

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA Nos. 172/Jodh/2019
(ASSESSMENT YEARS- 2016-17)

M/s Abdul Rashid S/o Abdul Rajjak 49, Chamanpura, Loha Bazar, Udaipur.	Vs	DCIT, Circle TDS, Udaipur.
(Appellant)		(Respondent)
PAN NO. AKFPM 6141 B		

ITA Nos. 173/Jodh/2019
(ASSESSMENT YEARS- 2016-17)

M/s Abdul Hakim S/o Abdul Rajjak 49, Chamanpura, Loha Bazar, Udaipur.	Vs	DCIT, Circle TDS, Udaipur.
(Appellant)		(Respondent)
PAN NO. AMVPM 8503 F		

ITA Nos. 174/Jodh/2019
(ASSESSMENT YEARS- 2016-17)

M/s Abdul Ajeej S/o Abdul Rajjak 49, Chamanpura, Loha Bazar, Udaipur.	Vs	DCIT, Circle TDS, Udaipur.
(Appellant)		(Respondent)
PAN NO. ALDPM 4422 C		

ITA Nos. 175/Jodh/2019
(ASSESSMENT YEARS- 2016-17)

M/s Abdul Kadir S/o Abdul Rajjak 49, Chamanpura, Loha Bazar, Udaipur.	Vs	DCIT, Circle TDS, Udaipur.
(Appellant)		(Respondent)
PAN NO. AMVPM 8492 M		

Assessee By	None
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	18/01/2023
Date of Pronouncement	05/04/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

These are four appeals filed by the assessee aggrieved from the order of the learned Commissioner of Income Tax (Appeals)-1, Udaipur [herein after referred as CIT(A)] for the assessment years 2016-17 all dated 26.02.2019 respectively, which in turn arises from the order passed by the Deputy Commissioner of Income Tax, Circle-TDS, Udaipur passed under Section 201(1)/201(1A) of the Income Tax Act, 1961 (in short 'the Act') all dated 08.09.2017.

2. None appeared on behalf of the assessee. However, the Bench decided to proceed with the matters on merits, based on the materials available on record. Since the issues involved are common in all the appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

3. We take ITA No. 173/Jodh/2019 for the A.Y. 2016-17 wherein following grounds have been raised by the assessee:-

"1. That the learned CIT Appeals has erred in treating the property transferred as one whereas the fact is that the property is owned by four separate individuals each having 1/4 share only and each individual had sold his respective share to respective transferee only. Hence, as the sale consideration received by each individual transferor is Rs. 1275000/- only which is below the limit of Rs. 50,00,000/- so the provisions of section 194IA were not applicable.

2. That the learned CIT Appeals has erred in not considering the fact that every transferee has paid Rs. 1275000/- through cheque to their respective transferor which is clear from the registered sale deed. Hence being the sale consideration to each transferor was below Rs. 50,00,000/- so the provisions of the section 194IA were not applicable.

3. That the learned CIT Appeals has erred in observing that case of indumukhi Vs Distt Collector WP(C) No. 2270 of 2014, dated 23.01.2014 has been rendered in the context of land acquisition laws and the facts being entirely different, whereas the fact is that the Honorable Kerala High Court has held that -

(a) "the sale price was fixed by negotiation and not in the process of compulsory acquisition. Therefore no deduction under section 194LA of the Income Tax Act need be made.

(b) The sale price due to petitioners 1 to 10 does not exceed Rs. 50 Lakhs each. Therefore no deduction under section 194IA of the Income Tax Act need be made either."

Thus the ratio laid down by the honorable Kerala High Court is fully applicable in the appellant's case. Hence the order passed by the CIT Appeals is liable to be quashed being against the law and facts.

4. That the appellant company reserves the right to add, alter or amend the grounds of appeals at the time of hearing.”

4. We notice that, in all these four appeals, the grounds are similar, facts are similar and arguments were similar. From the grounds of appeal, we notice that the only issue urged by all these assesseees is whether they are liable to deduct tax u/s 194IA of the Act from the purchase consideration paid for purchase of a property jointly.

5. Briefly the facts of the case are that the assessee along with his three brothers purchased an immovable property for total consideration of Rs.51,00,000/-. According to the AO, the assessee was required to deduct TDS @ 1% u/s. 194IA in respect of this transfer which, they have failed to deduct. It was noticed that these assesseees have not deducted tax at source u/s 194IA of the Act. Accordingly, after giving the opportunity of hearing to the assesseees, the AO treated these assesseees as "assessee in default" u/s 201(1) of the Act for not deducting TDS on the amount paid as consideration for purchase of above said immovable property. Accordingly, the AO vide order dated 08.09.2017 raised demand u/s. 201(1)/201(1A) of the Act in the hands of each of the assesseees.

6. Being aggrieved by the orders passed by the AO, all the assessee herein preferred appeals before the ld. CIT(A), who confirmed the orders passed by the AO observing as under:-

“ 6. I have considered the facts of the case, the AO's order and the appellant's submissions. The only issue to be decided in the instant case is whether the appellant was liable for deducting TDS as per section 194-IA of the Act on payment of Rs. 51,00,000/- being purchase price of the property. The AO held the assessee as "assessee in default" as the assessee did not deduct TDS @1% as per provisions of section 194-IA of the Act and created demand u/s. 201(1)/201(1A) of the Act. The appellant has contended that the provisions of section 194-IA are not applicable in his case as there were four buyers and four sellers, share of each buyer was Rs. 12,75,000/- and the purchase price being less than Rs. 50,00,000/-, the appellant was not required to deduct TDS under section 194-IA of the Act. At this juncture, it would be appropriate to refer to the provisions of section 194-IA of the Act which reads as below:-

“1 provisions of Section 194-IA

(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income-tax thereon.

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section.

Explanation.— For the purposes of this section,—

- (a) "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;
- (b) "immovable property" means any land (other than agricultural land) or any building or part of a building.'

For applicability of Section 194-IA following conditions need to be satisfied:

- *The payee must be a resident transferor of any immovable property (other than agricultural land).*
- *The payment must be by way of consideration for transfer of any immovable property (other than agricultural land).*
- *The quantum of payment must be Rs. 50 lakhs or more.*

The AO has emphasized the fact that there is only one immovable property viz. land situated in Ayad, Tehsil Girwa, Jila Udaipur bearing jamabandi khata Sankhya 9, there is only one transaction in respect of this property and therefore section 194-IA is applicable. The appellant has contended that the property was owned jointly by four persons and purchased jointly by four persons therefore section 194-IA is not applicable. As per sub-section (2) of section 194-IA, no deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees. Now

the question arises is what if the Property is held by joint co-owners. In case of joint owners, the threshold limit of Rs 50,00,000/- is to be determined property-wise and not transferor or transferee-wise. The number of buyers or sellers would not matter at all, the value of property should be more than Rs 50,00,000/- for applicability of deduction of tax u/s. 194IA of the Act. The section 194IA refers to an immovable property (highlighted above), which means that individual shares have no relevance. In short, if the value of immovable property is more than Rs. 50 lakhs, provisions of section 194-IA will come into play in the sense that tax has to be deducted @1%, irrespective of shares of individuals, i.e., even if the individual share is less than Rs. 50 lakhs. The Ld. AR has placed reliance on the case of Indumukhi Vs Distt Collector WP(C) No. 2270 of 2014, judgement dated 23.01.2014 but this case has been rendered in the context of land acquisition laws and the facts being entirely different, is not applicable to the present appellant.

Now coming to the facts of the instant case, the property is one single land on which some residential and commercial construction has been made and the total sale consideration for this property is Rs. 51,00,000/- which is more than Rs. 50 lacs therefore the appellant was liable to deduct TDS @1% as per provisions of sec. 194-IA of the Act. It may also be noted that one single registered sale deed dated 27.07.2015 has been executed in respect of this property. As the appellant failed to deduct TDS, the AO has rightly treated him as "assessee in default" and charged tax and interest u/s. 201(1)/201(1A) of the Act respectively. Taking a holistic view of the facts and

circumstances of the case, the AO's action is upheld and grounds raised by the appellant regarding this issue are dismissed.”

Aggrieved by the orders so passed by Ld CIT(A), all these assesseees have filed appeals before the Tribunal.

7. We have heard Ld D.R and perused the record. Before Ld CIT(A), the assesseees have furnished the details of payments made by each of them as under:-

Buyer	Seller	Date	Cheque No.	Amount	Bank Name
Abdul Aziz	Mohd Ayub	25.05.2015	003946	10,00,000/-	Union Bank
Abdul Aziz	Mohd Ayub	27.07.2015	003948	2,75,000/-	Union Bank
Abdul Kadir	Abdul Rauf	21.05.2015	309473	10,00,000/-	Adarsh Co. on
Abdul Kadir	Abdul Rauf	27.07.2015	309490	2,75,000/-	Adarsh Co. on
Abdul Rashid	Kalsum	27.07.2015	428140	12,75,000/-	HDFC
Abdul Hakim	Mehrunisha	27.07.2015	142075	12,75,000/-	Adarsh Co. on
	Total			51,00,000/-	

It is the contention of the assesseees that the sale consideration paid by each of them is only Rs.12,75,000/-, which is less than the threshold limit of Rs.50,00,000/- prescribed in sec. 194IA of the Act and in such circumstances, the provision of section 194IA is not applicable. We also notice that the assesseees have relied upon the decision rendered by Jodhpur bench of ITAT in the case of Oxcia Enterprises (P) Ltd v/s Deputy Commissioner Income Tax Source (2019) 199 TTJ.UO(JD)(UO)25, wherein it was held as under:-

" TDS-Under s. 194-IA-Joint ownership of property-In the instant case, the total sale consideration is only Rs.60,12,000-AR and Smt. S being the co-owners jointly owing the immovable property, the sale consideration has to

be divided equally into two by value of s.46 of the Transfer of Property Act- Since there is no contract to the contrary in this case, the consideration due to each transferor is Rs. 30,06,000 which is below the prescribed limit of Rs. 50 lac- Therefore, the provisions of s194-IA are not applicable- AO was therefore not justified holding that the provisions of s. 206AA were applicable and tax was deductible at source @ 20 per cent of the purchase consideration of Rs. 60,12,000/-.”

We notice that the assessee has also relied upon the decision rendered by ITAT Delhi B.Bench in the case of Vinod Soni V/s Income Tax Officer Source (2019) 197 TTJ (Del) 352, wherein it was held as under:-

“ TDS-Under S. 194-IA-Joint purchasers of property-As per sub-s. 194-IA, sub-s(1) is not applicable where the consideration for the transfer of immovable property is less than of Rs. 5000000/- Since s.194-IA (1) is applicable to any person who is a transferee **s. 194-IA(2) is also obviously, applicable only to the amount related to each transferee and not with reference to the amount as per the sale deed.** There being four transferees in this case, the consideration referable to each transferee is Rs. 3750000/- i.e. less than Rs. 5000000/- through total consideration was Rs.15000000 - Hence, s.194-IA is not applicable to the facts of the case and therefore, the assessee cannot be treated as assessee in default under s.201.”

8. In the instant case also, all the four brothers have purchased a residential house for a gross consideration of Rs.51,00,000/- from 4 sellers on 27.07.2015. Sale consideration paid by each of the assesseees was Rs.12,75,000/-, which is less than the threshold limit of Rs.50.00 lakhs prescribed in sec. 194IA of the Act. Each of the assesseees herein have paid

for purchasing a part of building. Accordingly, following the above said decisions, we hold that these assesseees are not liable to deduct tax at source u/s 194IA of the Act from the payments made by each of them.

9. In view of the foregoing discussions, we set aside the orders passed by Id. CIT(A) in the hands of each of the assesseees and direct the AO to delete the demand raised u/s 201(1) and also interest levied u/s 201(1A) of the Act.

10. In the result, all the appeals of these assesseees are allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) rules, 1963 by placing the details on the notice board.

Sd/-

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 05/04/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
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Assistant Registrar
Jodhpur Bench