

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1738/Del/2023
(Assessment Year: 2014-15)**

DCIT, Central Circle-31, New Delhi (Appellant) PAN:AAACK0016B	Vs. New India City Developers Pvt. Ltd, B-44/II, Floor Jangpura, New Delhi-110014 (Respondent)
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Assessee by :	None
Revenue by:	Ms. Indu Bala Saini, Sr. DR

Date of Hearing	06/12/2023
Date of pronouncement	05/03/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1738/Del/2023 for AY 2014-15, arises out of the order of the Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 102499/2019-20 dated 14.03.2023 against the order of assessment passed u/s 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 17.12.2019 by the Assessing Officer, DCIT, Central Circle-31, New Delhi (hereinafter referred to as 'ld. AO').

2. The revenue has raised the following grounds of appeal :-

"9. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition amounting to Rs. 2,07,54,440/-, on account of disallowance of External Development Charges(EDC) paid to HUDA without deduction of tax at source.

10. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in facts in ignoring that during the survey action on HUDA, it was found that the

assessee made payments of EDC to HUDA, which is a taxable entity and not covered by the provisions of Section 196.

11. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in ignoring the clarification offered by the CBDT (Office Memorandum No. F.No. 370133/37/2017-TPL dated 23.12.2017), wherein it was held that TDS provisions are applicable on EDC payable by the assessee to HUDA.

12. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in ignoring that EDC is charged for development work received by HUDA from private builders and the work carried out is civil work in nature for providing amenities. EDC enhance the value of property and the value additions fetch higher price from prospective customers. Thus, EDC payments made by the builders to HUDA are covered under service contract and provisions of section 194C are applicable on service contracts as per CBDT Circular No. 681 dated 08.03.1994.

13. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in relying upon the judgment of ITAT Delhi in the case of Regards Developers (P.) Ltd v. Additional Commissioner of Income-tax in IT Appeal No. 6535 of 2019 dated 30.11.2022, which covers the applicability of provisions of Section 271C and not Section 40(a)(ia).

14. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

15. The grounds of appeal are without prejudice to each other. 16. The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."

3. None appeared on behalf of the assessee despite issuance of notice. Hence we proceed to dispose of this appeal on hearing the Id. DR and based on materials available on record. The return of income for the Asst Year 2014-15 was filed by the assessee company on 25.10.2014 declaring total income of Rs 15,99,680/-, which was duly processed u/s143(1) of the Act on 21.5.2015. Subsequently a survey u/s 133A of the act was carried out at the business premises of HUDA and Sky High Land Con. Pvt Ltd by the TDS Circle, Panchkula on 9.2.2017 and 14.2.2017 and it was noticed that External Development Charges (EDC) amounting to Rs 2,07,54,440/- were received by HUDA from the assessee company without deduction of tax at source. Accordingly, the assessment of the assessee was sought to be reopened by issuance of notice u/s 148 of the Act on 22.3.2019 after obtaining the approval u/s 151 of the Act from the competent authority. The assessee filed its return of income on 1.7.2019 declaring total income of Rs 15,99,680/- as return in response to notice u/s 148

of the Act. A query was raised by the Id. AO that since the payment of EDC to HUDA was made without deduction of tax at source, why the expenditure of Rs 2,07,54,440/- be not disallowed u/s 40(a)(ia) of the Act. The assessee filed a detailed submission which is reproduced hereunder:-

"During the year under consideration assessee company had made a payment of Rs.2,07,54,440/- towards EDC charges to/on behalf of "Director Town & Country Planner Govt. of Haryana. The DTCP is a government undertaking and no TDS is required for the payment to the Govt. u/s 196 of the IT.Act. The assessee entered into agreement with Haryana Govt. through Haryana Governor through Director Town & Country Planning(DTCP). That the clause of agreement provided for payment of EDC charge to HUDA on behalf of Director Town & Country Planning(DTCP), Govt. of Haryana. There is no privity of contract/agreement between assessee and HUDA that such payments are to be made to HUDA. DTCP directed to make the payment to HUDA on DTCP behalf, for the reason that HUDA (now known as Haryana Shahkari Vikas Pradhikaran (HSVP) w.e.f. 01.06.117) was its executing agency for carrying out external development. STCP, vide its clarification Dtd. 19.06.18 also clarified that the payment to HUDA/HSVP is on behalf of State Govt. DTCP, vide its clarification Dtd. 19.06.18 also clarified that no TDS "was/is" to be made for the payments made to the Govt. for EDC/EDW(External Development Charges). The clarification Dtd.19.06.18 specifically provides for no TDS for EDC even if paid prior to date of clarification ie. 19.06.18 by the use of words "was/is" in the said clarification. We are also advised to submit before your goodself that the similar facts and same grounds related to payment of EDC charge to HUDA on which TDS is not deducted is recently decided by Hon'ble Delhi ITAT "G" Bench on dtd 11th September, 2019 in case of Shiv Sai Infrastructure(P) Ltd. Vs ACIT Circle-77 ITA No.5713/Del/2019 Asstt. Year 2017-18 and decided the issues in favour of assessee and direct the revenue to delete the demand. Hence, in light of above submission and in support of recent judgement of Hon'ble Delhi ITA on similar facts and grounds on the basis of facts of the assessee it is clarified that the assessee is not in default w.r.t. non-deduction of TDS on EDC charges paid to/on behalf of DTCP."

4. The Id. AO however held that the payment of EDC is covered by the provisions of section 194C/194I of the Act and hence the expenditure would be liable for disallowance u/s 40(a)(ia) of the Act and disallowed a sum of Rs 2,07,54,440/- in the reassessment proceedings completed u/s 147 of the Act dated 17.12.2019.

5. No challenge was made by the assessee either before the Id. CIT(A) or before us challenging the validity of assumption of jurisdiction u/s 147 of the Act

by the Id. AO. Before the Id. CIT(A), the assessee reiterated the submissions made by it before the Id. AO. Apart from that, it also stated that in any case, the disallowance of expense u/s 40(a)(ia) of the Act should be restricted to 30% of the expenditure pursuant to the amendment brought in the Finance Act applicable for Asst Year 2014-15. The Id. CIT(A) by following the decision of this Tribunal in the case of Regards Developers P Ltd vs Additional CIT reported in 146 taxmann.com 342 (Del Tribunal) deleted the disallowance made u/s 40(a)(ia) of the Act.

6. We find that the issue in dispute is no longer res integra in view of the Co-ordinate Bench decision of this Tribunal in the case of Regards Developers P Ltd vs Additional CIT reported in 146 taxmann.com 342 (Del Trib) wherein it was held that where assessee paid external development charges to Haryana Urban Development Authority (HUDA) without deduction of tax at source, since such payment to HUDA was deposited in consolidated Fund of State and consequently assessee was not required to deduct tax on such payment, levy of penalty under section 271C upon assessee was not sustainable. The entire order of the Tribunal is already reproduced in the order of the Id. CIT(A) and hence the same is not reiterated herein for the sake of brevity. Since the relief is granted by the Id. CIT(A) by following the order of this Tribunal referred supra, we do not find any infirmity in the said order of the Id. CIT(A). Accordingly, the grounds raised by the revenue are dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 05/03/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 05/03/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi