

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' NEW DELHI)**

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No. 2179/Del/2024 (A.Y. 2015-16)

Emaar India Limited 306-308, Square One, C-2, District Centre, New Delhi PAN: AABCE4308B	Vs.	DCIT Circle- 74(1) AayakarBhawan, Laxmi Nagar, Delhi
Appellant		Respondent
Assessee by	Sh. Rohit Jain, Adv, Sh. Deepesh Jain, Adv& Ms. Aditi Garg, CA	
Revenue by	Sh. Rajesh Kumar Dhanista, Sr. DR	
Date of Hearing		29/01/2025
Date of Pronouncement		07/02/2025

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Assessee against the order of the Commissioner of Income Tax Appeals-23, Delhi ['Ld. CIT(A)' for short] dated 05/03/2024 for the Assessment Year 2015-16.

2. The Grounds of Appeal are as under:-

"1. That the Commissioner of Income Tax (Appeals) (Ld. CIT)" has grossly erred both in law as well as in respect of the facts of the case, in passing the Appellate Order under section ('w/s') 250 of the Income Tax Act ('the Act') which is bad in law and is liable to be quashed;

2. That the Ld. CIT has grossly erred in law by concluding its order on Section 194C of the Act instead of Section 1941 of the Act thereby changing the provision of law of the transaction basis which assessment/verification was concluded while passing the impugned order. Accordingly, the order passed by the Ld. CIT is void ab initio, hence liable to be quashed;

2.1 That the Ld. CIT has grossly erred in disregarding the decision of the Hon'ble ITAT of Chennai wherein the ITAT had held that the provisions of Section 251 of the Act do not empower the CIT(A) to change the provision of law on which the assessment was made,

2.2 That the Ld. CIT has erred in ignoring judgment of the Hon'ble High Court of Delhi (DHC") in the case of the Appellant, wherein the DHC dismissed the plea of the revenue in Assessee's own case (W.P.(C) 6738/2022) and held that referring to a wrong provision for determination of TDS liability is without merits and determination of the nature of payment is pre-requisite for determining the provision of law & further that the reasoning of the Assessing Officer of finding whether the transaction is subject to TDS is important & diverging/differing from such reasoning would tantamount to a flawed approach. Hence, the Ld. CIT has erred in passing the impugned order in contravention to the order of the DHC by concluding its order basis a TDS provisions which is different from TDS provision referred by the Assessing officer. Therefore, the impugned order is out of jurisdiction, bad in law and liable to be quashed.

3. That the Ld. CIT has grossly erred in holding the Appellant liable to deduct TDS in respect of External Development Charges ("EDC") paid to Director of Town and Country Planning ("DTCP") through Haryana Urban Development Authority ("HUDA"). The Ld. CIT failed to appreciate the facts of the case and thereby, arbitrarily rejected the explanations and evidence submitted by the Appellant at the time of Appellate proceedings;

4. That the Ld. CIT has erred in law & in facts of the case in disregarding the provisions of section 196 of the Act which overrides the other provisions of Chapter XVII-B of the Act, the EDC payments made to DTCP/ through HUDA to DTCP, are payments made to Government and are thus not liable to withholding of tax;

4.1 That the Ld. CIT has failed to appreciate the agreement entered between Appellant and DTCP wherein it was agreed that all the EDC payment needs to be deposited at DTCP counter and enhanced EDC payment must be paid directly to DTCP. Thus, from the agreement it is evident that it is DTCP who determines, levy, collects and spends through its designated authority;

4.2 That the Ld. CIT disregarded the 3(3)(ii) of HDRUA Act which states the quantum, manner and mechanism of the payment of EDC charges are determined and communicated by Director of DTCP. Thus, it is abundantly clear that the power to levy, charge and collection of the amount of EDC rests with DTCP, which is a nodal department of the State Government of Haryana;

5 That the Appellant reserves its right to add, amend or withdraw any grounds of appeal, before the appeal is finally heard.”

3. Brief facts of the case are that, an order u/s 201(1)/201(1A) of the Income Tax Act, 1961 ('Act' for short) came to be passed on 25/03/2022 by the Assessing Officer (TDS Officer) treating the Assessee as 'Assessee in default' qua non deduction of tax at source u/s 194A of the Act on payment of External Development Charges ('EDC'). The Ld. A.O. computed the TDS u/s 194I of the Act at 10% on the said EDC of Rs. 131,62,71,519/- along with interest u/s 201(1A) and raised demand of Rs. 25,09,55,212/- vide order dated 25/03/2022. Aggrieved by the said order dated 25/03/2022, the Assessee preferred Appeal before the CIT(A).

