

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

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

ITA No. 90/Jodh/2022
(ASSESSMENT YEAR- 2014-15)

Kavita Rathore D 78 Prem Nagar, Jhotwara, Jaipur	Vs	ITO (TDS), Udaipur
(Appellant)		(Respondent)
PAN NO. ALCPR 6457 K		

Assessee By	Sh. S. S. Chauhan, C.A.
Revenue By	Sh. S. M. Joshi, JCIT-DR
Date of hearing	13/07/2023
Date of Pronouncement	14/07/2023

ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 28.04.2022 [here in after (NFAC)] for assessment year 2014-15 which in turn arise from the order dated 15.01.2021 passed under section 201(1A) r.w.s 194IA of the Income Tax Act, by the ITO (TDS), Udaipur.

2. The assessee has marched this appeal on the following grounds:-

“1. Ground 1. That the appellate order dated 28.04.2022 passed by the CIT.(Appeals) is bad in law and on facts also since the action of the Ld. AO by invoking the provisions of section 194-1A and passing order u/s 201(1)/ 201(1A) for the AY 2014-15 has been confirmed and therefore the said order deserves to be quashed.

2. Ground 2. On the facts and in the circumstances of the case and in law the Id CIT(A) has erred in invoking provisions of section 194 IA of the IT Act retrospectively. The provisions of section 194-1A were applicable with effect from 01.06.2013 whereas the UIT, Udaipur has completed the process of sale of the plot to the Assessee on dated 22.05.2013.

3. Ground 3. On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) has erred in invoking provisions of section 194IA of the IT Act as the amount payable after 01.06.2013 was Rs. 47,03,678, which was below the threshold limit of Rs.50 Lacs fixed under section 194-IA.

4. Ground 4. On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) has erred in giving retrospective effect to the provisions of the Act as the provisions of section 194-IA became applicable from 01.06.2013 and consideration payable after 01.06.2013 was Rs. 47,03,678 which was below the threshold limit of Rs. 50 Lacs fixed under section 194-IA.

5. Ground 5. On the facts and in the circumstances of the case and in law the Ld. CIT (Appeals) as erred in not giving proper, meaningful and adequate opportunity to the appellant to put forth his defense, which is against the principal of natural justice.

6. Ground 6. The appellant requests to quash the order passed by the Ld. CIT (Appeals) in respect of demand raised as stated at para 1 to 5 above and refund Rs. 90.311 with interest deposited on dated 06.02.2021.

7. Ground 7. The appellant hereby craves leave for addition, alteration, modification or deletion in the above grounds of appeal on or before it is finally heard.

8. Ground 8. The appellant prays for justice.”

3. The fact as culled out from the records is that the appellant had purchased a plot by participating in auction conducted on 29.04.2013 by Urban Improvement Trust, Udaipur. The total consideration was fixed at Rs. 62,71,228/- out of which the appellant paid Rs. 25,000 on 20.04.2013 and Rs. 15,43,000/- on 30.04.2013. The confirmation of auction of the plot in favour of appellant was done on 22.05.2013 by a written confirmation letter issued by the UIT, Udaipur and the appellant was asked to deposit the remaining amount within 30 days from the date of confirmation of the auction. The appellant paid the balance amount of Rs. 47,03,678/- during the month of June 2013 on three different dates 14.06.2013, 17.06.2013 & 21.06.2013. Meanwhile a new provision u/s 194IA was introduced w.e.f 01.06.2013 and as per the provision, the buyer of the property is required to deduct the TDS @ 1% on the consideration amount. The AO had this information in his possession that the assessee is into the transaction of purchase of immovable property and found that the new provision u/s 194IA is applicable in this case wherein the appellant while making payment to the seller of the property did not deduct the TDS u/s 194IA of the Act. Accordingly, the AO treated the appellant as assessee in default u/s 201(1) for failure to deduct tax and also

charged interest u/s 201(1A) of the Act. The total tax of Rs. 47,037/- u/s 201(1) and interest Rs. 43,274/- u/s 201(1A) of the Act were charged while passing the order.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. A propose to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“9. In view of the above section, the section 194IA(2) clearly states that no deduction under sub-section (1) of 1941A shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees and in the appellant case, the total consideration was Rs. 62,71,228/- which was partly paid before the introduction of new provision and balance after the date of introduction of new provision. As the total consideration amount was above Rs. 50 lakhs, the provision u/s. 1941A is applicable in the appellant case. Here in the section, the applicability of the provision of section 1941A attracts when the total consideration of the purchase exceeds Rs. 50 lakh, the completion of the proceedings of auction is immaterial in the case. The AO has rightly charged the amount which was antecedent to the introduction of section 1941A i.e. Rs. 47,03,678/- and not the amount which was paid when the provision of newly inserted section of 1941A was not applicable.

10. The undersigned find no occasion to interfere with the order passed by the Assessing Officer on 15.01.2021 and the same is confirmed. Accordingly, the grounds of the appellant are dismissed.

11. In the result, the appeal of the appellant is dismissed.”

5. The Id. AR of the assessee submitted that the only issue which lower authorities have not appreciated in this case, is that the alleged non-compliance u/s 194IA of the Act for which the Id. AR of the assessee submitted that the provisions of the Act become operative w.e.f 01.06.2013. The assessee has participated in the bid on 29.04.2013 by paying of Rs. 25,000/- and rest of the payment made by the assessee is tabulated herein below:-

S. No.	Date of Payment	Challan No.	Amount	Bank	Beneficiary Name
1	29.04.2013		Rs. 25,000/-		UIT, Udaipur
2	30.04.2013	81	Rs. 15,43,000/-	Union Bank of India	UIT, Udaipur
3	14.06.2013	220	Rs. 7,53,680/-	Union Bank of India	UIT, Udaipur
4	14.06.2013	219	Rs. 9,50,000/-	Union Bank of India	UIT, Udaipur
5	17.06.2013	226	Rs. 30,00,000/-	Union Bank of India	UIT, Udaipur
			Rs. 62,71,680/-		

Referring to the above table, the Id. AR of the assessee explained that after law become applicable, the payment is below 50 lakh and therefore, the assessee cannot be imposed the applicability of provisions of section 194IA of the Act for which the payment made after the application of the law is below 50 lakhs as it is evident from the above table that after 01.06.2013, the payment made by the assessee amounts to Rs. 47,03,680/- which is below prescribed limit

u/s 194IA and therefore, the lower authorities have wrongly interpreted the provisions of law.

6. Per contra, the Id. DR relied on the orders of the lower authorities and submitted that the finding of the lower authority is very much clear that the assessee has made the payment exceeding Rs. 50 lac for purchase of property and has failed to follow the provision of the law. He relied on the finding of Id. CIT(A) recorded at para-No. 9 of his order and prayed to confirm the said finding.

7. We have heard the rival contentions and perused the material placed on record. It is not disputed that relevant provision as applied in the case is made applicable into effect w.e.f 01.06.2013. So to decide the issue on hand it would be appropriate to reproduced the provision of the said section 194IA of the Act here in below:

Payment on transfer of certain immovable property other than agricultural land²⁵.

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 ²⁶[or the stamp duty value of such property, whichever is higher,] as income-tax thereon.

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an ^{26a}[immovable property and the stamp duty value of such property, are both,] 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](#);
- (aa) "consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property;
- (b) "immovable property" means any land (other than agricultural land) or any building or part of a building;
- ²⁷[(c) "stamp duty value" shall have the same meaning as assigned to it in clause (f) of the *Explanation* to clause (vii) of sub-section (2) of [section 56](#).]

It is also evident that the assessee has made the payment by way of the auction money paid to UIT, Udaipur has tabulated herein above which amounts to Rs. 47,03,680/-. Thus, after the provision made applicable the assessee has paid the amount which is below the prescribed limit for deduction of TDS u/s 194IA of the Act. Therefore, we are of the considered view that the fastening the liability of alleged default of TDS u/s 194IA of the Act cannot be imposed upon the assessee when after the applicability of the law the assessee has not paid money exceeding Rs. 50 Lacs. The fact of payment as tabulated here in above is not disputed by the Id. DR and same being below 50 lakhs, we are of the considered view that the assessee cannot be

termed as the assessee in default u/s 194IA of the Act. Therefore, we vacate the orders of the lower authorities and thereby the appeal of the assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 14/07/2023.

Sd/-
(Dr. S. Seethalakshmi)
Judicial Member

Sd/-
(Rathod Kamlesh Jayantbhai)
Accountant Member

Dated : 14/07/2023
*Ganesh Kumar, PS

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench