IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI

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

ITA No.577/Del/2023, A.Y. 2016-17

Oravel Stays Limited (formerly known as Oravel Stays Pvt. Ltd.) 4th Floor, Spaze Palazo, Sector 69, Gurgaon-122001 PAN: AABCO6063D	Vs.	Deputy Commissioner of Income Tax, Central Circle-6 ARA Building, Jhandewala Extension, New Delhi
(Appellant)		**(Respondent)**

ITA No.452/Del/2023, A.Y. 2020-21

Oravel Stays Limited (formerly known as Oravel Stays Pvt. Ltd.) 4th Floor, Spaze Palazo, Sector 69, Gurgaon-122001 PAN: AABCO6063D	Vs.	Deputy Commissioner of Income Tax, Circle-76(1), Income tax Office, Laxmi Nagar, New Delhi
(Appellant)		**(Respondent)**

Appellant by	Sh. Ajay Vohra, Sr. Advocate Ms. Somya Jain, CA
Respondent by	Sh. Sumer Singh Meena, CIT- DR, Sh. Gouranga Chandra, Sr. DR

Date of Hearing	27/08/2025
Date of Pronouncement	21/11/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

Similar grounds and facts are involved in the above captioned appeals of Assessment Years ('AY') 2016-17 and 2020-21 preferred by the assessee

against orders dated 06.01.2023 of the Commissioner of Income Tax (Appeals)-24, New Delhi ['CIT(A)']. Therefore, these appeals were heard together and are being disposed off by this common order.

2. The assessee has raised following grounds of appeal in ITA No. 577/Del/2023, AY 2016-17:

"1. That the Commissioner of Income-tax (Appeals) [CIT(A)'] erred on facts and in law in confirming disallowance to the extent of INR 39.25,74,528 under section axis) of the Income Tax Act, 1961 (the Act) in respect of minimum guarantee expense.

1.1 That the CIT(A) erred on facts and in law in holding that the arrangement entered in by the appellant requiring payment of minimum guarantee charges to hotel owners/operators was in the nature of 'rent' falling within the scope of section 1941 of the Act.

1.2 That the CIT(A) erred in holding that the case of the appellant fell within the scope of CBDT Circular No. 5/2002 of 30.07.2002, without appreciating that Circulars are not at all binding on appellate authorities.

1.3 That the CIT(A) erred on facts and in law in cherry picking and misconstruing the terms of the contract entered into by the appellant with independent hotel owners/operators and incorrectly concluding that the appellant has a rightful claim to use the premises on regular basis.

1.4 That the CIT(A) erred in adjudicating the appeal in gross violation of principles of judicial propriety in so far as the order passed by CIT(A) in the appellant's own case for the preceding assessment year 2015-16, wherein provisions of section 1941 was specifically held to be not applicable on minimum guarantee charges was completely ignored from consideration.

1.5 Without prejudice, that the CIT(A) failed to appreciate that disallowance under section 40(a)(ia) of the Act was, in any case, not warranted, since

non-deduction of tax at source was on account of bona fide view taken by the appellant.

1.6 Further without prejudice, that the CIT(A) erred in not allowing deduction in respect of the amounts paid to hotel operators on which tax has ultimately been paid by the payees/hotel operators, in view of second proviso to section 40(a)(ia) of the Act.

2. That the CIT(A) erred on facts and in law in confirming disallowance to the extent INR 2,76,28,010 (being 30% of INR 9,20,93,367) made by the assessing officer under section 40(a)(ia) of the Act on the alleged ground that the appellant failed to submit details in support of the said expenditure.

2.1 That the CIT(A) erred on facts and in law in confirming the disallowance without examining the nature of transaction and specifying the provision under which the appellant had failed to deduct tax at source.

2.2 Without prejudice, that the CIT(A) failed to appreciate that disallowance under section 40(a)(ia) of the Act was, in any case, not warranted, since non-deduction of tax at source was on account of bona fide view taken by the appellant.

