

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH 'DB' : AGRA.**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.30/AGR/2016
(Assessment Year: 2010-11)**

Gram Vikas Kalyan Sansthan,
Nagla Aklha, Sonkh – Goverdhan Road,
Mathura – 281 123 (Uttar Pradesh).

vs. Income Tax Officer (TDS),
Agra.

(PAN : AAATG3272E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rajan Gupta, CA

REVENUE BY : Shri Shalendra Shrivastava, Sr. DR

Date of Hearing : 13.10.2025

Date of Order : 28.10.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of the Id. Commissioner of Income-tax (Appeals)-1, Agra ["Ld. CIT (A)", for short] dated 23.09.2015 for the Assessment Year 2010-11.
2. Brief facts of the case are, Gram Vikas Kalyan Sansthan is registered under Societies Registration Act, 1860 at Nagla Akkha, Sonkh, Goverdhan Road, Mathura. During the year, the society has constructed the college block and given the contract for construction to Ronit

Developers. It came to the notice of the AO that the assessee has made various payments without deducting TDS in violation of provisions of section 194C of the Income Tax Act, 1961 (for short 'the Act'). These payments included payments to :-

i)	M/s Ronit Developers	Rs.2,20,99,263/-
ii)	M/s M.M. Advertiser	Rs. 5,76,791/-
iii)	M/s Jagram Prakashan Ltd.,	Rs. 38,155/-
iv)	M/s Unique Communication	Rs. 5,75,599/-

3. Since, the assessee should have deducted the tax at source as per provisions of section 194C of the Income tax act at the time of crediting the said payments to the accounts of the contractors, which it has failed to do, thus the assessee was treated as assessee in default by the AO and amount of Rs.7,50,231/- u/s 201 (1)/201 (1A) of the Income-tax Act, 1961 (for short 'the Act') was made payable by him.
4. Aggrieved assessee preferred an appeal before the Id. CIT (A) and submitted as under :-

"1. Since the assessee was made an oral contract with M/s Ronit Developers based on no profit no loss basis plus 4% of his supervision to built one part of Engineering college. But the matter was dispute with the contractor. However, the Assessing Officer has presumed that the assessee should have deducted the tax at source as per provisions of section I94C of the income tax act at the time crediting the said payments to the account of Contractees, which it has failed to do. Thus the assessee is treated as assessee in defaults and directed to the amount u/s 201(1) & 20I(1A) of the Income tax act totaling to Rs.7,50,231/-. As per details mentioned in annexure A, B, C and D of this order, which is arbitrary, uncalled for unjustified and based on surmises and conjunctures.

2. The order passed by the Income tax Officer is erroneous and contrary to law and facts, against the weight of evidence and probabilities of the case.

3. The assessee craves leave to add, alter or vary the grounds of appeal before or at the time of hearing.”

5. Further during appellate proceedings, assessee has submitted as under :-

“During the financial year 2009-10 the society has paid Rs.2,20,00,000/- against purchase of Material to construct the Engineers block of the society., As per oral contract with the company M/s Ronit Developers Private Limited, Delhi, First the society has reimbursed all the cost of materials used for construction of engineers college and after completing of the building the M/s Ronit Developers Private Limited has charged @4% on total cost of the Engineer college as margin/profit/supervision charges. Since the society has reimbursed all the cost of the materials used in building of Engineering college during the financial year 2009-10, the society has not liable to deduct TDS on the payments to Ronit Developers Private Limited, Delhi.

The contention of the assessing officer that the assessee has credited/paid the amounts on various dates in the account of M/s Ronit Developers Private Limited, Delhi, totaling to Rs.2,20,99,263/- and debited the same in building account on 31.03.2010. During the preceding the society has never admit that the composite contract was given to M/s Ronit Developers Private Limited, Delhi for construction of building of Engineers College, (Copy of the letter submitted on dated 8.3.2013 with Agra ITO (TDS), for your ready references). At the end all the amount given to M/s Ronit Developers Private Limited, Delhi transferred to Building A/C including advance to customers (Copy of the Balance Sheet as on 31.03.2010 is enclosed herewith for your ready reference).

Since, the society has reimbursed Rs. 2,20,99,263/- M/s Ronit Developers Private Limited, Delhi against supply of Materials used in the building of the Engineers College, the provisions of section 194C of the Income tax act, 1961 is not applicable for aforesaid payment made, hence the assessee society is not treated as assessee in defaults amounting to Rs.7,50,231/-. Under Section 201(1) & 201(1A) of the Income Tax Act, 1961.

Payment for Advertisement Expenses to M/s MM Advertisers Rs. 5,76,791/-, M/s Jagran Prakashan Ltd. Rs. 38,155/-, M/s Unique Communication Rs.5,75,599/-. The aforesaid payment was paid for advertisement given in the various newspapers during the year, the parties has issued various small bills less than Rs. 30,000/- of one single bill. Therefore, the Society has not deducted TDS on the aforesaid payment made.

In view of the above and circumstances, it is prayed that fact of the case may please be judicious reviewed and the appropriate relief may please be granted.

6. After considering the submissions of the assessee, ld. CIT (A) dismissed the contentions of the assessee by observing as under :-

“9. As regards payment for the advertisement expenses it was submitted by the assessee that the payments were given to various newspapers during that year and the parties have issued small bills of less than Rs.30,000/-. In view of this monetary limit, TDS was not deducted on these payments.

9.1 I have gone through the assessment order, submissions of the assessee and other details in this regard. Submissions of the assessee do not seem to be genuine as initially it was explained before the AO that these advertisers/newspapers advertised the material without their approval and sent the bills, which they refused to take. It was submitted before AO that the matter is in dispute and they are in the process of settling this matter. However, during the appellate proceedings, it was submitted by the assessee that TDS was not deducted on these payments, as all the payments were small bills of less than Rs.30,000/-. It is seen from the details of the bills in the case of M/s M M advertisers that there were two bills of Rs.4,70,357/- and of Rs.86,184/- apart from some other small bills, making a total payment of Rs.5,76,791/-. Similarly, in the case of M/s. Unique communications, a number of bills that were of higher value than Rs.30,000/- were there. These included bills of Rs.54,504/-, Rs.85,930/-, Rs.1,72,800/-, Rs.1,75,628/-, Rs.35,280/- and Rs.36,918/- apart from some other small bills of less than Rs. 30,000/-. The total payment of Jagran Prakashan was also of Rs.38,155/- with one bill of Rs.30,515 and another of Rs.7,640/-.

9.2 Even in this context, the provisions of this section are very clear.

Subsection 5 of section 194 lays down :-

(5) No deduction shall be made from the amount of any sum credited or paid are likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed Rs.30,000/-

provided that where the aggregate of the amounts of such sums credited or paid are likely to be credited or paid during the financial year exceeds 75,000/-, the person responsible for paying such sums referred to in subsection 1 shall be liable to deduct income tax under this section.

In view of this proviso of subsection 5 of section 194C, assessee is not correct in not deducting TDS while making these payments, as the aggregate of payments made to M/s MM advertisers, M/s Jagran Prakashan and M/s Unique Communication is more than the prescribed limits. The assessing officer is correct and law in holding the assessee as assessee in default, and raising demand in terms of the section 201 (1)/(1A) of the Income tax act.

Thus the stand of the AO is hereby confirmed and the total demand raised of rupees 7,50,231/- by treating the assessee as assessee in default for not deducting TDS under section 194C is hereby confirmed.”

7. Aggrieved assessee is in appeal before us raising following grounds of appeal :-

“1. Since the assessee was made an oral contract with M/s Ronit Developers based on no profit no loss basis plus 4% of his supervision to built one part of Engineering college. But the matter was dispute with the contractor. However, the Ld/- A. O. has presumed that the

appellant should have deducted the tax at source as per provisions of section 191C of the income tax act at the time crediting the said payments to the account of Contractees, which it has failed to do. Thus the appellant is treated as appellant in defaults amounting to Rs.7,50,231/-for not deducting TDS under section 194C is hereby confirm., which is arbitrary, uncalled for, unjustified and based on surmises and conjunctures.

2. On the facts and in the circumstances of the case, the order of the Id. CIT (A) is bad in law and not in consonance with the facts of the case.

3. The Ld CIT (A) failed to appreciate the fact that all the building material was supplied by the contractor and the appellant has first to paid against building construction material.

4. The confirmation of Income tax Officer order by the Ld CIT (A) is erroneous and contrary to law and facts, against the weight of evidence and probabilities of the case.”

