

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

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

**ITA Nos. 75/Jodh/2023
(ASSESSMENT YEAR- 2015-16)**

Jyoti Maliwal 1-E-1, Old Housing Board, Shastri Nagar, Bhilwara-311001.	Vs	Income Tax Officer, TDS, Bhilwara.
(Appellant)		(Respondent)
PAN NO. BFZPM 7523 P		

**ITA Nos. 76/Jodh/2023
(ASSESSMENT YEAR- 2015-16)**

Kiran Jain Kiran Hospital, 8-R-4 & 5, Near Love Garden Chouraya, R.C. Vyas Colony, Bhilwara-311001.	Vs	ITD, Ward-1, TDS, Bhilwara.
(Appellant)		(Respondent)
PAN NO. AOPVJ 9883 M		

(Virtual hearing)

Assessee By	Shri Rajendra Jain-Adv.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	14/07/2023
Date of Pronouncement	11/09/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

These are two appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] both dated 14.02.2023 & 17.02.2023 for the assessment years 2015-16 respectively.

2. Since, the facts of both the cases are identical, we have heard these cases together and passing the order together. The facts and grounds are taken from the folder of Jyoti Maliwal in ITA No. 75/Jodh/2023 and this case is taken as lead case.

3. The assessee has raised the following grounds of appeal:-

“1. That on the facts and in the circumstances of the case the authority below erred in treating the assessee as “assessee in default” under section 201(1) of the Act without considering the submission of assessee in right perspective and judicial manner.

2. That on the facts and in the circumstances of the case the Ld. CIT(A) grossly erred in upholding that the provision of TDS are applicable on purchase of immovable property which is contrary to the material facts as placed on record.

3. That on the facts and in the circumstances of the case the Ld. CIT(A) grossly erred in sustaining the addition of Rs. 79,500/- on account of non-deduction of tax at source, interest & penalty thereon.

4. That on the facts and in the circumstances of the case the Id. CIT(A) grossly erred in arbitrarily rejecting the bonafide explanation furnished by assessee which is accordance with provisions of law.

5. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.”

4. Brief facts of the case are that the assessee is an individual and the Id. AO received information from Dy. Commissioner of Income Tax, TDS, Circle, Udaipur that the assessee had purchased an immovable property along with her husband Shri Ramesh Chandra Maliwal on 03.09.2014 to the tune of Rs. 1,00,00,000/- from UIT, Bhilwara and as per OLTAS on tax has been deducted of source u/s 194IA of the Act. Accordingly, the Id. AO passed an order u/s 201(1A)/201(1A) of the Act on 12.07.2019 for an amount of Rs. 79,500/-.

5. Aggrieved from the said order of assessment, the assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee, dismissed the appeal of the assessee by giving following findings on the issue:-

“8.1 I have gone through the grounds of appeal, statement of facts, assessment order, and written submissions filed by the appellant during the appellate proceedings. On perusal of order of the Ld. AO, it is observed that the appellant had purchased an a immovable property from Urban Improvement Trust, Bhilwara along with her husband for a total consideration of Rs. 1,00,00,000/- without deducting TDS as per the provisions of section 1941A of the Act. The appellant contended that the Urban Improvement Trust, Bhilwara is having exemption u/s. 10(20) of the Act and the said trust is within the meaning of section 196 of the Act and accordingly, not liable for interest u/s. 201(1A) of the Act.

8.2 Further, the appellant contended that during the period of purchase of plot. the Rajasthan High Court granted stay on proceeding against the Urban Improvement Trust and also given favourable decision in case of the similar initiation of Urban Improvement Trust, Bhilwara Alwar & Kota. However, the Ld. AO relied on the decision of Hon'ble Supreme Court in the case of ITO vs. Urban Improvement Trust [2018] 98 taxman.com 237 stating that the said trust is not entitled to tax exemption under the provisions of section 10(20) of the Act. Accordingly, the relevant portion of the order of Hon'ble Supreme court is reproduced hereunder for ready reference.

"Sections 61 to 64 are the provisions empowering levy of betterment charges, which is again in reference to and in context of carrying out improvement by the Improvement Trust in urban areas. The Municipal Board, Kota performs its functions, in areas where Municipal Board still exists. There is no reason to accept that Urban Improvement Trust is a Municipal Committee within the meaning of section 10(20) Explanation clause (iii). Coming back to section 105, which provides for ultimate dissolution of Trust and transfer of its assets and liabilities to the Municipal Board, this provision does not in any manner improve the case of the assessee. When the Trust is dissolved or at dissolution, properties and funds and dues vested in or realizable by the Trust shall vest in and be realizable by the Municipal Board, which is a provision for different purpose and object. The above provision does not support the contention that Improvement Trust is a Municipal Committee as referred to in clause (iii) of Explanation to section 10(20).

Thus, it is viewed that Scheme of the Rajasthan Urban Improvement Act, 1959 does not permit acceptance of the contention of the appellant assessee that Urban Improvement Trust is a Municipal Committee within the meaning of section 10(20) Explanation (iii). The purpose and object for expression 'Municipal Committee' used in section 10(20) Explanation (iii) has been explained, as already

noticed above, by this Court's judgment in Agricultural Produce Market Committee Narela (supra).

The High Court based its decision on the fact that functions carried out by the assessee are statutory functions and it is carrying on the functions for the benefit of the State Government for urban development. The said reasoning cannot lead to the conclusion that it is a Municipal Committee within the meaning of section 10(20) Explanation clause (iii). The High Court has not adverted to the relevant facts and circumstances and without considering the relevant aspects has arrived at erroneous conclusions. Judgments of the High Court are unsustainable.

In view of foregoing discussions, the judgments of the High Court deserve to be set aside. All the appeals are allowed.

3.3 Further, the Ld. AO not accepted the appellant's contentions since the Ld. CIT(A), Ajmer has delivered the decision in the case of ITO (TDS), Bhilwara vs. Sri. Govind Kumar, Bhilwara in Appeal No. 510/2018-19, dated 10.06.2019, dismissing The appeal of the appellant on the same issue as in the instant case, stating that "there is no dispute about the fact that the appellant had committed default of non deduction/ short deduction of tax at source while making payment to Urban Improvement Trust, Bhilwara. The appellant was required to deduct tax at source while making payment to UIT, Bhilwara. Therefore, the demand of Rs. 28,255/- and Rs. 9,889/- raised by the AO u/s. 201A and 201(1A) by treating the appellant as assessee in default is hereby confirmed."

8.4 Be that as it may, I am of the considered view that there is no special provision in the Act which states that no TDS u/s. 1941A is liable to pay by the buyer while purchasing immovable property (other than agricultural land) from a charitable Trust who is having tax exemption u/s 10(20) of the Act. For reference, an extract from the section 1941A is reproduced hereunder:-

"Payment on transfer of certain immovable property other than agricultural land22a

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.]"

8.5 In view of the above, I am of the considered opinion that the Ld. AO justified in charging penalty and interest u/s. 201(1) & 201(1A) of the Act to the extent of Rs. 79,500/- as per provisions of section 194IA of the Act. Accordingly, the action of the AO is hereby confirmed and the grounds of appeal raised by the appellant are dismissed."

6. Per contra, the ld. DR supported the orders of the lower authorities praying that the assessee was provided various opportunities by the lower authorities to argue the case but the assessee was lethargic and unserious to pursue his case and thus the order passed by the ld. CIT(A) should be sustained.

7. We have heard both the parties and perused the materials available on record. The Bench observed from the records and the submissions made by the parties, the question arise before us, whether there is no special provisions in the Act which states that no TDS u/s 194IA of the Act is liable to pay by the buyer while purchasing immovable property (other than agricultural

land) from a charitable trust, who is having tax exemption u/s 10(20) of the Act. However, the Bench feels that the assessee because of any reasons could not advance his arguments/submissions to contest the case and prove that plot from UIT Bilwara where the assessee not deducted TDS by sec194(i)(a)and UIT is not a trust before the lower authorities and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question. In this view of the matter, the appeal of the assessee is restored to the file of the ld. AO, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing, however, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. AO.

8. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. AO independently in accordance with law.

9. The Bench feels that the fact in the case in ITA No. 76/Jodh/2023 is exactly the similar to the fact ITA No. 75/Jodh/2023 and therefore, it is not imperative to repeat the fact in ITA No. 76/Jodh/2023. The decision taken by

us in ITA No. 75/Jodh/2013 shall apply mutatis mutandis to ITA No. 76/Jodh/2023.

In the result, the appeals of the assessee are allowed for statistical purposes.

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

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 11/09/2023

**Santosh*

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