2.3 Further without prejudice, that the CIT(A) erred in not allowing deduction in respect of the amounts on which tax has ultimately been paid by the payees, in view of second proviso to section 40(a)(ia) of the Act.

3. That the CIT(A) erred on facts and in law in setting aside the disallowance of INR 1,89,68,934/- pertaining to provision for onerous contracts which has already been disallowed by the appellant, for further verification with the assessing officer.

4. That the CIT(A) erred on facts and in law in confirming disallowance of INR 62,04,444 made by the assessing officer under section 2(24)(x) read with section 36(1)(va) of the Act.

4.1 That the CIT(A) erred on facts and in law in holding the due date for deposit of employee's contribution to provident fund/other fund shall be the due date provided under the respective Act.

4.2. That the CIT(A) erred on facts and in law in holding that amendment made vide Finance Act. 2021 under section 36(1)(va) of the Act and section 43B of the Act is retrospective in nature.

5. That the CIT(A) erred on facts and in law upholding the interest charged by the assessing officer under section 234D of the Act.

6. That the CIT(A) erred on facts and in law in upholding the initiation of penalty proceedings under section 271(1)(c) of the Act by the assessing officer.

The Appellant craves leave to add and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing before the Hon'ble ITAT."

2.1 The assessee has raised following grounds of appeal in ITA No. 452/Del/2023, AY 2020-21:

"1. That the Commissioner of Income-tax (Appeals)-24, New Delhi [CIT(A)'] erred on facts and in law by upholding the order passed by Deputy Commissioner of Income Tax, Circle 76(1), New Delhi ('assessing officer) under section 201(1)/201(1A) of the Income tax Act, 1961 ('the Act").

2. That the Ld. CIT(A) erred on facts and in law in disregarding the scheme of demerger approved by Hon'ble National Company law Tribunal (NCLT) wherein the Indian hotel business was demerged from the Appellant to another entity.

2.1 That the Ld CIT(A) erred on facts and in law in not appreciating that demerger does not liquidate the company and since the appellant is still an operating company carrying a functional Tax Deduction Account Number the order to be passed in the name of the Appellant even if the undertaking pertaining the alleged default has been demerged to a different entity.

2.2 Without prejudice, That the CIT(A) erred on facts and in law by not appreciating that the fact that impugned business transaction does not pertain to Appellant since the business has been demerged to another entity following the NCLT order.

3. Without prejudice, that the CIT(A) erred on facts and in law by the considering the Appellant as 'assessee in default" for non-deduction of TDS under section 1941 of the Act in respect of minimum guarantee expenses.

3.1 Without prejudice, that the CIT(A) erred on facts and in law in holding that the arrangement entered into by the Appellant requiring payment of minimum guarantee charges to hotel operators was in the nature of rent falling within the scope of section 194 of the Act

3.2 That the CTT(A) erred on facts in misinterpreting and reconstructing the terms of the contract entered by the appellant with independent hotel owners/operators by holding that

3.2.1 mem inventory of the independent hotels has been taken over by the appellant company

3.2.2 prior concurrence is needed even by the hotel to sell the room

3.2.3 appellant is booking the room on regular basis with a right to resell them or keep them vacant and hence falls within the circular no. 5/2002 dated 30.07.002 of CBDT

3.3 That the CIT(A) erred on facts and in law by holding the Appellant as 'assessee in default and confirming the demand determined by the assessing officer without taking cognizance of order passed by CIT(A) in the Appellant's own case for AY 2015-16 wherein it has been held that provisions of section 1941 shall not apply on minimum guarantee charges and therefore the order passed by the CII(A) is against the principle of "judicial discipline' and 'consistency".

3.4 Without prejudice, that the CIT(A) has also taken different views on applicability of section 1941 of the Act on minimum guarantee charges for two different year, accordingly the Appellant should not be treated as 'assessee in default' since non-deduction of tax at source was on account of bona fide view taken by the Appellant.

4. That the CIT(A) erred on facts and in law in arbitrarily confirming the levy of interest under section 201(1A) of the Act by the assessing officer.