8. At the time of hearing, Id. AR of the assessee submitted that the issue under consideration is deduction of TDS under section 194C of the Act relating to payment made to Ronit Developers. He submitted that the issues is of disallowance of Rs.7,99,263/- for non-deduction of TDS. In this regard, he brought to our notice pages 22 to 29 of the paper book wherein a Chartered Accountant certificate was enclosed wherein it was certified that the assessee has paid or credited the sum to the account of Ronit Developers Pvt. Ltd. without deduction of whole or any part of the tax in accordance with the provisions of Chapter XVII-B. With the above submission, he submitted that Ronit Developers Pvt. Ltd. has already declared the abovesaid income in their return of income, however the Assessing Officer failed to verify whether the assessee is in default u/s 201/201(1A) of the Act for the amount of Rs.7,50,231/- as per the details submitted before Assessing Officer. He prayed that the issue of assessee's default has to be verified by the Assessing Officer by

independently verifying the same and calling for the information from the relevant parties and he submitted that the assessee has no power to call for the information and assessee is not in a position to expect every party to submit the same. Accordingly, he prayed that the issue may be remitted back to the Assessing Officer to redo TDS assessment afresh.

9. On the other hand, Id. DR of the Revenue objected to the above submissions of the assessee and submitted that the assessee has not submitted any information before the Id. CIT (A), therefore, it is fact on record that assessee has not deducted any tax at the time of crediting the income or at the time of making payment. Therefore, Id. CIT (A) has made categorical finding that assessee has failed to deduct the tax and accordingly pleaded that the appeal of the assessee may be dismissed.
10. Considered the rival submissions and material available on record. We observe that the assessee has made several payments to the contractors and failed to deduct TDS on certain amounts. We are aware that TDS provisions have gone several changes over the years and several amendments were brought on record especially in section 201/201(1A) of the Act. In case, the payee declares the abovesaid income in their return of income and pays the due tax, the liability of the assessee is discharged and before making the disallowance, the Assessing Officer has to determine whether the assessee is in default or not u/s 201/201(1A). In

case, it is found that the payee has declared the payments as their income and paid the due to them, assessee may not be treated as assessee in default for not deducting TDS at all. After considering the fact on record, we observe that the issue involved is of AY 2010-11. There is no point remitting this issue back to the authorities below. In our considered view, the Assessing Officer has determined the liability as per below chart :-

Monthly of payment (F.Y. 2009-10)	Amount of payment	194J 10% TDS thereon @ 2.266%	Date of tax paid	Months for delayed payment as on Mar'2013	Interest u/s 201(1A) on late payment	Total demand
April	55,10,000	1,24,857	-	48	59,931	1,84,788
May	20,00,000	45,320	-	47	21,300	66,620
June	-	-	-	46	-	-
July	1,36,40,000	3,09,082	-	45	1,39,087	4,48,169
August	-	-	-	44	-	-
September	50,000	1,133	-	43	487	1,620
October	-	-	-	42	-	-
November	1,00,000	2,266	-	41	929	3,195
December	-	-	-	40	-	-
January	-	-	-	39	-	-
February	-	-	-	38	-	-
March	7,99,263	18,111	-	37	6,701	24,812
	2,20,99,263	5,00,769	-		40,324	7,29,204

11. We observe that the assessee has agreed to pay for the materials and the margin agreed with the Ronit Developers @ 4%. This being charitable institution, they agreed to the same at such margin. Further the college also not commenced due to various reasons. We are inclined to give benefit of doubt in favour of the assessee. Therefore, we direct Assessing Officer to consider only the 4% margin on the total contract value and treat the same u/s 194J of the Act. Therefore, the 4% of the

contract value would be Rs.8,83,970/-. The TDS would be Rs.88,397/-.

The interest would be as per below chart :-

Month of payment	Amount of payment	4% margin	194J 10%	Months delay	Interest u/s 201(1A)	Total demand
April	55,10,000	2,20,400	22,040	48	10,579	32,619
May	20,00,000	80,000	8,000	47	3,760	11,760
June	-	-	-	46	-	-
July	1,36,40,000	54,560	54,560	45	24,552	79,112
August	-	-	-	44	-	-
September	50,000	2,000	200	43	86	286
October	-	-	-	42	-	-
November	1,00,000	4,000	400	41	164	564
December	-	-	-	40	-	-
January	-	-	-	39	-	-
February	-	-	-	38	-	-
March	7,99,263	31,970	3,197	37	1,183	4,380
	2,20,99,263	8,83,970	88,397		40,324	1,28,721

12. With regard to other payment of administrative and other expenses, the same are sustained as such. Therefore, the grounds raised by the assessee are partly allowed as indicated above.
13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 28th day of October, 2025.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 28.10.2025
TS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI