

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : B : NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.3075/Del/2019
Assessment Year: 2014-15

Tulip Infratech Pvt. Ltd.,
1201-1204, Barakhamba Road,
New Delhi – 110 006.

Vs. ACIT,
Special Range-9,
New Delhi.

PAN: AACCT3755E

(Appellant)

(Respondent)

Assessee by	:	Shri Salil Aggarwal, Advocate & Shri Shailesh Gupta, CA
Revenue by	:	Shri Pankaj Khanna, Sr. DR
Date of Hearing	:	27.02.2023
Date of Pronouncement	:	23.03.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 11.02.2019 of the CIT(A)-16, New Delhi, relating to Assessment Year 2014-15.

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2. The sole issue for our adjudication in this appeal is as to whether the Id.CIT(A) was correct and justified in sustaining the addition of Rs.2,06,01,632/- u/s 43B of the Income-tax Act, 1961 (for short, 'the Act') on account of External Development Charges (EDC) not paid before the due date of filing the return of income ?

3. The Id. Counsel of the assessee submitted that the issue is covered by the order of the coordinate Bench of ITAT, Delhi in the case of *Vipul Ltd. vs. DCIT (2022) 143*

taxmann.com 105 (Delhi-Trib). The Id. Counsel submitted that the assessee builder/developer made payment of EDC to Haryana Urban Development Authority (HUDA) for obtaining the right to develop the specific land which is not covered u/s 43B of the Act.

4. Replying to the above, the Id. Sr. DR strongly supported the orders of the authorities below and submitted that when the assessee had not made payment of EDC to the Government of Haryana, then, it has to be disallowed u/s 43B of the Act.

5. On careful consideration of the above rival submissions and on careful perusal of the order of the coordinate Bench of ITAT Delhi in the case of *Vipul Ltd. vs. DCIT (supra)* (which was authored by one of us, the JM), we note that the identical issue under identical facts and circumstances was decided in favour of the assessee with the following observations and findings:-

"11. In the present case, from the Rules under which payments have been made by the assessee and the order of the AO, TDS, it is amply clear that it is a charge paid by the developer and builder for obtaining the services from the HUDA authority like sewage, roads, lighting, etc. and in case the assessee does not avail such facility, he is entitled for refund or adjustment of payment. The AO himself noted that the payment of EDC to HUDA is subject to TDS @ 2% u/s 194C of the Act which clearly characterize the payment as made against the facilities availed by the developer/builder/colonizer which cannot be put in the basket of mandatory or compulsory payment of duty, tax, cess or fee, therefore, section 43B of the Act does not stand attracted in the present case to the payment of EDC by the assessee.

12. In view of the foregoing, once we come to the conclusion that section 43B of the Act does not apply to the payment of EDC, the question of applying the rigor of payment within the time schedule viz., before filing the return of income u/s 139(1) of the Act will not decide the allowability or otherwise of such payment u/s 143B of the Act. It is pertinent to note that the allowability of such payment would then depend upon the method of accounting followed by the assessee and if the assessee has made provision for its payment in its books of account and has claimed it as accrued liability in the relevant financial period, then, he

is entitled to get the deduction in the relevant assessment year itself without any bar or application of section 43B of the Act.

13. In view of the foregoing, we conclude that the impugned payment made by the assessee towards EDC under HDRUA Rules does not fall within the ambit of duty, tax, cess or fee. Per contra, the impugned payment has been made by the assessee for acquiring the facilities on the land allotted to it by HUDA, which is not in the nature of duty, tax, cess or fee. Therefore, the provisions of section 43B of the Act is not applicable to the said payment. Thus, we are incline to hold that the AO was not correct in characterizing the payment falling within the ambit of section 43B of the Act and the Id.CIT(A) was also not justified in confirming the same. Therefore, we are of the considered opinion that the impugned payment made by the assessee towards EDC does not attract the provisions of section 43B of the Act and the same is allowable to the assessee. The sole ground of the assessee is allowed."

6. The Id. Sr. DR could not show us any contrary judgement or order or did not dispute that the facts and circumstances in the case of *Vipul Ltd. (supra)* are identical to the facts and circumstances of the present case. Therefore, respectfully following the order of the coordinate Bench of the Tribunal in the case of *Vipul Ltd. (supra)*, we hold that the disallowance made by the AO and upheld by the Id.CIT(A) u/s 43B of the Act on account of EDC charges does not attract the provisions of section 43B of the Act and the same is allowable to the assessee even if the same was not paid before the due date for filing the return of income. Accordingly, the sole grievance of the assessee is allowed and the AO is directed to delete the addition.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 23.03.2023.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 23rd March, 2023.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi