

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT
AND
SH. M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3081 & 3082/DEL/2019
Assessment Year: 2010-11 & 2011-12**

Prateek Buildtech (India) Pvt. Ltd., G-50, Lower Ground Floor, Lajpat Nagar-III, New Delhi-AADCP7864P	Vs	ACIT Central Circle – 76 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Neha Gupta, Advocate Sh. Naresh C. Gupta, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	07/02/2024
Date of Pronouncement:	19 /02/2024

ORDER

PER SAKTIJIT DEY, VP:

Captioned appeals have been filed by the assessee against two separate orders, both dated 06.03.2019, of learned Commissioner of Income -tax (for short "CIT(A)")-31, New Delhi for assessment years 2010-11 and 2011-12.

2. The dispute in the present appeal is confined to levy of interest under section 201(1A) of the Income Tax Act, 1961.

3. Briefly, the facts are, the assessee is a resident corporate entity. After receiving information from the Commissioner of

Income Tax, Kanpur that various companies are paying lease rent to Greater NOIDA without deducting tax at source u/s.194I of the Act, the Assessing Officer (AO) initiated proceedings u/s. 201 (1) and (1A) of the Act. In response to the notice issued by the AO the assessee furnished the details of the payment made. After verifying the details, the AO observed that the total premium received by the Greater NOIDA from the assessee is capital in nature. However, the assessee has paid lease rent to the Greater NOIDA Authority which is revenue in nature and has been offered to tax by the Greater NOIDA Authority. The AO was of the view that the lease rent paid was subject to TDS u/s. 194I of the Act. Since the assessee had paid the lease rent without deducting tax at source, the AO raised demand u/s. 201 (1) alongwith interest u/s. 201(1A) of the Act. Against the orders passed u/s.201(1) and 201 (1A) of the Act, the assessee preferred appeals before learned Commissioner (Appeals).

4. After considering the submissions of the assessee in the context of facts and material on record learned Commissioner (Appeals) held as under :-

“4.2. On merits of the case, the assessee had challenged creation of demand at Rs. 6,95,986/-u/s 201(1)/201(1A). Undisputedly, the appellant has paid lease rent at Rs. 37,56,540/- to Noida Authority in addition to the premium paid for purchase of land. It was claimed that Noida Authority insisted for non deduction of TDS on the ground

that provisions of section 1941 are not applicable on the payment made to it. On the request of various assessees, the Noida Authority had also issued a letter dated 28.03.2013 to the assessee directing it not to deduct any TDS and to ensure payment of full lease rent. While disposing various writ petitions in the case of Rajesh Projects (India) Pvt Ltd and others (WP(C) 8085/2014, CM. APPL. 18876/2014 and others), the Hon'ble Delhi High Court vide order dated 16.02.2017 has held that payment of annual lease rent to Noida Authority is liable for TDS @ 1%, but since the TDS was not made as per the directions issued by the Noida Authority, the assessee cannot be made liable for the same till the date of this judgment. However, the Noida Authority will comply with the provisions of law and make all the payments of TDS. Considering the above factual and legal positions, the erstwhile CIT(A)-41, New Delhi vide order dated 01.12.2017 contained in appeal no 86/2016-17/CIT(A)-41 has deleted the demand raised u/s 201(1) by not treating it as assessee in default, but directed to recalculate the interest u/s 201(1A) after ascertaining that the deductee has taken the receipts into account while computing his total income. Since the facts are identical in this year also, the AO is directed to charge interest u/s 201(1A) only in view of the above directions.”

5. Being, aggrieved the assessee is in appeal before us.

6. We have heard both the parties and perused material on record. As per the observations of the First Appellate Authority reproduced elsewhere in the order, learned First Appellate Authority has accepted assessee's contention that since the lease rent was paid to Greater Noida Authority without deduction of tax as per their directions, the assessee cannot be treated as assessee in default in terms with the decision of the Hon'ble Delhi High Court in the case of **Rajesh Products (India) Pvt. Ltd. and others (W.P.(C) 8085/2014) dated 16.02.2017**. However, following his order on similar issue in assessee's case, first appellate authority directed to recalculate the interest u/s. 201(1) and 201(1A) of the Act after ascertaining the fact that Greater NOIDA has taken the receipts into their account while computing total income.

7. It is observed, while deciding identical issue in assessee's own case in assessment years 2012-13 and 2013-14 the Tribunal in ITA No.3109 and 3110/Del/2017 dated 28.02.2020 has directed as under :-

"19. In our opinion, it was the responsibility of the assessee to furnish documentary evidence in support that the NOIDA has paid tax to the Income-Tax department on lease rental income i.e. for the amount of the tax which was deductible on lease rental payment under reference, along with the interest. If the said interest has already been paid by the NOIDA, no recovery can be made from the assessee for the said amount of the interest. The Hon'ble High Court has directed that if the basic liability along with interest to be paid by the GNOIDA has been satisfied, no recovery shall be pursued from the buyer. In view of the facts and circumstances, we feel it

appropriate to restore this issue to the file of the Learned Assessing Officer, with the direction to verify whether the NOIDA has made payment of the basic TDS liability along with the interest due thereon. The assessee shall cooperate and provide the relevant information required by the Assessing Officer, If after verification, it is found that the basic TDS liability and interest thereon has already been paid by the NOIDA, then no such liability shall be raised on the assessee. Accordingly, we restore this issue to the file of the Assessing Officer with above directions in both the appeal before us. It is needless to mention that 'A' shall be afforded adequate opportunity of being heard.”

8. Facts being identical, respectfully following the decision of the coordinate Bench as referred to above, we restore the issue to the files of the AO with similar directions. The grounds are allowed for statistical purpose.

9. In the result, the appeals are allowed for statistical purpose.

Order pronounced in the open court on 19.02.2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

NEHA

Date:- 19 .02.2024

Copy forwarded to:

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

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

ASSISTANT REGISTRAR
 ITAT NEW DELHI

ate of dictation	07.02.2024
Date on which the typed draft is placed before the dictating Member	08.02.2024
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 file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	