

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

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 2006 & 2007/MUM/2020  
(A.Ys: 2013-14 & 2017-18)**

DCIT – TDS – 2(1) Room No. 615, 6 <sup>th</sup> Floor K.G. Mittal Ayurvedic Hospital Bldg Charni Road (W), Mumbai - 400002	v.	M/s. Omkar Realtors & Developers Pvt. Ltd., Omkar House Off. Eastern Express Highway Opp. Sion Chunnabhatti Signal Sion (E), Mumbai -400022  <b>PAN: AAAC07919F</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>Shri Mitali Gopani</b>
<b>Department by</b>	<b>:</b>	<b>Shri R.A. Dhyani &amp; Shri Jagdish Jangid</b>
<b>Date of Hearing</b>	<b>:</b>	<b>02.03.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>25.05.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

1. These appeals are filed by the revenue against different orders of the Learned Commissioner of Income Tax (Appeals)-60, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 29.01.2020 for the A.Y. 2013-14 and 2017-18.

**ITA NO. 2006/MUM/2020 (A.Y: 2013-14)****2. Revenue has raised following grounds in its appeal: -**

"1) *Whether on the facts and in the circumstances of the law and in law, the Ld. CIT(A) was justified in deleting the demand of Rs. 64,99,24,919/- raised under section 201/201(1A) by holding that the assessee company has neither entered into any lease nor there was any relationship of tenant and landlord, without appreciating the fact that the amount of compensation paid is in nature of Rent and is meant for housing needs of the parties who had vacated the land meant for redevelopment and therefore liable to be covered u/s 1941 of the IT Act, 1961.*

2) *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the payment of Rs. 85,00,000/- to PLS technologies Pvt. Ltd. was in the nature of advance or loan and therefore would not come under the ambit of commission/ Brokerage, without appreciating the fact brought on record by the AO that the payment made to this party was for identifying projects for investment and therefore its role was of an agent. The Ld. CIT(A) has failed to appreciate that the assessee has failed to prove that this transaction was in the nature of advance or loan, no repayment was made by this party and further on verification of the form 26AS it appears that even interest has not been paid by this party. Further the Ld. CIT(A) has also failed to appreciate that PLS technologies Pvt. Ltd was not owner of any property which was to be purchased by the assessee and that such payment was nothing but brokerage/commission in order to acquire suitable property/deal for future project.*

3. *The Appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and the order of the Assessing Officer be restored?*

**3.** At the time of hearing Ld. DR has stated that the tax effect on the issue in the present appeal is below ₹.50 Lacs and in view of the CBDT Circular No. 17/2019 dated 08.08.2019 in F.No.279/Misc.142/2007-ITJ (Pt), the appeal of the Revenue is not maintainable. In view of the above

submissions, we dismiss the appeal of the Revenue on account of low tax effect. Accordingly, appeal of the revenue is dismissed.

**ITA NO. 2007/MUM/2020 (A.Y: 2017-18)**

**4.** Revenue has raised following grounds in its appeal: -

*"(1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the demand of Rs. 64,02,694/- raised under section 201/201(1A) by holding that the assessee company has neither entered into any lease nor there was any relationship of tenant and landlord, without appreciating the fact that the amount of compensation paid is in nature of Rent and is meant for housing needs of the parties who had vacated the land meant for redevelopment and therefore liable to be covered u/s 194I of the IT Act, 1961.*

*(2) The Appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and the order of the Assessing Officer be restored."*

**5.** At the time of hearing, Ld. AR brought to our notice that similar ground which assessee has raised before the Coordinate Bench in ITA.No. 6814/Mum/2018 for the A.Y. 2010-11 and the Coordinate Bench has considered and adjudicated the issue in favour of the assessee. In this regard, he brought to our notice Para No. 8 &9 of the order.

**6.** Ld. DR fairly agreed that the issue is covered in favour of the assessee.

7. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2010-11 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

*"8. Similarly, the Ld. CIT(A) has set aside the action of the AO in treating the assessee as assessee in default u/s 194-I of the Act, in respect of payment of compensation by following the decision of the co-ordinate Benches rendered in the case of Sahana Dwellers (P) Ltd. v. ITO [158 ITD 78(Mum)] and Shanish Construction Pvt. Ltd. v. ITO [ITA No. 6087 & 6088/Mum/2014]*

*"I have gone through the facts of the case, grounds of appeal and the appellant's factual as well as legal submission. The appellant has stated that it has not paid any rent to any land lord for any accommodation while making this payment. Further, the appellant has also not made any payment in respect of lease/sub-lease or tenancy between the appellant and any of the slum dwellers. There is no relationship of land lord and tenant between the appellant and slum dwellers. The appellant's role is only to provide concrete houses on the slum land and till the time such building/houses are ready, either provide any temporary accommodation to them or pay compensation so that such slum dwellers avail suitable accommodation for themselves. This compensation/payment cannot be compared with rent within the meaning of section 194-I of the Act. Further, the appellant has also cited two decisions of Hon'ble Mumbai Tribunal namely*

- 1. Sahana Dwellers (P) Ltd. v. ITO [158 ITD 78(Mum)] And*
- 2. Shanish Construction Pvt. Ltd. v. ITO [ITA No. 6087 & 6088/Mum/2014] dated 11.01.2017.*

*wherein on the identical facts the issue of applicability of sec 194-I of the Act was adjudicated. The relevant part of the decision is reproduced below: "On a plain reading of the aforesaid definition of rent, it becomes clear that the payment made by the assessee does not come within the purview of rent as prescribed in the said provision as the assessee is not making such payment for use of any land, building, etc. On*

*the contrary, if the facts involved are considered as a whole the payment made by the assessee is nothing else but in the nature of compensation. The Tribunal in case of Jitendra Kumar Madan (supra) while considering the nature of payment received for alternative accommodation by the recipients held such payments at their hand as income from other sources instead of income from house property. That being the case, the payment made by the assessee also being in the nature of compensation for alternative accommodation cannot be treated as rent. Moreover, such compensation is not using land and building but it may also be a fact that persons to whom such payments have been made may not be incurring any expenditure on account of rent. In any case of the matter, payments made by assessee under no circumstances can be construed to be coming within the meaning of "Rent" as provided under section 194I. Thus, after considering the totality of the facts and circumstances of the case, we are of the considered opinion that compensation paid by the assessee to the tenants towards alternative accommodation not being in the nature of rent as defined in section 194I, there is no requirement for deduction of tax under the said provisions. Therefore, the disallowance made under section 40(a)(ia) of the Act cannot be sustained. Consequently, we delete the addition made on that account. Grounds raised by the assessee are allowed."*

*"In the facts of the case before us also, the assessee has merely paid compensation to the members of society. It is for them to utilize this amount for payment of rent or otherwise. Even if it has been paid as rent, the contract of rent/lease would be between the members and their respective landlords from whom these members would take premises (alternative accommodation) on rent/lease, and then the amount payable by these members to their respective landlords may be liable for deduction of TDS u/s 194-I, if applicable upon them. AS far as assessee is concerned, there was no transaction, much less, transaction of rent between the assessee and the new landlords of members of the society. Therefore, it would be highly unjustified to treat this amount as payment of rent and to make it liable for deduction of tax at source u/s 194-I. Under these circumstances, invoking of provisions of section 40(a)(ia) is unjustified. Thus, the disallowance made by the lower authorities is illegal and therefore, directed to be deleted. Ground 1 is allowed."*

*Following the jurisdictional tribunal's orders, the judicial precedence on the issue is to be followed and hence the*

*appellant gets a relief on this account. Accordingly, these grounds are allowed."*

*9. As pointed out by the Ld. counsel for the assessee, the Ld. CIT(A) has decided this issue in favour of the assessee by following the decisions of the coordinate Benches of the Tribunal referred above. We notice that the coordinate Benches have decided the identical issue in favour of the assessee by holding that the payment made by the assessee does not come within the purview of rent as prescribed in the relevant provisions as the assessee has not made such payment for use of any land, building, etc. The findings of the Ld. CIT(A) are based on the principles laid down by the coordinate Benches in the cases discussed above. Hence, we do not find any reason to interfere with the findings of the Ld. CIT(A). Accordingly, we uphold the decision of the Ld. CIT(A) and dismiss this ground of appeal of the revenue."*

**8.** Since the issue is exactly similar and facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2010-11, we dismiss the appeal filed by the revenue. Grounds raised by the revenue are dismissed.

**9.** In the result, appeals filed by the revenue are dismissed.

Order pronounced in the open court on 25<sup>th</sup> May, 2022.

Sd/-  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 25/05/2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**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**