5. *That the CIT(A) erred on facts and in law in upholding the initiation of penalty proceedings under section 271C of the Act by the Additional Commissioner of Income tax, Range 76, New Delhi.*

The Appellant craves leave to odd and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing before the Hon'ble ITAT."

ITA No. 452/Del/2023, AY 2020-21:

3. The relevant facts giving rise to these appeals are that the assessee, engaged in operating online platform for providing OYO Rooms at various hotels, guest houses, etc. throughout India. The appellant assessee, for doing its business, has entered into agreement(s)/arrangement(s) with various hostels, guest houses, etc. for facilitating reservation/booking of hotel rooms through the appellant assessees OYO platform. Survey operations under section 133A of the Income Tax Act, 1961 ('Act') were carried out at the business premises of the assessee. Based on the information gathered during the survey, the Assessing Officer (TDS)/Assistant Commissioner of Income Tax, Circle-76(1), New Delhi, initiated proceedings under section 201 of the Act, which culminated with TDS liability of Rs.3,33,19,101/- vide order dated 07.02.2020 passed under section 201(1)/201(1)(A) of the Act. The said order passed under section 201(1)/201(1)(A) of the Act was challenged before the Ld. CIT(A), who dismissed the appeal holding that the demerger of the hotel business of the assessee in the relevant year vide NCLT order dated 26.09.2019, the assessee continued with the same active/operational; i.e. TAN DLO04346G; therefore, the demand was raised in the TAN DLO04346G

owned by the appellant assessee even after demerger. Further, the Ld. CIT(A) also held that the appellant assessee had right to use rooms; therefore, the payment in form of minimum guarantee expenses for non-occupied rooms would be nothing but the rent liable for Tax Deduction at Source ('TDS') under section 194I of the Act. Dissatisfied with the impugned order, this appeal is here.

4. At the outset, Sh. Ajay Vohra, Sr. Advocate representing the appellant assessee, submitted that the issue of TDS liability under section 194I of the Act interlinks these two appeals. Hence, this issue needed to be decided first and other issues, if required, thereafter. So, we have decided to adjudicate TDS issue first in the ITA No.452/Del/2023. Another issue in ITA No.452/Del/2023 is that whether the TDS demand can be raised in TAN DLO04346G even after demerger of the business.

5. The first issue is whether the minimum guarantee expenses paid by the appellant assessee is liable for TDS under section 194I of the Act. First of all, it is better to understand the business model of the appellant assessee. The appellant assessee has entered into agreements with various hotels, etc. for facilitating booking of hotel rooms, etc. through its e-platform; OYO. As per the said agreement, the hotel conducts its operations in terms of providing lodging and accommodation services, whereas the appellant assessee provides technology, sales and marketing services to various hotels relating to the provision of lodging and accommodation services through its

e-platform. The agreement is based on 'Minimum Guarantee Revenue Model' ("MGRM'). As per the agreement, the assessee appellant has assured minimum revenue benchmark, which hotels/guest houses may/will receive or likely/expect to receive from the appellant assessee e-platform. In case, the benchmark is exceeded, then the hotel/guest house is required to pay service fee to the appellant assessee otherwise the appellant assessee is required to pay the service fee in case of shortfall in achieving the benchmark. The agreement further provides that in case the rooms are sold at price lesser than the agreed amount between the appellant assessee and hotels, the difference/loss has to be borne by the appellant assessee.

6. The Ld. Sr. Counsel submitted that the appellant assessee had provided only the service of securing booking of rooms in hotels and guest houses through its e-commerce platform maintained and run by it. The rooms could be booked by anyone and the bill would be raised in the name of customer occupying the room. It was further submitted that the appellant assessee, vide its e-platform and agreement entered with hotels, had not booked any room exclusively for its use but had enabled various customers to book rooms through its e-platform as evident from the agreement entered into with the hotel (A copy of an agreement at page 119-136 of the Paper Book was filed before us.).

