

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.239/Ind/2023
(Assessment Years:2015-16)

Shri Chaman Kumar Goyal Goyal Oil Mills Barwaha Barwaha, M.P.	Vs.	ITO (TDS)-2 Indore
(Appellant / Assessee)		(Revenue)
PAN: AHVPG 2117 N		
Assessee by	Shri Ram Gilda, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	27.09.2023	
Date of Pronouncement	09.10.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 01.03.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for A.Y.2015-16. The assessee has raised following grounds of appeal:

“1.That the order u/s 201(1)/201(1A) of the Income Tax Act 1961 is illegal wrong and time barred.

2. That the order u/s 201(1)/201(1A) of the income Tax Act 1961 deserves to be quashed.”

2. Ld. AR of the assessee has submitted that the assessee has purchased land with his brother on 21.08.2014 for total consideration of Rs.80,00,000/- vide sale deed dated 21.08.2014. Ld. AR has further submitted that the assessee has paid his share of Rs.40,00,000/- to the

seller which is below the threshold limit of Rs.50,00,000/- as provided in section 194IA and therefore, the assessee was under no obligation to deduct TDS in respect of the said payment of purchase consideration. In support of his contention he has relied upon the decision of Jodhpur bench of the tribunal dated 24.03.2023 in case of *Reetu Devi Nanecha vs. ITO in ITANo.118/Jodh/2021*. He has also relied upon the following decisions:

1. Vinod Soni vs. ITO in ITANo.2736/Del/2015 (ITAT, Delhi)
2. Reebok India Company vs. JCIT in ITANo.319/Del/2021 (ITAT, Delhi)
3. M/s. Gupta & Mahindra Tractors, vs. ITO (TDS) in ITANo.397/JP/2017 (ITAT, Jaipur)

3. Ld. AR has further submitted that the order passed u/s 201(1)/201(1A) of the Act are invalid as barred by limitation. The impugned order was passed on 20.01.2022 which is after six years from the end of the financial year in which the transactions took place. Thus, Ld. AR has submitted that the order passed u/s 201(1)/201(1A) is not valid and liable to be quashed.

4. On the other hand, Ld. DR has submitted that as per the provisions of section 194IA what is to be seen is the total value of the property and therefore, total consideration paid for the purpose of property is Rs.80,00,000/- which is more than threshold limit of Rs.50,00,000/-. He has referred to sub-section (2) of section 194-IA and submitted that in case where consideration for transfer of immovable property and stamp duty value of such property are both less than Rs.50,00,000/- then only the TDS is not required to be deducted. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. The assessee has purchase his $\frac{1}{2}$ share in the land in question along with his brother vide sale dated 21st August 2014. There is no

dispute that the total consideration of the said land paid by the assessee and his brother is Rs.80,00,000/- and ½ shares of the assessee is Rs.40,00,000/-. The provisions of section 194IA required deduction of tax at source by transferee of any immovable property other than agricultural land to deduct tax at source(TDS) on consideration paid for transfer of the said property. Sub-section (2) of section 194IA carry out an exception that no deduction of TDS shall be made where the consideration for transfer of the immovable property and stamp duty value of the said property is less than Rs.50,00,000/-. As per section 194IA the obligation for deducting tax is on a person and in case in hand the assessee and his brother are two separate individuals and would be regarded as two separate persons for the purpose of section 194IA. Accordingly the consideration paid by the assessee would be taken into account for the purpose of liability of TDS u/s 194IA of the Act. The assessee has paid only Rs. 40,00,000/- which is less than the minimum consideration of the immovable property provided in sub-section (2) of section 194IA. Thus, what is relevant for threshold limit is the consideration actually paid or stamp duty valuation of immovable property. When the assessee has paid only Rs.40,00,000/- then the assessee is not liable to deduct TDS u/s 194 IA. An identical issue has been considered by the Jodhpur Bench of the Tribunal in case of *Reetu Devi Nanecha (supra)* in para 2.4 as under:

“2.4 We have heard the rival contentions and perused the materials placed on record. We notice that the assessee is an individual and as per facts of the case narrated before us and not disputed by the revenue authority, find that the assessee alongwith 3 other persons purchased an immovable property for a consideration of Rs.1.20 crores on 03-09-2014. The assessee paid 1/4th share of sale consideration i.e. Rs. 31.50 lacs. The AO treated the assessee in default applying the provisions of section 1941A of the Act by considering the purchase cost of Rs.1.26 crores. We notice that the provisions of Section 1941A of the Act are applicable where consideration for transfer of an immovable property is more than

Rs.50 lacs. Since in the instant case, the consideration paid by the assessee is Rs.31.50 lacs, therefore, the provisions of Section 1941A of the Act cannot be invoked. Thus, we fail to find any merit in the findings of the ld CIT(A) and the same is set aside and the demand raised by the AO w/s 201(1) for non-deduction of Tax Rs.31,500/- and interest levied u/s 201(1A) at Rs.16,380/- is deleted. The effective issued in Ground No 1 as raised by the assessee is allowed.”

6. The same view has been taken by the Delhi Bench of the Tribunal in case of *Pradeep Kumar Soni vs. ITO (supra)* in para 5 to 5.2 as under:

“5. We have heard both the parties and perused the records especially the impugned order as well as the provisions of law on the subject and the case laws cited by the Ld. DR in his written submissions. We find that in the instant case Sh. Pradeep Soni; Smt. Babli Soni; Sh. Vinod Soni and Smt. Beena Soni of same family, purchased 1/4th undivided equal shares in Immovable property, Plot No. 94, Block-F, SLF Model Town, Sector-10, Faridabad vide single registered sale deed dated 3.7.2013 for Rs. 1,50,00,000/-. The 1/4th share purchase consideration for each person was only Rs. 37,50,000/- each. The AO held that since the value of the property purchases under single sale deed was exceeding Rs. 50,00,000/- therefore, as per section 194 IA(2), the assessee was required to deduct TDS @1%. The AO thus held that all the four assesseees as defaulter u/s 201(1) and created a total liability @ 1% i.e. Rs. 1,50,000/- by a common order u/s. 201(1) of the Act and Ld. CIT(A) confirmed the findings of the AO. During the hearing, Ld. Counsel for the assessee draw our attention towards the Paper Book-1 Page no. 1 to 8 which is a copy of purchase deed dated 3.7.2013 was attached especially page no. 6 para no. 4 of the Sale Deed which is reproduced as under:-

“4. That the actual physical possession of the said Residential Plot No. 94, Block-F, Area Measuring 500 sq. yards in the residential known as DLF's Model Town, Sector-10, Faridabad situated in Village Sihi, Tehsil Ballabgarh, Distt. Faridabad has been handed over and delivered by the Vendor to the Vendees and the Vendees have become the absolute and undisputed owner of above said plot in equal share.”

5.1 He further draw our attention towards Paper Book-II Page No. 14 having the details of party wise payment for purchase of property and page no. 15 to 20 which are the copies of Banks Statements showing payment by Sh. Pradeep Soni; Smt. Babli Soni; Sh. Vinod

Soni and Sh. Beena Soni and also draw our attention towards page no. 21 which the copy of Loan Statement ICICI showing payment (all 04 parties).

5.2 After perusing the Paper Book and the relevant provisions of law, we find that Section 194-IA(2) provides that Section 194-IA(1) will not be applicable where the consideration for transfer of immovable property is less than Rs. 50,00,000/-. However, section 194-IA(1) is applicable on any person being a transferee, so section 194-IA(2) is also, obviously, applicable only w.r.t. the amount related to each transferee and not with reference to the amount as per sale deed. In the instant case there are 04 separate transferees and the sale consideration w.r.t. each transferee is Rs. 37,50,000/-, hence, less than Rs. 50,00,000/- each. Each transferee is a separate income tax entity therefore, the law has to be applied with reference to each transferee as an individual transferee / person. It is also noted that Section 194-IA was introduced by Finance Act, 2013 effective from 1.6.2013. It is also noted from the Memorandum explaining the provisions brought out alongwith the Finance Bill wherein it was stated that "in order to reduce the compliance burden on the small tax payers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than fifty lakhs rupees." We further find that the main reason by the AO is that the amount as per sale deed is Rs. 1,50,00,000/-. The law cannot be interpreted and applied differently for the same transaction, if carried out in different ways. The point to be made is that, the law cannot be read as that in case of four separate purchase deed for four persons separately, Section 194-IA was not applicable, and in case of a single purchase deed for four persons Section 194-IA will be applicable. It is noted that AO has passed a common order u/s. 201(1) for all the four transferees. In order to justify his action since in case of separate orders for each transferee separately, apparently, provisions of section 194IA could not had been made applicable since in each case purchase consideration is only Rs. 37,50,000/-. This action of AO shows that he was also clear in his mind that with reference to each transferee, Section 194IA was not applicable. Hence, we are of the considered view that the addition made by the AO and confirmed by the Ld. CIT(A) is not sustainable in the eyes of law, thus the same is deleted. As far as issue of charging interest is concerned, the same is consequential in nature, hence, need not be adjudicated. As regards the case laws cited by the Ld. DR are concerned, the same are on distinguished facts and therefore, not applicable in the present case. Accordingly, the grounds raised by the assessee stand allowed and as a result thereof, the appeal of the assessee is allowed."

7. In view of the above facts and circumstances of the case when the assessee has paid consideration of Rs.40,00,000/- which is less than the

threshold limit of Rs.50,00,000/- as well as in view of the decision as sited above the assessee cannot be held as assessee in default for want of TDS u/s 194-IA of the Act. Accordingly the impugned orders of the authorities below are set aside.

8. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 09.10.2023

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 09.10.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*