

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.2366/Del/2023
(Assessment Year :2019-20)**

**ITA No.2367/Del/2023
(Assessment Year :2020-21)**

ACIT, Circle 77 (1),
Delhi.

vs. Shree Vardhman Developers Pvt.Ltd.,
301-311, Indraprakash Building,
21, Barakhamba Road,
Connaught Place,
New Delhi – 110 001.

(PAN : AACCV1495M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Gunjan Jain, Advocate
REVENUE BY : Shri Anuj Garg, Sr. DR

Date of Hearing : 19.12.2023
Date of Order : 21.12.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals filed by the Revenue are directed against the order of Id. CIT (Appeals)-23, New Delhi both dated 27.06.2023 for the Assessment Years 2019-20 & 2020-21.

2. Since the issues are common and the appeals were heard together, these are being disposed off by this common order.

3. The Revenue has taken common grounds of appeal in both the assessment years. For the sake of brevity, we are reproducing Grounds of appeal taken by the Revenue in AY 2019-20 as under :-

“1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in not appreciating the fact that decision of Hon'ble ITAT in the judgement relied upon that the assessee was not liable to deduct tax at source on External Development Charges (EDC) is in contravention to CBDT's Office Memorandum vide F.No. 370133/37/2017-TPL dated 23.12.2017, wherein, it has been clearly mentioned that the TDS provisions would be applicable on EDC payable to HUDA.

2. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in not appreciating the fact that the definition of contract provided u/s 194C is wide enough to cover EDC payments. EDC payments are in nature of contract u/s. 194C and therefore are required to be subjected to TDS accordingly.

3. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was justified in not appreciating the fact that judgments relied upon by him are of no avail in the present case as subject matter of appeal in those cases before the Hon'ble Tribunal was penalty order u/s 271C of the I.T. Act, 1961, while in this case subject matter of appeal is order u/s 201(1)/201(1A) of the I.T. Act passed by AO.

3. That the order of the CIT (A) being erroneous in law and on facts and needs to be vacated.”

4. We have heard the rival submissions and perused the materials available on record. We find that the only effective issue involved herein is whether assessee could be treated as assessee in default u/s 201(1) of the Act and consequentially liable for interest u/s 201(1A) of the Act in respect of non deduction of tax at source on payment of external development charges (EDC) to Haryana Urban Development Authority (HUDA). The entire facts of the issue, observations of the Id AO, the

submissions of the assessee and the observations of the Id CIT(A) are captured hereunder:-

“6. I have considered the material on record including written submissions of the appellant filed in course of appellate proceedings. I have perused the order u/s 201(1) and 201(1A) of the Act. In the present appeal the appellant has raised four grounds of appeal. All the grounds are related to raising of demand u/s 201(1) and 201(1) of :-

- A) Rs.18,40,610/- for its failure to deduct TDS u/s 194C on EDC/IDC charges of Rs.6,34,69,312/- paid to HUDA (Rs.12,69,386/- u/s 201 and Rs.5,71,224/- u/s 201(1A);
- B) Rs.88,88,451/- for its failure to deduct TDS u/s 194C on EDC/IDC charges of Rs.5,69,77,249/- paid to HUDA (Rs.56,97,725/- u/s 201 and Rs.31,90,726/- u/s 201(1A).

7. According to the Assessing Officer, the appellant was required to deduct tax at source (TDS) on the payment of External Development Charges and Internal Development Charges (here-in-after referred as “EDC/IDC”) to Haryana Urban Development Authority (here-in-after referred as "HUDA"). According to the AO, by failing to deduct tax at source on the payments made to HUDA, the appellant has committed a default within the meaning of section 194C of the Income Tax Act, 1961. The Assessing Officer was of the view that EDC charges are in the nature of contractual payment covered u/s 194C of the Act.

8. Further, it was also held by Assessing Officer that the appellant was required to deduct TDS on the interest paid on EDC & IDC charges to HUDA. According to the AO, by failing to deduct TDS on the interest payment made to HUDA, the appellant has committed a default within the meaning of section 194A of the Income Tax Act, 1961. The assessing Officer was of the view that interest paid on EDC/IDC charges are in the nature of payments covered u/s 194A of the Act.

9. In the case of the appellant, it has been stated during the course of appellate proceedings that the appellant has paid said external development charges for taking license for development of residential, commercial colony in Haryana in the F.Y. 2018-19. The Assessing Officer had held that EDC payment made by appellant to HUDA are covered under service contract and therefore, the appellant was liable to deduct TDS @ 2% on such payment as per section 194C of the Act. The AO further levied the interest for late payment/non-payment of TDS chargeable u/s 201(1A) of the Act @ 1% for every month on the amount of TDS in default from the date on which such tax was deducted to the date on which such tax is actually paid, the demand raised and payable by the appellant u/s 201(1) and interest u/s 201(1A) of the Act, which as follows :-

S. No.	EDC amount Paid (in Rs.)	TDS Deductible @ 2% u/s 194C (in Rs.)	Date of Payment	Delay in months	Interest u/s 201(1A) @ 1% p.m. (in Rs.)	Total liability
1	6,34,69,312	12,69,386	31.03.2019	45	5,71,224	18,40,610

10. Further, appellant had made payment of Rs.S,69,77,249/ as "Interest on EDC & IDC charges" without deducting TDS on it during the period under consideration. The Assessing Officer had held that the appellant was liable to deduct TDS @10% on 'Interest on EDC /IDC charges paid as per section 194A of the Act. The AO further levied the interest for late payment/ non-payment of TDS chargeable u/s. 201(1A) of the Act @1 % for every month on the amount of TDS in default from the date on which such tax was deducted to the date on which such tax is actually paid, the demand raised and payable by the appellant u/s. 201(1) and interest u/s. 201(1A) of the Act, which as follows:

S. No.	Interest amount Paid (in Rs.)	TDS Deductible @ 2% u/s 194C (in Rs.)	Date of Payment	Delay in months	Interest u/s 201(1A) @ 1% p.m. (in Rs.)	Total liability
1	5,69,77,249	56,97,725	-	56	31,90,726	18,40,610

11. Thus, the AO has raised demand u/s 201(1)/(1A) of the Act amounting to Rs.1,07,29,061/- (Rs.18,40,610/- plus Rs.88,88A51/-).

12. The AO has mentioned in the order that the cost of acquisition of land is paid by HUDA which transfers and gives possession of land to private builders. HUDA develops urban infrastructure on land by undertaking EDWs. HUDA transfers land to private builders who has to pay user fee for the developed urban infrastructure which is named as EDC. Its business income is taxed by Income Tax Department which includes EDC. The EDC is arising out of an agreement which is in the nature of service contract where colonizers pay EDC to HUDA for creation, development and maintenance of External Development Works. The HUDA is rendering a service to colonizers for which EDC is paid and the work carried out is civil work in nature for providing amenities. Therefore, private builder is liable to deduct tax at source on such payments and EDC ought to be subjected to TDS by payers @2% u/s 194C of the Act and interest thereon@ 1% u/s 201(1A) of the Act. Further, the appellant paid interest component on EDC/IDC charges was also liable to deduct TDS @ 10% on such payments as per provisions of section 194A of the Act.

13. The appellant has claimed that EDC is determined and levied by Directorate of Town and Country Planning (DTCP) which is a department of state Government of Haryana and therefore, TDS provisions should not apply relying on the provision of Section 196 of the Act.

14. It is a matter of fact that the HUDA is engaged in acquiring land, developing it and finally handing over it for a price. EDC is fixed by HUDA from time to time. It is a fact that payment has been made to HUDA through DTCP which is a Government Department and the same is not in pursuance to any contract between the appellant and HUDA.

15. In similar case, it was held that the appellant was not assessee-in-default for not deducting TDS on the payments of EDC made to HUDA. The Hon'ble ITAT, Delhi has held in the case of M/s RPS Infrastructure Limited vs. Addl. CIT, Range-78, New Delhi reported as {2019 (9) TMI 39-ITAT Delhi}, date of order:23.07.2019 as under:

"5.0 We have heard the rival submissions and have also perused the material on record. It is seen that in Para 4.3.2, subparagraph (iv) of the order passed u/s 271 C of the Act, the AO has himself noted that the demand draft of the EDC amounts are drawn in favour of the Chief Administrator, HUDA though routed through the Director General, Town and Country Planning, Sector-18 Chandigarh. He has also referred to the notes to accounts to the financial statement wherein It has been stated that "other liabilities also include external development charges received through DGTCP, Department of Haryana for execution of various EDC works. The expenditure against which have been booked in Development Work in Progress, Enhancement compensation and Land cost". Undisputedly, the payment of EDC was issued in the name of Chief Administrator, HUDA. It is also not in dispute that HUDA has shown EDC as current liability in the balance sheet, but in the 'Notes' to the Accounts Forming part of the Balance Sheet, it has been shown that EDC has been received for execution of various external development works and as and when the development works are carried out, the EDC's liabilities are reduced accordingly. It is also not in dispute that HUDA is engaged in acquiring land, developing it and finally handing it over for a price. It is also not in dispute that EDC is fixed by HUDA from time to time. However, the fact of the matter remains that payment has been made to HUDA through DTCP which is a Government Department and the same is not in pursuance to any contract between the assessee and HUDA. Thus, the payment of EDC is not for carrying out any specific work to be done by HUDA for and on behalf of the assessee but rather DTCP which is a Government Department which levies these charges for carrying out external development and engages the services of HUDA for execution of the work. Therefore, it is our considered view that the assessee was not required to deduct tax at source at the time of payment of EDC as the same was not out of any statutory or contractual liability towards HUDA and, therefore, the impugned penalty was not leviable. We note that similar view has been taken by the Co-ordinate Benches of ITAT Delhi in the cases of Santur Infrastructure Pvt. Ltd. vs. ACIT in ITA 6844/Del/2019 vide order

dated 18.12.2019, Sarv Estate Pvt. Ltd. vs. JCIT in 17A NO.5337 & 5338/Del/2019 vide order dated 13.09.2019 and Shiv Sai Infrastructure (Pvt.) Ltd. vs. ACIT in ITA NO.5713/Del/2019 vide order dated 11.09.2019. A similar view was also taken by the Co-ordinate Bench of ITAT Delhi in case of R.P.S Infrastructure Ltd. vs. ACIT in 5805, 5806 & 5349/Del/2019 vide order dated 23.07.2019. Therefore, on an identical fact and respectfully following the orders of the Co-ordinate Benches as aforesaid, we hold that the impugned penalty u/s 271C of the Act is not sustainable. The order of the Ld. CIT (A) is set aside and the penalty is directed to be deleted.

6.0 In the final result, the appeal of the assessee stands allowed.”

16. Thus, it was held that the payment of EDC is not for carrying out any specific work to be done by HUDA for and on behalf of the appellant but rather Haryana Government which levies these charges for carrying out external development and engages the services of HUDA for execution of the work. Therefore, in view of the above judgement, the appellant was not required to deduct tax at source at the time of payment of EDC as the same was not out of any statutory or contractual liability towards HUDA and, therefore, the impugned addition is not sustained.

17. A similar view has been taken by the Hon'ble ITAT Delhi in the cases of Santur Infrastructure Pvt. Ltd. vs. ACIT in ITA 6844/Del/2019 vide order dated 18.12.2019, Sarv Estate Pvt. Ltd. vs. JCIT in ITA No.S337 & S338/Del/2019 vide order dated 13.09.2019 and Shiv Sai Infrastructure (Pvt.) Ltd. vs. ACIT in ITA NO.S713/Del/2019 vide order dated 11.09.2019.

18. The facts of the case are identical to the case of Perfect Constech Pvt. Ltd. vs. Addl. CIT, Range-76, Delhi (I.T.A No.6907/DeI/2019), as quoted above. Respectfully following the orders of the Hon'ble ITAT Delhi as aforesaid, it is held that the appellant was not liable to deduct TDS on payment of EDC and interest thereon made to the HUDA. Therefore, the impugned demand raised u/s 201(1)/201(1A) of the Act of Rs.1,07,29,061/- is not sustainable and deleted. Accordingly, these grounds of the appellant are hereby allowed.

19. The next issue involved is deduction of TDS on payment of interest to the HUDA for late payment of EDC. In the forgoing paragraphs it has been held that the payment to HUDA is actually the payment made to the Haryana Government and HUDA is the designated authority to collect the payment on behalf of the Government. The payment of interest to the Government does not attract TDS as per the provisions of section 196 of the Act. Therefore, the appellant was not liable to deduct TDS on payment on interest u/s 194A. Hence, the action of the Assessing Officer in holding that the appellant was liable to deduct TDS on payment of interest made to HUDA is liable to be deleted.

20. In the result, the appeal of the appellant is Allowed.”

5. We find that the Id. CIT(A) had granted relief by placing reliance on the decisions of the co-ordinate bench of this tribunal stated supra, wherein it was held that the EDC paid to HUDA would not be liable for deduction of tax at source and accordingly the assessee cannot be treated as 'assessee in default' in terms of section 201(1) of the Act and no tax could be recovered from it for non-deduction of tax at source. Consequentially the assessee could not be made liable to pay interest u/s 201(1A) of the Act. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on this 21st day of December, 2023.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 21st day of December, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-23, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
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