4. Apart from challenging the order of the A.O. dated 25/03/2022, passed u/s 201(1)/201(1A) of the Act before the Ld. CIT(A), the Assessee also questioned the same before the Hon'ble High Court of Delhi in Writ Petition No. 6738/2022. The Hon'ble High Court of Delhi allowed the said writ petition along with other petitions by quashing the impugned orders passed by the A.O. dated 25/03/2022 raising a demand u/s 201(1)/201(1A) of the Act. Consequent to the Judgment of the Hon'ble High Court, an order giving effect has also been passed by the A.O. on 14/06/2023 by reflecting the Revised demand after the relief allowed by the Hon'ble High Court of Delhi as 'NIL'.

5. However, an order came to be passed on 05/03/2024 by the Ld. CIT(A) in the Appeal filed by the Assessee, wherein the Ld. CIT(A) held that the Assessee was required to deduct TDS on the payments u/s 194C of the Act and directed the A.O. to re-compute the demand raised considering the applicability of TDS at the rate of 2% as per provision of Section 194C of the Act. Aggrieved by the order of the Ld. CIT(A) dated 05/03/2024, the Assessee preferred the present Appeal on the Grounds mentioned above.

6. The Ld. Counsel for the Assessee vehemently submitted that the very order of the A.O. passed u/s 201(1)/201(1A) of the Act has been quashed by the Jurisdictional High Court in Writ Petition No. 6738/2022 vide order dated 24/03/2023 and pursuant to the Judgment of the Hon'ble High Court, an order giving effect has also been passed by the A.O. by revising the demand as NIL, however, the Ld. CIT(A) ignoring the order of the Hon'ble High Court, directed the A.O. to re-compute the demand raised considering the applicability of TDS rate of 2% as per provisions of Section 194C of the Act, therefore, sought for allowing the Appeal.

7. Per contra, the Ld. Departmental Representative contended that the Ld. CIT(A) has relied on the subsequent Judgment of M/s Puri Construction Pvt. Ltd. Vs. Addl. Commissioner of Income Tax (2004) 159 Taxman.com 444, Delhi, wherein held that TDS u/s 194C is deductible on the payment made to HUDA and the earlier decisions of the Tribunal on the said issue has been reversed by the Court. The Ld. Departmental Representative relying on the orders of the Lower Authorities sought for dismissal of the Appeal.

8. We have heard both the parties and perused the material available on record. It is not in dispute that the order of the A.O. dated 25/03/2022 passed u/s 201(1)/201(1A) of the Act has been called in question before the Jurisdictional High Court and the Hon'ble High Court vide order dated 24/03/2023, quashed the said order. The Judgment of the Hon'ble High Court dated 24/03/2023 has not been challenged by the Department and the same has reached finality. Once the order dated 25/03/2022 passed by the A.O. quashed by the Hon'ble High Court, the same becomes non-est order and the Appeal filed by the Assessee should have been dismissed having become in-fructuous.

9. As per the provision of Section 251 of the Act, the powers of CIT(A) in the Appeal filed under section 250 of the Act are co-terminus with that of the Assessing Officer, due to which CIT(A) has power of enhancement of assessment and penalty and can also reduce the amount of refund which AO also can do. The said power can be exercised by the CIT(A) only when there is an existence of enforceable order of the A.O. and which should have been impugned before the CIT(A). When there is no existence of the Order of the Assessing Officer, which has been quashed by the Hon'ble High Court, the question of exercising the power confirmed under section 251 of the Act doesn't arise. In the present case the Ld. CIT(A) directed the A.O. to re-compute the demand

raised considering the applicability of TDS rate of 2% as per Provisions of Section 194C of the Act by sitting on the Judgment of the Hon'ble Jurisdiction High Court wherein the Hon'ble High Court has quashed the very order of the A.O. dated 25/03/2022. Thus, Ld. CIT(A) committed grave error in directing the A.O. to re-compute the demand. Considering the above facts and circumstance we set aside the order of the Ld. CIT(A) by allowing the Grounds of appeal of the Assessee.

10. In the result, Appeal of the Assessee is allowed.

Order pronounced in the open court on 07th February, 2025

Sd/-

**(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER**

Date:- 07.02.2025

R.N, Sr.P.S*

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

