

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, F: NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.7274/Del/2018
[Assessment Year: 2009-10]**

Giza Builders & Developers Pvt. Ltd., (Now merged with M/s Karida Real Estates Pvt. Ltd.) Seating 4, Unit No.- 119, First Floor, Vardhman Star City Mall, Sector-7, Dwarka, New Delhi-110075.	Vs	Income Tax Officer, Ward- 11(2), CR Building, New Delhi.
PAN- AACCG7585M		
Assessee		Revenue

Assessee by	Shri R.S. Singhvi, CA Shri Rajat Garg, CA & Shri Satyjeet Goel, CA
Revenue by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	25.09.2025
Date of Pronouncement	26.09.2025

ORDER

PER BRAJESH KUMAR SINGH, AM:

This appeal by the assessee is directed against the order dated 29.08.2018 of the Ld. Commissioner of Income Tax (Appeals)-35, New

Delhi, [hereinafter referred to as the 'Ld. CIT(A)] arising out of the order dated 09.12.2016 passed by the ITO, Ward-11(2), (hereinafter referred to as the 'Ld. AO'), under Section 144/ 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), pertaining to Assessment Year 2009-10.

2. The only issue in this appeal is against the disallowance of Rs. 50,16,875/- under Section 40(a)(i) of the Act made by the AO in the aforesaid assessment order. In this regard, the Ld. AR of the assessee submitted that, in respect of the said non-deduction of TDS, Ward-1(3)(2), (Intl. Taxation), New Delhi had taken cognizance and passed an order u/s 201(1)/201(1)(A) r.w.s. 195 of the Act, dated 29.03.2016, determining demand at Rs. 21,88,265/-. The assessee further submitted that the said demand of Rs. 21,88,265/- was settled by the assessee under VSV Scheme, and submitted Form 5 dated 13.10.2022 issued by the Ld. CIT(IT)-2, New Delhi (which is placed at Pg. no. 26 of the Paper Book). Further, it was submitted that the appeal against the order u/s 201(1)/201(1)(A) was allowed to be withdrawn by the ITAT, Delhi Bench vide order dated 29.06.2021 (placed at Pg. no. 27 -28 of the Paper Book). In view of

these facts, it was submitted that the disallowance of Rs. 50,16,875/- under Section 40(a)(i) made under Section 147/144 of the Act, will not survive as the consequent liability under Section 201(1)/201(1)(a) has been settled under VSV Scheme as per CBDT circular no. 7/2020 dt. 04/03/2020.

3. We have heard both the parties and perused the material available on record. The assessee has relied upon Question no. 31 of CBDT Circular no. 7/2020 dated 04.03.2020, on the subject- 'Clarifications on provisions of Direct Tax Vivad Se Vishwas Bill, 2020'. The relevant extract of the clarification is reproduced as under:

“Question no. 31. Where assessee settles TDS liability as deductor of TDS under Vivad Se Vishwas (i.e. against order u/s 201), when will he get consequential relief of expenditure allowance under proviso to section 40(a)(i)I(ia)?

Answer: In such cases, the deductor shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)(ia) in the year in which the tax was required to be deducted.

To illustrate, let us assume that there are two appeals pending, one against the order under section 201 of the Act for non-deduction of TDS and another one against the order under section 143(3) of the Act for disallowance under section 40(a)(i) / (ia) of the Act. The disallowance under section 40 is with respect same issue on which order under section 201 has been issued. If the dispute is settled with respect to order under section 201, assessee will not be required to pay any tax on the issue relating to disallowance under section 40(a)(i) / (ia) of the Act, in accordance with the provision of section 40(a)(i) / (ia) of the Act.”

3.1 On perusal of the above facts, it is seen that the assessee had withdrawn the appeal being ITA no.- 2501/Del/2018 relating to demand raised u/s 201(1)/201(1)(A) of the Act for the non-deduction of TDS on Rs. 50,16,875/-, and the said appeal was dismissed as withdrawn, on account of assessee settling the dispute under VSVS. The same amount of Rs. 50,16,875/- was disallowed by the AO vide order under Section 147/144 dated 09.02.2016. Therefore, the case of the assessee squarely falls under the above clarification issued by the CBDT, vide which the assessee shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)(ia) in the year in which the tax was required to be deducted where the assessee settles TDS liability as deductor of TDS under Vivad Se Vishwas (i.e. against order u/s 201 of the Act). Therefore, this appeal of the assessee is allowed and disallowance of Rs. 50,16,875/- made by AO under Section 40(a)(i) of the Act, vide order under Section 147/144 of the Act dated 09.02.2016, and confirmed by the Ld. CIT(A), is hereby deleted. Ground no. 3(b), the specific ground in this regard of the appeal, is allowed.

3.2 In view of the fact that ground no. 3(b) of appeal of the assessee being allowed, the other grounds raised in this appeal have become academic and are kept open in this case.

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

Order pronounced in the open court on 26th September, 2025.

Sd/-
[MAHAVIR SINGH]
VICE PRESIDENT

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated- 26.09.2025.

Pooja.

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,