel it appropriate to restore this issue to the file of the Learned Assessing Officer, with the direction to verify whether the NOIDA has made payment of the basic TDS liability along with the interest due thereon. The assessee

shall cooperate and provide the relevant information required by the Assessing Officer. If after verification, it is found that the basic TDS liability and interest thereon has already been paid by the NOIDA, then no such liability shall be raised on the assessee. Accordingly, we restore this issue to the file of the Assessing Officer with above directions in both the appeal before us. It is needless to mention that 'A' shall be afforded adequate opportunity of being heard.

20. In the result, the appeals of the assessee for both assessment years are allowed for statistical purposes.

**Order pronounced in the Open Court on 28<sup>th</sup> February, 2020.**

**Sd/-  
(SUSHMA CHOWLA)  
VICE PRESIDENT**

**Sd/-  
(O. P. KANT)  
ACCOUNTANT MEMBER**

Dated: 28/02/2020

*Priti Yadav, Sr. PS\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI