

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

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No. 489/Del/2020
Assessment Years: 2012-13

ACIT, Central Circle-2, Faridabad	Vs.	Prompt Engineering Pvt. Ltd. GP-1, Vipul Plaza, Village: Haiderpur Viran, Sector-54, Gurgaon.
PAN :AAECP0734E		
(Appellant)		(Respondent)

Assessee by	Shri Gautam Jain, Adv.
Department by	Sh. T. Kipgen, Sr. DR

Date of hearing	21.09.2022
Date of pronouncement	21.09.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the Revenue against order dated 20.11.2019 of learned Commissioner (Appeals)-3, Gurgaon pertaining to assessment year 2012-13.

2. The short issue which needs to be adjudicated in the present appeal is, whether the assessee was required to deduct tax at source on the external development charges (EDC) paid to Haryana Urban Development Authority (HUDA)..

3. Briefly, the facts are, the assessee is a resident corporate entity engaged in the business of real estates development.

4. In course of assessment proceedings for the impugned assessment year, the assessing officer noticed that assessee has paid an amount of Rs.8,82,60,000 to HUDA towards EDC without deducting tax at source. Being of the view that assessee was required to deduct tax at source on payment of EDC, which the assessee has failed to do, the assessing officer invoking the provisions of section 40(a)(ia) of the Act disallowed 30% of the EDC paid, which works out to Rs.2,64,78,000. Assessee was successful in contesting the aforesaid disallowance before learned Commissioner (Appeals).

5. Before us, learned counsel appearing for the assessee as well as learned Departmental Representative fairly submitted that the issue on merits is squarely covered in favour of the assessee by the decision of

the Hon'ble High Court in case of BPTP Ltd. vs. PCIT (2020) 421 ITR 51 and various decisions of the co-ordinate Bench.

6. Having carefully gone through the decision of Hon'ble Delhi High Court in case of BPTP Ltd. vs. PCIT (supra), we find that while dealing with an identical issue of non-deduction of TDS and EDC paid to HUDA, the Hon'ble High Court has observed that Revenue was unable to point out any specific provision which deals with EDC. In other words, the Hon'ble Court held that payment of EDC was not covered under any of the TDS provisions. In case of M/s. Splender Land Bus Ltd. vs. Additional CIT(supra), the co-ordinate Bench, after following the decision of another co-ordinate Bench in case of Spaze Tower Pvt. Ltd. vs. ACIT – ITA No.5842/Del/2019 dated 26.05.2022, has held that by not deducting tax on payment made to HUDA towards EDC, no violation of TDS provision was made. Thus, with due obedience to the ratio laid down in the judicial precedents cited before us, we hold that there was no legal requirement on assessee to deduct tax at source while making payment of EDC to HUDA. Therefore, the disallowance made under Section 40(a)(ia) of the Act is unsustainable on merits. Accordingly, we do not find any reason to

interfere with the decision of learned Commissioner (Appeals), though, based on our own reasoning.

7. In the result, the appeal is dismissed.

Order pronounced in the open court on 21st September, 2022.

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 21st September, 2022.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	21.09.2022
2.	Date on which the draft of order is placed before the Dictating Member:	23.09.2022
3.	Date on which the draft of order is placed before the other Member:	26.09.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	28.09.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	28.09.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	30.09.2022
7.	Date on which the final order is uploaded on the website of ITAT:	30.09.2022
8.	Date on which the file goes to the Bench Clerk	30.09.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	