

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

Before Sh. C. N. Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 958/Del/2022 : Asstt. Year : 2013-14

Three C Homes Pvt. Ltd., D-32, East of Kailash, New Delhi-110065	Vs	DCIT, Circle-76(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AADCT7045E		

**Assessee by : Sh. Rishabh Jain, AR
Revenue by : Ms. Rajeshwari R., Sr. DR**

Date of Hearing: 28.10.2022

Date of Pronouncement: 05.01.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

This appeal has been filed by the assessee against the order of the Id. CIT(A)-24, New Delhi dated 28.03.2022.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the impugned order dated 28.03.2022 passed by the Ld. CIT(A), to the extent of addition of Lease Rent sent back to AO for verification, is bad, illegal and contrary to the provisions of the I.T. Act, 1961.

2. That the Ld. CIT(A) is fact finding authority, therefore Ld. CIT(A) ought to have decided the issue of quantum of lease rent paid by the assessee company during the A.Y. 2013-14 instead of referring back the matter to Ld. AO in para 4.2.6 of the impugned order.

3. That as per section 251(1)(a) of the Income Tax Act, 1961 the CIT(A) can confirm, reduce, enhance or annul the assessment but cannot remand back the matter to AO.

4. That as per section 251(1)(a) of the Income Tax Act, 1961 the CIT(A) can confirm, reduce, enhance or annul the assessment. Therefore Ld. CIT(A) ought to have decided

the issue as to whether the assessee company, being payer can be treated as assessee in default u/s 201(1) of the Income Tax Act, 1961-after filing the requisite documents in lieu of Form 26A instead of referring back the matter to Ld. AO in para 4.5.6 of the impugned order.

5. That the Ld. CIT(A) erred in not deleting the addition towards lease rent after filing of requisite documents in terms of CBDT Circular No-275/201/95-IT(B) dated 29.01.1997 on the contrary referred back the matter to Ld. AO in para 4.5.6 of the impugned order;

6. That the Ld. CIT(A) erred in not deleting the addition towards lease rent after filing of requisite documents Hindustan Coca Cola Beverage Private Limited v. Commissioner of Income Tax [20071 163 Taxman 355 (SC) on the contrary referred back the matter to Ld. AO in para 4.5.6 of the impugned order;

7. That the Yamuna Expressway Industrial Development Area is a government body. Therefore, the taxes may be presumed to have been paid lastly by the due date of filing of the return of income vide order of Hon'ble High Court of Delhi in the matter of CIT Vs. Trans Bharat Aviation Pvt. Ltd. in ITA No. 891/20078, 894/2008."

3. The Yamuna Expressway Industrial Development Area (YEIDA) has been constituted by a State Act and the assessee has failed to deduct tax u/s 201(1) of the Income Tax Act, 1961.

4. The assessee paid an amount of Rs.2,47,58,400/- to YEIDA towards lease rent. The Id. CIT(A) held that the lease rent amounting to Rs.1,83,48,160/- is the annual lease rent and is in the nature of revenue expenditure covered by Section 194-I of the Income Tax Act, 1961 and liable to be deducted TDS @ 10% and the default amount of Rs.18,34,160/- u/s 201(1) was determined. Further, it was held that as per the correction deed dated 04.02.2013, the assessee has paid one time lease rent amounting to Rs.63,69,810/- equivalent to 11 years of the lease rent and no further annual lease rent would be required to be paid for the balance period. The Id. CIT(A) held that this

amount is also liable to TDS u/s 194-I. It was argued that YEIDA being a Government organization has duly declared the lease rent paid by the assessee without deducting the TDS. We have gone through the confirmation letter dated 14.12.2021 as received from the YEIDA confirming their income tax return for A.Y. 2013-14, copy of income tax return for A.Y. 2013-14 filed by the YEIDA, receipt and payment account of the YEIDA for F.Y. 2012-13, certified copy of account statement of the assessee in the books of YEIDA and copy of notification No. 11/2016 dated 21.12.2016. The Id. CIT(A) remanded the matter back to the file of the AO to take appropriate action as per the law. We have gone through the record and find that no action u/s 201(1) of the Act is called for and the matter is being remanded back to the file of the AO only to re-compute interest u/s 201(1A).

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 05/01/2023.

Sd/-

(C. N. Prasad)
Judicial Member

Dated: 05/01/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR