

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

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

ITA No. 2962/Del/2022  
Asstt. Year: 2015-16

Ascot Hotels and Resorts P. Ltd. 15, Mohandev Building, 13 Tolstoy Marg, New Delhi – 110002 PAN AAACA913IH	Vs.	DCIT Circle-73(1) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Ruchesh Sinha, Advocate
Department by :	Shri Kanv Bali, Sr.DR
Date of Hearing	24/01/2024
Date of pronouncement	21/ 02/2024

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 29.11.2022 of the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi ("**CIT(A)**") pertaining to the Assessment Year ("**AY**") 2015-16.

2. The assessee has taken the following grounds:

"1. That the order of the CIT (A) is a completely perverse order as the same has been passed without giving an opportunity of hearing to the appellant, despite being asking for it, in gross violation of the Faceless Appeal Scheme and also against the principles of natural justice.

2. That the CIT (A) has erred in law in confirming the TDS assessment order, wherein an addition has been made of Rs. 14,92,098/- for allegedly not deducting the tax at source U/s 1941 (pertaining to lease rent) and U/s 194 A (pertaining to interest on lease rent) on the payments made to New Okhla Industrial Development Authority.

3. That the CIT (A) has erred in law in confirming the TDS assessment order, without considering that on similar issues the matter has been remanded back by the ITAT to the Assessing Officer for preceding Same as ground no-1 assessment years and hence the order passed is against the judicial discipline.”

3. Briefly stated, during AY 2015-16 the assessee company made payment to New Okhla Industrial Development Authority (“**NOIDA**”) on account of lease rent to the tune of Rs. 47,53,230/- and Rs. 33,56,003/- on account of interest on lease rent. The Ld. Assessing Officer (“**AO**”) found that on the aforesaid payments TDS under section 194I and 194A of the Act was not deducted while making payment to the deductee. He, therefore passed order under section 201(1)/201(1A) of the Act on 24.03.2022 for AY 2015-16 raising demand of Rs. 14,92,098/-.

4. Aggrieved, the assessee appealed but without success. This has brought the assessee before the Tribunal and all the grounds relate thereto.

5. The Ld. AR submitted that the assessee has raised additional ground of appeal as under:-

*“The order passed by the AO (TDS) is unsustainable in law as the same is passed without mentioning DIN in the body of the assessment order and the same is also not in conformity with the manner prescribed in CBDT Circular No. 19/2019 dated 14.08.2019 and is thus bad in law and void ab initio.”*

6. However, during the course of hearing before us, the said additional ground was not pressed. We, therefore, dismiss the same as not pressed.

7. We, now proceed to adjudicate the remaining original grounds.

8. At the very outset, the Ld. AR submitted that the only issue involved is whether lease rental paid by the assessee to NOIDA is subject to TDS or not. He further submitted that the issue is covered by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for AY(s) 2011-12 to 2014-15.

9. The Ld. Sr. DR could not contradict the submissions of the Ld. AR. He, however, supported the order of the Ld. CIT(A).

10. We have considered the submission of the parties and perused the records. We observe that the same issue came up for consideration before the Co-ordinate Bench of the Tribunal in ITA Nos. 5463 to 5466/Del/2016 and the Tribunal vide its order dated 26.03.2018 observed and recorded the following findings:-

*"6. So far as the merits of the case are concerned, it is the submission of the assess that according to the specific instruction the Noida Authority, the assessee is under an obligation for making the periodic payments of ground rent/lease rent to the Noida authority to the permitted that under similar circumstances in the case of Rajesh projects. Att. Ltd vs Commissioner Of Income Tax (TDS) W.P. (C) 8085/2014 and batch decided on 16 February, 2017, Hon'ble High Court of Delhi considered the matter in detail and passed certain directions both to the revenue authorities a matte as the Noida authority is and such directions are applicable to the case of the assessee also on all fours. Heard the Ld. DR also.*

*7. In Rajesh Projects (India) Pvt. Ltd (supra), the Hon'ble jurisdictional High Court held that, -*

*"20. In view of the above analysis, the court hereby concludes as follows:*

<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
<i>xxx</i>	<i>xxx</i>	<i>xxx</i>

*(2) Amounts constituting annual lease rent, expressed in terms of percentage (e.g. 1%) of the total premium for the duration of the lease, are rent, and therefore subject to TDS. Since the petitioners*

*could not make the deductions due to the insistence of GNOIDA, a direction is issued to the said authority (GNOIDA) to comply with the provisions of law and make all payments, which would have been otherwise part of the deductions, for the periods, in question, till end of the date of this judgment. All payments to be made to it, henceforth, shall be subject to TDS.*

xxx xxx xxx

xxx xxx xxx

*21. In view of the above conclusions, it is hereby directed that wherever result of the amounts have been paid by the petitioners, towards TDS as a coercive process used by the Revenue, the GNOIDA shall make appropriate orders to credit/reimburse such payments. In case para to the mos through deposit, over and above the rental amounts paid to the GNOIDA without TDS, the income tax authorities shall not pursue any coercive proceedings, GNGIDA shall duly reimburse the petitioners for such amounts. Any amounts deposited in the court or with the Revenue, shall, to the extent of TDS liability only be appropriated for such purpose. It is clarified that GNOIDA shall ensure that reimbursement is made to compensate the petitioners' excess payments; the income tax authorities shall not pursue any coercive methods for recovery of the amounts, or penalty, once the basic liability (with interest, to be paid by GNOIDA) is satisfied. The impugned orders are quashed; the Revenue shall make consequential orders, to give effect to this judgment, after duly hearing the petitioners and those likely to be affected, within 12 weeks from today."*

*8. It is nobody's case that the facts involved in the above matter are not similar to the facts involved in this matter. In the circumstances, we are of the considered opinion that the observations of the Hon'ble jurisdictional High Court are applicable to the case of the assessee also for all these AYs. We, therefore, while respectfully following the observations of the Hon'ble jurisdictional High Court set aside the matter to the file of the Ld. AO to follow the directions of the Hon'ble High Court in the above case in these cases also. Grounds of appeal are answered accordingly."*

11. It would be noticed that the Tribunal in its decision (supra) followed the decision of Hon'ble Delhi High Court in Rajesh Projects (India) Pvt. Ltd. Vs. CIT (TDS) WP(C) 8085/2014 (2017) 78 taxmann.com 263 (Delhi) decided on 16.02.2017, para17 of which decision, in turn, has been affirmed by the Hon'ble Supreme Court in New Okhla Industrial Development Authority vs. CIT (2018) 95 taxmann.com 80 (SC).

12. Respectfully following the decision of Tribunal (supra), we set aside the matter and restore it to the file of the Ld. AO to follow the directions of the Hon'ble Delhi High Court in the decision (supra) and decide it afresh in the light thereof. We order accordingly.

13. In the result, appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the open court on 21<sup>st</sup> February, 2024.**

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

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMEBR**

Dated: 21/02/2024  
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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	19.02.2024
Date on which the typed draft is placed before the dictating Member	19.02.2024
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	