

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

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. Nos. 3398 & 3417/Del/2023
(Assessment Year : 2015-16)**

TDI Infrastructure Ltd. 11, Vandana Building, Upper Ground Floor, Tolstoy Marg, Connaught Place, New Delhi-110 001	Vs.	DCIT Circle – 76(1) New Delhi
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PAN : AAACI 5799 P

(Appellant) .. (Respondent)

**Appellant by : Shri Tarandeep Singh, C.A.
Respondent by : Shri Amit Katoch, Sr. D.R.**

**Date of Hearing : 30.05.2024
Date of Pronouncement : 11.06.2024**

ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

These two appeals filed by the assessee are directed against the order dated 27.09.2023 passed by the Commissioner of Income Tax (Appeals)-29, New Delhi under Section 263 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') arising out of the orders dated 30.03.2022 passed by the DCIT, Circle – 76(1), New Delhi under Section 201(1)/201(1A) of the Act for A.Y. 2015-16.

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2. The DCIT has raised a demand of Rs.21,35,330/- under Section 201(1) of the Act on the ground that as the deductor the assessee has failed to deduct tax as required under the provision of Section XVII – B of the Act and Interest of Rs.20,03,550/- under Section 201(1A) of the Act. The same was upheld by the Learned CIT(A). Hence the instant appeal before us. Whether the assessee has liable to deduct the tax at source under Section 194C of the Act on payment of External Development Charges (EDC) to Haryana Sahkari Vikas Pradhikarna (HSVP) earlier known as Haryana Urban Development Authority (HUDA) is the issue involved in the matter before the authorities below.

3. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the issue has been decided against the assessee by the Hon'ble Delhi High Court by and under the order dated 13.02.2024 in the matter of Puri Constructions (P.) Ltd. vs. ACIT, reported in 462 ITR 326 (Delhi), a copy whereof has also been submitted before us. However, though the provision of Section 194C stood attracted, in paragraph 83 of the said judgment, it was mentioned that the fact of whether the EDC payments have been taxed in the hands of HSVP or whether the same was offered to tax was subject to verification, as well as the scope of a person in default and penalty provision to be looked into by the authorities concerned. Upon perusal we find that the contents of relevant paragraph is as follows:

“83. That only leaves us to deal with the issue of the petitioners having been treated as an assessee in default in terms of Section 201 and called upon to pay penalties by virtue of Sections 221 and 271C of the Act. Pursuant to the interim orders that were made on these writ petitions,

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while the respondents were permitted to continue further in terms of the show cause notices impugned herein, orders if passed against the petitioner were not to be given effect to. We have not been apprised of the status of those proceedings nor have the respondents apprised of any final orders that may have been framed in respect of each of the writ petitioners. We have also not been apprised of whether the EDC payments have been taxed in the hands of the HSVP or whether the same was offered to tax.”

4. The crux of the observation made by the Hon'ble High Court in paragraph 83 to 86 as contended by the Learned AR is also found to be acceptable which is as follows :

- “A. It has to be determined whether HSVP has paid taxes on receipt of EDC.*
- B. Demand visualized u/s 201(1) of the Act should not be enforced if taxes due have been paid by the payee, and*
- C. Interest u/s 201(1A) of the Act is chargeable, however as regards period of default is concerned, the period starts from the date of deductibility till the date of actual payment of tax. Therefore, the levy of interest has to be restricted for the above stated period only. Date of payment of taxes by the payee can be treated as the date of actual payment.”*

5. Considering the above fact, the Learned AR has prayed for remanding the matter to the file of Learned AO for the purpose of computing the exact quantum of default under Section 201(1) of the Act and interest payable under Section 201(1-A) of the Act. Relevant to mention that such prayer has not been objected by the Learned DR with all his fairness.

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6. Having heard the Learned Counsel appearing for the parties, having regard to the facts and circumstances of the case, particularly, the order passed by the Hon'ble High Court following the judgment passed by the Hon'ble Apex Court in the matter of Eli Lilly & Co. (India) (P.) Ltd., reported in 312 ITR 225 (SC), we set aside the issue to the file of the Learned AO with the direction upon him to determine the quantum of default under Section 201(1) of the Act and interest payable under Section 201(1-A) of the Act having regard the observation made by the Hon'ble Delhi High Court as above and to pass a reasoned order. The Learned AR is further directed to grant an opportunity of being heard to the assessee while determining the quantum of default and interest payable thereon against the assessee and to pass the orders accordingly.

7. In the result, appeals of the assessee are allowed for statistical purposes.

This Order pronounced in Open Court on 11/06/2024

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Dated 11/06/2024

Priti Yadav, Sr.PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DEL