

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI  
BEFORE,  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER  
ITA No.997/Del/2020  
(ASSESSMENT YEAR 2011-12)**

Mahagun Real Estate Pvt. Ltd. B-66, 1 <sup>st</sup> Floor Vivek Vihar Delhi-110 092 PAN-AAFCM 4203R <b>(Appellant)</b>	Vs.	Asst. CIT Circel-75(1) New Delhi <b>(Respondent)</b>
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**ITA No.998/Del/2020  
(ASSESSMENT YEAR 2011-12)**

Mahagun (India) Pvt. Ltd. B-66, 1 <sup>st</sup> Floor Vivek Vihar Delhi-110 092 PAN-AAACM 6572A <b>(Appellant)</b>	Vs.	Asst. CIT Circel-75(1) New Delhi <b>(Respondent)</b>
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Assessee by	Sh. Ruchesh Sinha, Advocate
Department by	Sh. Ashish Mohanty, CIT- DR
Date of Hearing	14/12/2023
Date of Pronouncement	15/12/2023

**ORDER**

**PER M. BALAGANESH, AM:**

Both the appeals filed by Assessee arise out of the orders of the Learned Commissioner of Income Tax (Appeals)-38, Delhi

[hereinafter referred to as 'Ld. CIT(A)'] dated 28/01/2020 and 13/02/2020 for Assessment Year 2011-12.

2. As identical issue is involved in both the appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience.

3. The solitary issue involved in both the appeals on merit is whether the payment made by the assessee in respect of lease rent to New Okhla Industrial Development Authority (NOIDA) would be liable for deduction of tax at source (TDS) and failure to do so whether would result in assessee being treated as assessee in default u/s 201(1) of the Act and consequential interest u/s 201(1A) of the Act.

4. The assessee has also raised a preliminary ground before us that the order passed by the Ld. TDS Officer u/s 201/201(1A) is barred by limitation. We deem it fit to address this preliminary issue raised on the ground of limitation first.

5. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the assessee had fully filed its TDS returns with the Income Tax Department in the prescribed form within the prescribed time for the AY 2011-12.

The assessments on those TDS returns were framed in the present proceedings by the Ld. AO on 28/12/2017 for the AY 2011-12. The preliminary objection raised by the assessee is that the said assessment framed on 28/12/2017 is barred by limitation in view of then prevailing provisions of section 201(3) of the Act. We have gone through the provisions of section 201(3) of the Act as it stood at the relevant point of time and applicable to AY 2011-12, wherein it states that assessment for TDS return could not be framed beyond two years from the end of the Financial Year for which the assessment is sought to be framed. Accordingly, assessment framed by the Ld. AO on 28/12/2017 is barred by limitation.

6. Further, we find that for the regular TDS returns filed by the assessee for AY 2011-12, the erstwhile TDS Officer had already framed an assessment u/s 201/201(1A) of the Act on 15/03/2012 accepting the claim of the assessee. Hence, the assessments stood completed for the AY 2011-12. This assessment was neither reopened by the Ld. AO nor subjected to any revision proceedings u/s 263 of the Act by the Ld. PCIT. While this is so, there is absolutely no need for the Revenue to have framed yet another

assessment on 28/12/2017 for AY 2011-12 by taking a divergent stand with regard to applicability of TDS on lease rent paid to NOIDA. When this fact was brought to the notice of the Ld. CIT(A), the Ld. CIT(A) did not even bother to give any finding on the same. Hence, we have no hesitation to hold that the second assessment framed on 28/12/2017 deserves to be quashed as void *ab-initio* for more than one reason and it is also barred by limitation.

7. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 15<sup>th</sup> December, 2023.

Sd/-  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 15/12/2023

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI