

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 2273/DEL/2023 [A.Y. 2016-17]

The Dy. C.I.T
Circle - 75 (1)
Delhi

Vs.

M.G. Housing Pvt Ltd
A-22, Anand Vihar,
Delhi

PAN: DELM 2122 D

(Applicant)

(Respondent)

Assessee By : Shri Salil Agarwal, Sr. Adv
Shri Shailesh Gupta, CA

Department By : Shri M.P. Dwivedi, Sr. DR

Date of Hearing : 23.11.2023

Date of Pronouncement : 28.11.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against order of the Id.
CIT(A) - 23, Delhi dated 27.12.2022 pertaining to Assessment Year
2016-17.

2. Solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the demand of Rs. 97,17,163/- raised u/s 201(1)/201(1A) of the Income-tax Act, 1961 [the Act, for short].

3. On merits of the case, demand raised u/s 201(1)/201(1A) of the Act is on account of non deduction of TDS u/s 194C of the Act on EDC paid to HUDA by the assessee. EDC payment to HUDA was under dispute before the Hon'ble Jurisdictional High Court of Delhi in the case of BPTP Vs. PCIT 113 Taxmann.com 587 wherein the Hon'ble High Court has held that EDC are in the nature of statutory fees.

4. The same was considered by the co-ordinate bench in the case of Bharti Land Limited in ITA Nos. 195 & 608/DEL/2020 vide order dated 24.03.2023. The relevant findings read as under:

"18. We have heard both the parties and perused the records. We note that the Id. CIT (A) has already allowed the assessee's appeal on the reasoning mentioned herein above. We refer to Hon'ble jurisdictional High Court decision in the case of BPTP Ltd. vs. PCIT 113 taxmann.com 587 wherein it is held that EDC are in the nature of

statutory fees. Apart from that, Id. Counsel of the assessee has placed reliance on the following case laws :-

(i) M/s. Perfect Constech Pvt. Ltd. v. Addnl. CIT (ITA No.6907/Del/2019) PB 134 to 137 (136) Para 5.0

(ii) Spaze Tower Pvt. Ltd. v. JCIT (ITA No.5842/Del/2019) PB 138 to 143 (140-141) (Letter from Director Town & Country Planning considered)

(iii) M/s. Sarv Estate Pvt. Ltd. v. JCIT (ITA No.5337 & 5338/De1/2019) PB 116 to 128 (123)

(iv) Satya Developers Pvt. Ltd. v. JCIT (ITA Nos. 6301 & 6302/Del/2019) PB 144 to 148 (148) (Letter from Director Town & Country Planning considered)

(v) Shiv Sai Infrastructure (P) Ltd. v. ACIT (ITA No. 5713/Del/2019) PB 110 to 115 (110, 115)

(vi) Signature Builders Pvt. Ltd. v. Add. CIT (ITA Nos.5735/Del/2019) PB 129 to 133 (132, 133)

(vii) Tulip Infratech Private Limited v. Addl. CIT (ITA No.6734/Del/2019) PB 98 to 109 (103-104) 5.3. Though these cases dealt with penalty u/s 271 C for not deducting tax on payments to

HUDA, same principles will apply to penal consequences u/s 40(a)(ia) of the Act. The sum and substance of the aforesaid decisions of the co-ordinate benches is that the payment to HUDA is, in effect, payment to State Government as the payment of EDC is not for carrying out any specific work to be done by HUDA for and on behalf of the appellant company 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, such payment is exempt from obligations to deduct TDS as the nature of payment is statutory fees."

19. We note that Id. CIT (A) has already granted relief to the assessee on the ground that [section 40\(a\)\(ia\)](#) applies to expenses claimed in P&L account. Since the assessee's claim that expenses were not debited to P&L account is correct, Id. CIT (A) held that there is no question of disallowance of expenses. We find that other case laws in this regard relied upon by the assessee also support the proposition that no TDS is required to be deducted on payments made to HUDA for EDC. Hence, in the background of the facts and judicial

precedents, we do not find any infirmity in the order of the Id. CIT (A) and accordingly we uphold the same."

5. Following the decision of the co-ordinate bench [supra] we do not find any reason to interfere with the findings of the Id. CIT(A).

6. In the result, the appeal of the Revenue in ITA No. 2273/DEL/2016 is dismissed.

The order is pronounced in the open court on 28.11.2023 in the presence of both the rival representatives.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 28th NOVEMBER, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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Date on which the typed draft is placed before the dictating Member	
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Date on which the approved draft comes to the Sr.PS/PS	
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