

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.3449/Del/2024, A.Y. 2017-18

Santur Builders Private Limited E-6, Greater Kailash-1, New Delhi PAN: AAICS4666F	Vs.	Income Tax Officer, Ward 77(1), TDS Ward, Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Sarthak Jain, CA
Respondent by	Ms. Indu Bala Saini, Sr.DR

Date of Hearing	12/11/2024
Date of Pronouncement	13/11/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2017-18 filed by the Appellant/assessee is directed against the order dated 26.06.2024 passed by the Commissioner of Income Tax (Appeals)-23, New Delhi [hereinafter, the 'CIT (A)'].

2. Following grounds are raised in this appeal: -

"1. That on the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) -23, Delhi (Ld. CIT (A)) has erred in confirming the order dated December 27, 2033 passed u/s.201(1)/201(1A) of the Income Tax Act, 1961 ("Act") passed by the Income Tax Officer, Ward-77(1), Delhi [AO], in

complete violation of the principles of natural justice and also without fair and objective application of mind to the facts of the case and law and hence liable to be quashed.

2. On the facts and circumstances of the case and in law, the Ld. CIT (A)/AO erred in not appreciating the fact that the quantum of payment made to HUDA of Rs 3.57,12,500/- is factually incorrect as against correct amount of Rs. 1,31,62,500/-in spite of specific submission of the appellant and thus action of the Ld. CIT (A)/AO in confirming the same is erroneous, bad in law and must be quashed.

3. On the facts and circumstances of the case and in law, the Ld. CIT (A)/AO erred in sustaining the demand of Rupees 7,14,250/- under section 201(1) and in charging interest on such amount of Rs 5,99,970/- under sections 201(1A) of the Income Tax Act aggregating to Rs. 13,14,220/- on wrong quantum of payment made to HUDA of Rs. 3,57,12,500/-. The action of the Ld. CIT (A)/AO in confirming the same is erroneous, bad in law and must be quashed.

4. On the facts and circumstances of the case and in law, the CIT (A) erred in sustaining the action of AO in treating the appellant as assessee in default for not deducting TDS under section 194C of the act on amount of External Development Charges paid to HUDA ignoring the facts that the payment to HUDA was made on the direction of Directorate of Town and Country Planning Haryana, Chandigarh, local authority established under the State Act, on which no liability of tax arises. The action of the Ld. CIT (A)/AO in confirming the same is erroneous, bad in law and must be quashed.

5. On the facts and circumstances of the case and in law, the Ld. CIT (A)/AO erred in not appreciating the fact that there was no agreement or contract between the appellant and HUDA and the payment was made on the direction of The Directorate of Town and Country Planning Haryana (DTCP) as such no liability of TDS arises on such payment. The additions have been made on surmises and conjectures. Thus, the said addition treating appellant as assessee in default for non-deduction of tax have no merit and is liable to be quashed.

6. *On the facts and circumstances of the case and in law, the CIT(A) erred in sustaining the action of AO in charging interest of Rupees 5,99,970/- under section 201(1A) on account of non-deposit of TDS ignoring the fact that the company was not required to deduct TDS on payment made to HUDA. The action of the Ld. CIT(A) / AO in confirming the same is erroneous, bad in law and must be quashed.*

7. *That the Ld. AO/Ld. CIT(A) has erred on the facts and circumstances of the case and in law in initiating the penalty proceedings under section 271C read with section 272A(2)(g) of the Act.*

That above grounds of appeal are mutually exclusive and without prejudice to each other.

The appellant craves leave to add, alter, amend and/ or modify any of the ground ground(s) during or before the hearing of the appeal.”

2.1 In nutshell, the appellant/assessee has challenged the chargeability of tax of Rs.7,14,250/- under section 201(1) and interest of Rs.5,99,970/- under section 201(1A) of the Income Tax Act, 1961 (hereinafter the 'Act'). Besides this, the initiation of penalty under section 271C r.w.s. 272a(2)(g) of the Act was also challenged.

3. The relevant facts giving rise to this appeal are that the appellant/assessee, a real estate developer, was developing a housing project at Sohana, Gurugram. The Dy. Commissioner of Income Tax (TDS), Panchkula surveyed the office premises of Haryana Urban Development Authority (hereinafter, the 'HUDA') and Sky-High Land Construction Pvt. Ltd. under section 133A of the Act on 09.02.2017 and 14.02.2017 respectively. It was noted by the DCIT (TDS),

Panchkula that the payment of External Development Charges (hereinafter 'EDC') made to the HUDA was liable to Tax Deduction at Source (hereinafter, the 'TDS') in the hands of various payers/persons including the appellant/assessee. The outcome of the said survey was circulated, vide a report dated 15.03.2017, amongst various Assessing Officer of the TDS charges for taking necessary action in the cases of persons who paid EDC charges to the HUDA. As per the Assessing officer, the appellant/assessee has paid EDC charges of Rs. 3,57,12,500/- as detailed below:-

F.Y. 2016-17	Date of payment as per ledger account	Amount (Rs.)
EDC amount paid to HUDA	19.01.2017	1,31,62,500/-
	19.01.2017	1,68,76,000/-
	19.01.2017	5,67,4000/-
Total		3,57,12,500/-

Thereafter, the Assessing Officer (TDS) issued show cause notice to the appellant/assessee for chargeability of TDS and consequential interest on EDC. Dissatisfied with the appellant's submission filed during the said proceedings, the Assessing Officer (TDS) raised the demand of tax and interest thereon under section 201(1) and 201(1A) of the Act. Aggrieved, the appellant/assessee filed appeal before the Ld. CIT(A), however, it did not succeed.

4. At the outset, the Ld. AR submitted that the issue of TDS had been decided in favour of the Revenue by the Hon'ble High Court of

Delhi in the case of Puri Construction Pvt. Ltd. & Others in the W.P.(C) 9483/2019 & CM APPL 39041/2019 vide order dated 13.02.2024. It was further submitted that the SLP is still pending against the said order of the Hon'ble High Court. We appreciate this submission of the Ld. AR. His argument was confined to the issue of quantum of EDC paid by the appellant/assessee. He submitted that the appellant/assessee had paid the sum of Rs.1,31,62,500/- as against Rs.3,57,12,500/- mentioned in the order passed under section 201(1) and 201(1A) of the Act. It was categorically submitted by the Ld. AR that the appellant/assessee had not paid any sum other than sum of Rs.1,31,62,500/- on 19.01.2017. The remaining figures were challenged by him. He submitted that the Assessing Officer (TDS) had wrongly taken the sum of Rs.3,57,12,500/- as against the actual sum of Rs.1,31,62,500/-. He contended that neither the Assessing Officer (TDS) nor the CIT(A) took note of the specific submission in this regard. It was contended that the appellant's submission filed during the proceedings before the lower authorities were summarily dismissed without assigning any reason thereof. He thus, prayed for relief.

5. The Ld. Senior Departmental Representative (hereinafter, the 'Sr. DR.')

requested for setting aside the issue before the Assessing Officer (TDS) for proper verification of quantum of EDC charges paid by the appellant/assessee and doing needful accordingly.

6. We have heard both the parties and have perused the material available on the record. In the interest of justice and considering all the afore-stated observations, we are of the considered view that the appellant-assessee deserves reasonable opportunity of being heard and the Revenue also has to verify the sum paid/payable as EDC by the appellant/ assessee. In view thereof, without offering any comment on merit of the case, we deem it fit to set aside the impugned order and remit the matter back to the file of the Assessing Officer (TDS) for proper verification of quantum of EDC charges paid by the appellant/assessee and doing needful accordingly. The appellant-assessee should ensure compliances during the set-aside proceedings.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open Court on 13th November, 2024

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Dated:13/11/2024

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI