

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.1064/Ahd/2025
Assessment Year: 2018-19**

Aakash Pursottambhai Vaghela, 55, Aarana Bungalow, Sevasi Main Road, Sevasi Village, Vadodara – 391 101, Gujarat. [PAN – AISPV 3364 N] (Appellant)	Vs.	Income Tax Officer, Ward TDS – 1, Aayakar Bhavan, Race Course Circle, Vadodara – 390 007 (Gujarat). (Respondent)
Assessee by	Shri Hemant Suthar, AR	
Revenue by	Smt. Mamta Singh, Sr. DR	
Date of Hearing	23.06.2025	
Date of Pronouncement	26.06.2025	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the assessee against the order of the Addl./JCIT(A), Prayagraj (in short “Addl. CIT(A)”) dated 05.03.2025 for the Assessment Year (A.Y.) 2019-20 in the proceedings under Section 201(1)/ 201(1A) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

2. The brief facts of the case are that in the course of assessment proceedings of the assessee for the A.Y. 2018-19, the Assessing Officer (AO) noticed that the assessee did not deduct tax at source in respect of certain transactions on which it was liable to deduct tax under Section

194IA and 194J of the Act. The AO found that the assessee had purchased immovable property at R.S. No.177/2, Block No.214/A and R.S. No.176, Block No.216/A, Ampad, Vadodara for a consideration of Rs.1,61,00,000/- from four co-owners. Accordingly, the assessee had made payment of Rs.40,25,000/- to each of the four co-owners on 30.01.2018 on which no TDS was made under the provisions of Section 194IA of the Act. Further, the assessee had also purchased another property being land at Sevasi R.S. No.980/1 and 980/2, Block No.885 for which payment of Rs.22,66,133/- was made on 30.08.2017 to various persons on which no TDS under Section 194IA of the Act was made. In addition, the assessee had made payment of Audit Fee of Rs.39,000/- on 31.03.2018 to Mukund and Rohit which was liable to TDS @ 10% under Section 194J of the Act but no TDS was made by the assessee.

2.1 On the basis of the above defaults, the TDS AO had initiated proceedings under Section 201(1)/ 201(1A) of the Act for failure to pay tax at source (TDS) under Section 194IA and 194J of the Act. The assessee was treated as “assessee in default” under Section 201(1)/201(1A) of the Act and total tax liability of Rs.3,19,728/- was worked out as under: -

S.No.	Name of the concern/individual	Nature of payment/section involved	Date of payment	Amount of payment	TDS to be deducted	Delay in months	Interest u/s 201(1A) @ 1%
1	Vikram P Mahurkar	Purchase of property at R.S. No.177/2, Block No.214/A and R.S. No.176, Block No.216/A, Ampad, Vadodara u/s.194IA @ 1%	30.01.2018	4025000	40250	61	24553
2	Sharmila Vikram Mahurkar	Purchase of property R.S. No.177/2, Block No.214/A and R.S. No.176, Block	30.01.2018	4025000	40250	61	24553

		No.216/A, Ampad, Vadodara u/s.194IA @ 1%					
3	Visvang Vikram Muhurkar	Purchase of property R.S. No.177/2, Block No.214/A and R.S. No.176, Block No.216/A, Ampad, Vadodara u/s.194IA @ 1%	30.01.2018	4025000	40250	61	24553
4	Samarjit Vikram Mahurkar	Purchase of property R.S. No.177/2, Block No.214/A and R.S. No.176, Block No.216/A, Ampad, Vadodara u/s.194IA @ 1%	30.01.2018	4025000	40250	61	24553
5	Mukund & Rohit (Certificate of accountant submitted but invalid due to different A.Y.)	Audit fee u/s.194J @10%	31.03.2018	39000	3900	59	2301
6	Various persons	Purchase of property u/s.194IA @1%	30.08.2017	2266133	22661	66	14956
Total				1,84,05,133	1,87,561		1,15,469

2.2 Accordingly, an order under Section 201(1)/201(1A) of the Act was passed on 02.02.2023 directing the assessee to pay the total tax liability of Rs.3,19,728/-.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority which was decided by the Ld. Addl. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now, the assessee is in second appeal before us. The following grounds have been taken in this appeal: -

1. *The Ld. CIT (Appeals)/Addl./JCIT (A), Prayagraj, has grossly erred in law and in facts in dismissing the appeal ex-parte without affording reasonable opportunity of being heard to the appellant. The appeal of the appellant may kindly be restored to the file of the Ld. CIT (Appeals) and may please be directed to afford reasonable opportunity of being heard.*
2. *The Ld. CIT (Appeals)/Addl./JCIT (A), Prayagraj has grossly erred in law and in facts in dismissing the appeal ex-parte without properly appreciating the merits of the case considering the Provisions of the Income Tax Act and amendments thereto. Thus, it is prayed that the impugned order may please be set-aside to the file of the Ld. CIT(Appeals) and may please be directed to afford proper opportunity of being heard.*
3.
 - a) *The Ld. CIT (Appeals)/ Addl./JCIT (A) has erred in law and facts in confirming the action of the Ld. A.O., in holding that the appellant has failed to deduct TDS on an amount of Rs.1,61,00,000/- alleged to be payments towards immovable property to which provisions of Sec. 194-IA is attracted disregarding the submissions of the appellant and applicable law. The Ld. CIT(A)/Addl./ JCIT(A) has erred in holding that the appellant has failed to deduct TDS on an amount of Rs.1,61,00,000/- alleged to be payments towards immovable property to which provisions of Sec. 194-IA is attracted.*
 - b) *The Ld. CIT (Appeals)/Addl./JCIT (A) has erred in law and facts in confirming the action of the Ld. A.O. in invoking provisions of section 201(1) and 201(1A) and consequently calculating amount payable u/s. 201(1) of Rs. 1,61,000/- and interest u/s. 201(1A) of Rs. 98,212/-*
4. **Without prejudice to the above grounds of appeal:**
 - a) *The Ld. CIT (Appeals)/Addl./JCIT (A) has erred in law and facts in confirming the action of the Ld. A.O. in not considering the provisions of section 194-IA in respect of deduction of TDS @ 1%, as the said provision are not applicable to the appellant as the purchase consideration paid by the appellant is only Rs.22.66,133/-being less than the threshold limit.*
 - b) *The Ld. CIT (Appeals)/Addl./JCIT (A) has further erred in law and facts in confirming the action of the Ld. AO in Invoking provisions of section 201(1) and 201(1A) and consequently calculating amount payable u/s. 201(1) of Rs.22.661/- and interest u/s. 201(1A) of Rs.14,956/-*

5. a) *The Ld. CIT (Appeals)/Addl./JCIT (A) has erred in law and facts in confirming the action of the Ld. A.O. in holding that the appellant has failed to deduct TDS on an amount of Rs.39,000/- alleged to be payments towards audit fees to which provisions of Sec. 194J is attracted in disregarding the submissions of the appellant and in defiance of law.*
- b) *The Ld. CIT (Appeals)/Addl./JCIT (A) has further erred in law and facts in confirming the action of the Ld. AO in invoking provisions of section 201(1) and 201(1A) and consequently calculating amount payable u/s. 201(1) of Rs.3,900/-and interest u/s. 201(1A) of Rs.2,301/-.*
6. *The Ld. CIT (Appeals)/Addl./JCIT (A) has erred in law and facts in confirming the action of the Ld. AO in charging interest 1% per month u/s. 201(1A) of Rs. 16,698/-. The impugned interest charged of Rs.16,698/- being bad in law and the same may please be directed to deleted.*
7. *Your appellant craves liberty to add, amend, substitute, or withdraw any ground of appeal hereinabove contained.*

5. The first two grounds were not pressed by the Ld. AR. Hence, these grounds are dismissed.

6. The ground no.3 pertains to invoking the provisions of Section 201(1)/201(1A) of the Act in respect of the payment of Rs.1,61,00,000/- to four persons towards acquisition of immovable property. Shri Hemant Suthar, Ld. AR of the assessee explained that the payment of Rs.40,25,000/- each was made to four co-owners of the property namely Vikram P. Mahurkar, Sharmila Vikram Mahurkar, Visvang Vikram Mhurkar & Samarjit Vikram Mahurkar towards the purchase of property at Ampad, Vadodara. The Ld. AR submitted that the payment made to each of the co-owners was less than Rs.50 Lakhs, hence, the provisions of Section 194IA of the Act was not applicable to these transactions. He explained that as per the provisions of Section 194IA of the Act at the relevant point of time, no deduction under Section 194IA of the Act was required to be

made where consideration for transfer of an immovable property was less than Rs.50 Lakhs. In this regard, he relied upon the decision of Co-ordinate Bench of this Tribunal in the case of *Bhikhabhai Hirabhai Patel vs. DCIT (155 taxmann.com 87) (Ahd.-Trib.)* and in the case of *Archanaben Rajendrasingh Deval vs. ITO TDS (173 taxmann.com 722) (Ahd.-Trib.)*.

6.1 Per contra, Smt. Mamta Singh, Ld. Sr. DR submitted that the consideration for transfer of immovable property has to be taken at the gross value and not the payment made to individual co-owners. She explained that the consideration for the transfer of immovable property in the present case was Rs.1,61,00,000/- and, therefore, the provision of Section 194IA of the Act was squarely applicable. According to the Ld. Sr. DR, the assessee was required to deduct TDS under Section 194IA of the Act even if payment made to individual co-owners was less than Rs.50 Lakhs.

6.2 We have carefully considered the rival submissions. The undisputed facts of the case are that the total consideration paid by the assessee for the purchase of immovable property was Rs.1,61,00,000/-. However, the payment made to four co-owners was Rs.40,25,000/- each, which was less than Rs.50 Lakhs. The Co-ordinate Bench of this Tribunal in the case of *Bhikhabhai Hirabhai Patel (supra)* has held that where share of consideration paid by the assessee to each transferor for acquisition of immovable property was less than Rs.50 Lakhs, the assessee was not under obligation under Section 194IA to deduct TDS on such consideration on behalf of the transferor/seller. An identical view was taken by the Co-ordinate Bench of this Tribunal in the case of *Archanaben Rajendrasingh Deval (supra)*, as well. It is also noted that a proviso to

Section 194IA(2) of the Act was introduced w.e.f. 01.10.2024 vide Finance (No.2) Act 2024, which reads as under :-

Provided that where there is more than one transferor or transferee in respect of any immovable property, then the consideration shall be the aggregate of the amounts paid or payable by all the transferees to the transferor or all the transferors for transfer of such immovable property.

6.3 This proviso stipulates that where there is more than one transferor or transferee in respect of any immovable property, then the aggregate amount of consideration paid by the transferee to all the transferors is required to be considered for the purpose of Section 194IA(2) of the Act. However, this amended clause is applicable w.e.f. 01.10.2024 only. In the present case, the payment was made by the assessee much earlier on 30.01.2018 and, therefore, this amended provision cannot be applied to these transactions. Respectfully following the decision of the Co-ordinate Bench of this Tribunal on this issue as well as the amended provision of Section 194IA(2) of the Act, we are of the considered opinion that the assessee was not required to deduct TDS u/s 194IA of the Act in the current year where the consideration paid to each of the transferor was less than Rs.50 Lakhs. Accordingly, the demand raised by the AO u/s 201(1)/201(1A) of the Act in respect of the payment of Rs.40,25,000/- to the four co-owners for purchase of property is deleted. The ground of the assessee is allowed.

7. The ground no.4 pertains to demand raised u/s 201(1)/201(1A) of the Act in respect of purchase of another property for a total consideration of Rs.22,66,133/-. The Ld. AR submitted that since the total payment made in this case was less than Rs.50 lakhs, provision of Section 194IA of the Act was not applicable at all.

7.1 Per contra, the Ld. Sr. DR submitted that though the assessee had made payment of Rs.22,66,133/- in this case, stamp duty value of the property was Rs.67,98,400/-. Therefore, the assessee was liable to deduct tax under Section 194IA of the Act and accordingly the AO had correctly invoked the provisions of Section 201(1)/201(1A) of the Act in respect of this transaction.

7.2 We have considered the rival submissions. There is no dispute to the fact that the total consideration paid by the assessee in this case was Rs.22,66,133/- only. The provision of Section 194IA(2) of the Act was amended w.e.f. 01.04.2022 whereby the stamp duty value of the property was required to be taken into consideration for deduction of TDS. However, no deduction was required to be made under Section 194IA(1) of the Act in the case where the consideration for transfer of immovable property and the stamp duty value of the property, both, was less than Rs.50 lakhs. Prior to 01.04.2022, there was no requirement to take into account the stamp duty value of the property for applicability of provision of Section 194IA of the Act. In the present case, the transaction was made by the assessee much earlier on 30.08.2017, when there was no requirement to take into account the stamp duty value of the property. Therefore, the AO was not correct in considering the stamp duty value of the property to invoke the provisions of Section 194IA of the Act. Since the consideration paid by the assessee for this property was less than Rs.50 Lakhs, there was no requirement to deduct TDS under Section 194IA of the Act. Accordingly, the demand raised by the AO under Section 201(1)/201(1A) of the Act in respect of this transaction is cancelled. This ground of the assessee is allowed.

8. Ground No.-5 pertains to non-deduction of TDS under Section 194J of the Act on the audit fee and consequent liability under Section 201(1)/201(1A) of the Act. The assessee had paid audit fee of Rs.39,000/- on 31.03.2018 on which he was liable to deduct TDS under Section 194J of the Act. The Ld. AR submitted that as per the 4th proviso to Section 201(1A) of the Act, the interest was to be computed from the date on which the tax was deducted to the date of furnishing return of income by the payee. He explained that the payee had shown the receipt as income on payment basis in the next year. Therefore, interest chargeable was required to be recomputed accordingly.

8.1 On the other hand, Ld. Sr DR supported the order of the AO in this regard.

8.2 We have considered the rival submissions. Since there was default of non-deduction of TDS under Section 194J of the Act in respect of audit fee payment of Rs.39,000/-, the assessee was rightly treated as “assessee in default” under Section 201(1) of the Act. As regards interest u/s 201(1A) of the Act, the AO is directed to verify the payment of tax on this amount by the recipient and, thereafter, restrict the interest chargeable for the period from date on which tax was deductible under Section 194J of the Act to the date of furnishing of return of income by the recipient. The matter is set aside to the file of the jurisdictional TDS AO for this limited purpose. The assessee is also directed to produce the relevant evidences in this respect before the AO in the course of set aside proceeding. In case of any non-compliance by the assessee, the AO will be free to re-decide the matter on the basis of the materials as available on record. The ground taken by the assessee is partly allowed for statistical purpose.

9. Ground No.-6 was not pressed by the Ld. AR, hence the same is dismissed.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 26th June, 2025.

Sd/-
(T.R. SENTHIL KUMAR)
Judicial Member
Ahmedabad, the 26th June, 2025

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
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By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad