

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

**BEFORE
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 7191/Del/2019
Asstt. Year: 2015-16

ACIT, Special Range-9, New Delhi.	Vs.	Tulip Infratech Pvt. Ltd. 1201-1204, Indra Prakash Building, Barakhamba Road, New Delhi. PAN AACCT3755E
(Appellant)		(Respondent)

Assessee by:	Shri Shailesh Gupta, CA
Department by:	Shri Amit Katoch, Sr. DR
Date of Hearing:	09.08.2023
Date of pronouncement:	01.09.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order of the Ld. Commissioner of Income Tax, (Appeals)-9 New Delhi ("**CIT(A)**") dated 12.07.2019 pertaining to Assessment Year ("**AY**") 2015-16.

2. The Revenue has taken the following solitary ground:-

"Whether the Ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 2,38,14,025/- on account of EDC not paid before the due date of filing the return."

3. We have heard the Ld. Representative of the parties and perused the records. Identical issue came up for consideration before the Tribunal in the assessee's own case pertaining to AY 2014-15. Similar disallowance was made by the Ld. AO under section 43B of the Income Tax Act, 1961 (**the "Act"**) which was upheld by the Ld. CIT(A). The assessee's appeal against

the order of the Ld. CIT(A) has been decided by the Tribunal in its order dated 23.03.2023 in ITA No. 3075/Del/2019, a copy of which has been placed on record. The relevant paras thereof are reproduced below:-

"3. The ld. 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 ld. 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 ld. 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."

4. There is no dispute that the facts and circumstances of the case remain the same. Moreover, in para 4.2 and 4.3 of his appellate order, the Ld. CIT(A) has held that the provisions of section 43B are not applicable to the assessee by observing as under:-

"4.2 I have considered the arguments given by the AO and the arguments raised on behalf of the appellant. The EDC charges are for 'external development works, which has been defined in the Haryana Development & Regulation of Urban Area Act, 1975 as under-

"2 (g) "external development works include water supply, sewerage, drains, necessary provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid, waste management and disposal, slaughter houses, colleges, hospitals, stadium/sport complex, fire stations, grid sub- stations etc. and any other work which the Director may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area;

4.3 The appellant got the license for colonizing and was required to pay EDC charges for the facilities to be provided by the Authorities for development of external works. EDC stands for External Development Charges. The charges are collected to create a fund, which is utilized towards development of infrastructure outside the land given to the appellant. The schedule of payment is decided by the Director. It is not a tax, duty or cess provided in the Act. The charges are for development of services to be provided in external areas by HUDA. It is in the nature of administrative charges for development of infrastructure for township in which land has been allotted. Under the circumstances, the provisions of section 438 is not applicable and hence the AO is directed to delete the addition of Rs.2,38,14,025/-."

5. It is thus obvious that the decision of the Ld. CIT(A) is in consonance with the decision (supra) of the Tribunal in assessee's appeal for the preceding AY 2014-15.

6. Respectfully following the decision (supra) of the Tribunal we hold that the provisions of section 43B are not attracted in the case of the assessee and the Ld. CIT(A) was perfectly justified in deleting the impugned disallowance. There being no substance in the appeal of the Revenue, we reject the same.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 1st September, 2023.

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated: 01/09/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	