

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No.970/Ahd/2024
Asstt.Year : 2015-16**

Shankheswar Buildwell Ltd. Adani Corporate House Shantigram Nr.Vaishno Devi Circle SG Highway, Khodiyar Ahmedabad382 421. Gujarat. PAN : AACS 5788 F	Vs	ITO, Ward-3 (TDS) Ahmedabad.
---	----	---------------------------------

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Biren Shah, AR
Revenue by :	Shri Ravindra, SR.DR

सुनवाई की तारीख / **Date of Hearing** : 09/10/2024
घोषणा की तारीख / **Date of Pronouncement**: 09/10/2024

आदेश / O R D E R

This is assessee's appeal against the order of the ld. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Bengaluru dated 8.3.2024 for the Asst.Year 2014-15 passed under section 250 of the Income Tax Act, 1961 ("the Act" for short).

2. The assessee has raised the following grounds in the appeal against the impugned order of the ld.CIT(A).

- 1. In law and on the facts and in the circumstances of the case, the order u/s 250 of the Act passed by the Ld. CIT (A) is arbitrary, erroneous, contrary to the provisions of law and on facts.*
- 2. In law and in the facts and circumstances of the case of the Appellant, the order u/s 250 of the Income Tax Act, 1961 passed by Ld. CIT(A) is without considering the facts of the case and responses filed by the appellant, is bad in law and deserves to be cancelled.*

3. *In law and in the facts and circumstances in the case of the appellant, the Ld. CIT(A) has grossly erred in upholding order passed u/s 201(1)/201(1A) of the Act treating appellant as assessee in default u/s 201(1) of the Act for not deducting TDS u/s 194-IA of the Act amounting to Rs.14,65,080/- without appreciating the fact that it is not required to deduct TDS as appellant has purchased agriculture land.*
4. *In law and in the facts and circumstances in the case of the appellant, the Ld. CIT(A) has grossly erred in upholding interest charged @ 1% u/s. 201(1A) of the Act amounting to Rs.13,00,036/-.*

The appellant craves leave to add to alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

3. A perusal of the above grounds the assessee aggrieved by the action of the Revenue authorities in passing order under section 201(1)/201(1A) of the Act for non-deduction of the TDS. The Revenue passed the impugned order treating the assessee as “assessee-in-default” for not deducting TDS under section 194-IA of the Act.

As the facts emanate from the Revenue’s orders, the assessee has purchased agriculture land which is not a taxable entity. The land was situated at Virochan nagar, Sanand, Ahmedabad and as per the revenue record, the land is an agriculture land which is not a “capital asset”. Further, the area situated beyond 8 Kms. Of the limits of the municipality limit and also had population less than 10,000/-.

4. Similar issue stands adjudicated by the Co-ordinate Bench of the ITAT in the case of Hiten Tulshibhai Engineer Vs. ITO, (2023) 157 taxmann.com 81 (Ahd-Tribunal). Since no taxability arise out of the sale of the agriculture land, which cannot be treated as “capital asset”, the assessee cannot be treated as “assessee-in-default” in accordance with the provisions of section 201(1) of the Act. Thus, the grounds of appeal of the assessee are allowed.

5. In the result, the appeal of the assessee is allowed.

Dictated on the Open Court, typed and pronounced on 9th October, 2024.

Copy of this order be given to the assessee. The Registry is directed to dispatch as per procedure.

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Ahmedabad, dated 09 /10/2024