7. The Ld. Sr. Counsel further submitted that hotels/guest houses were required to keep earmarked rooms available, as per agreements, for booking

through only the appellant assessee's e-platform. The Ld. Sr. Counsel drew our attention to one of terms & conditions of the agreement, wherein it had been specifically provided that if the hotel/guest house would book any room(s) out of rooms agreed upon, then the minimum guarantee fee for the said room(s) would not be paid by the appellant assessee and the said booked room(s) would be considered as part of the minimum booking guarantee. Further, it was submitted that the appellant assessee did not get access/right to use hotel rooms even in the case where minimum booking had not been met. The Ld. Sr. Counsel thus summed up that the appellant assessee had not booked rooms for exclusive its use but had provided a e-platform for hotel bookings as a business model carried out by it with hotels as per agreements.

8. The Ld. Sr. Counsel further contended that the guarantee fee had been paid to various hotels/guest houses for not meeting the contractual obligations for unsold rooms (booking of minimum number of rooms not met through e-platform of the appellant assessee) and loss from sold rooms (booking of rooms at a lesser price than the minimum agreed room tariff through e-platform of the appellant assessee) in accordance with the terms and conditions of the agreement for not using any room for itself but for the default on the part of appellant to secure the number of bookings of rooms at a minimal tariff (for unsold rooms and loss from sold rooms). The Ld. Sr. Counsel further categorically submitted that the guarantee fee paid by

appellant assessee for unsold rooms and loss from sold rooms was not for use of any room by the appellant assessee as an occupant but was for non-use of rooms as per the agreement. In nutshell, he contended that the guarantee fee was nothing but in the nature of compensation paid by the appellant assessee to hotels/guest houses owners.

9. The Ld. Sr. Counsel drew our attention to the Section 194I of the Act and in particular the definition of the 'rent' therein. He emphasized on the phrase *'for the use of (either separately or together)'*.... He contended that the TDS liability arose in section 194I of the Act only when the payer assessee pays rent/credit such rent in the recipient accounts *'for the use of (either separately or together)'* any building, machinery, plant, equipment, furniture, fittings etc.... Hence, in the case in hand, the Ld. Assessing Officer (TDS) had to establish that the guarantee fee paid to hotel/guest house was for the appellant assessee's use. He submitted that the guarantee fee or by whatever name called had not been paid *for the use of* ....; hence, provisions of section 194I of the Act did not get attracted in the present case. In support of his contention, the Ld. Sr. Counsel placed reliance on the decision of Hon'ble Supreme Court in the case of Japan Airlines company Ltd. 377 ITR 372 and also on the decision of Hon'ble Delhi High Court in the case of Apeejay Surrendera Park Hotels Ltd. (2016) 287 CTR 161, the decision of Hon'ble Andhra Pradesh High Court in the case of Krishna Oberoi 257 ITR 105 and on decisions of Tribunal in cases of Johnson Watch Company Pvt. Ltd. ITA

No. 1738/Del/2020 (Delhi), Sahana Dwellers (P.) Ltd. [2016] 67 taxmann.com 202 (Mumbai).

10. Further, the Ld. Sr. Counsel drew our attention to the order of the Ld. CIT(A) in the case of the assessee in AY 2015-16 (order dated 30.05.2019) wherein the Ld. CIT(A) had held "*where an agreement is merely in the nature of rate contract, it cannot be said to accommodation 'taken on regular basis', as there is no obligation on the part of the hotel to provide a room or specified set of rooms. So the provision of section 194I while applying to hotel accommodation on regular basis would not apply to rate contract agreement*" and the Revenue had accepted this finding and did not contest in appeal. Thus, his argument was that non-applicability of provisions of section 194I of the Act had already accepted by the Revenue and thus, this issue had attained finality.

11. The Ld. Sr. Counsel drawing our attention to the following part of the Circular No. 5/2002 dated 30.07.2002 which reads as under:

> *"Clarification regarding question No. 20 1. Circular No. 715 dated 8-8-1995 has been issued by the Central Board of Direct Taxes to clarify various provisions relating to tax deduction at source under various provisions of the Income-tax Act. Question No. 20 of the aforesaid Circular related to applicability of the provisions of section 194-I of the Income-tax Act in respect of payments made to a hotel for rooms. The relevant question and answer is reproduced below :—*
>
> *". . . Q. No. 20 : Whether payments made to a hotel for rooms hired during the year would be of the nature of rent?*

Ans. : Payments made by persons other than individuals and HUF for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I." [Emphasis supplied]

In this context, doubts have been raised as to what constitutes "hotel accommodation taken on regular basis" for the purpose.

2. The Board have considered the matter. First, it needs to be emphasised that the provisions of section 194-I do not normally cover any payment for rent made by an individual or HUF except in cases where the total sales, gross receipts or turnover from business and profession carried on by the individual or HUF exceed the monetary limits specified under clause (a) or clause (b) of section 44AB. Where an employee or an individual representing a company (like a consultant, auditor, etc.) makes a payment for hotel accommodation directly to the hotel as and when he stays there, the question of tax deduction at source would not normally arise (except where he is covered under section 44AB as mentioned above) since it is the employee or such individual who makes the payment and the company merely reimburses the expenditure.

Furthermore, for purposes of section 194-I, the meaning of 'rent' has also been considered. "'Rent' means any payment, by whatever name called, under any lease . . . or any other agreement or arrangement for the use of any land. . . ." [Emphasis supplied]. The meaning of 'rent' in section 194-I is wide in its ambit and scope. For this reason, payment made to hotels for hotel accommodation, whether in the nature of lease or licence agreements are covered, so long as such accommodation has been taken on 'regular basis'. Where earmarked rooms are let out for a specified rate and specified period, they would be construed to be accommodation made available on 'regular basis'. Similar would be the case, where a room or set of rooms are not earmarked, but the hotel has a legal obligation to provide such types of rooms during the currency of the agreement.

3. However, often, there are instances, where corporate employers, tour operators and travel agents enter into agreements with hotels with a view to merely fix the room tariffs of hotel rooms for their executives/guests/customers. Such agreements, usually entered into for lower tariff rates, are in the nature of rate-contract agreements. A rate-contract, therefore, may be said to be a contract for providing specified types of hotel rooms at pre-determined rates during an agreed period.

> *Where an agreement is merely in the nature of a rate contract, it cannot be said to be accommodation 'taken on regular basis', as there is no obligation on the part of the hotel to provide a room or specified set of rooms. The occupancy in such cases would be occasional or casual. In other words, a rate-contract is different for this reason from other agreements, where rooms are taken on regular basis. Consequently, the provisions of section 194-I while applying to hotel accommodation taken on regular basis would not apply to rate contract agreements."*

submitted that the appellant assessee was not liable to deduct tax under section 194I of the Act; hence the Assessing Officer (TDS) was not justified in raising demand under section under section 201(1)/201(1)(A) of the Act.

12. On the other hand, the Ld. Senior Departmental Representative ('Sr. DR') drawing our attention to the answer to Question No. 20 of the Circular No. 5/2002 dated 30.07.2002 which reads as under:

> *Question 20 : Whether payments made to a hotel for rooms hired during the year would be of the nature of rent ?*
>
> *Answer : Payments made by persons, other individuals and HUFs for hotel accommodation taken on regular basis will be in the nature of rent subject to TDS under section 194-I.*

submitted that the assessee was liable to deduct tax under section 194I of the Act on the rent and the Assessing Officer (TDS) was justified in raising demand under section under section 201(1)/201(1)(A) of the Act. Further, the Ld. Sr. DR, emphasizing on para 4.2.13 to 4.2.15 of the Ld. CIT(A)'s order in the ITA No.577/Del/2023, submitted that the assessee had right to sell rooms to any customer and also had right to use the said room otherwise.

Hence, he contended that the assessee had right to use the minimum number of rooms as it desired as per the agreement.

13. We have heard both parties and have perused the material available on record. Keeping in view the facts in totality, we find merit in the arguments/contentions/submission of the Ld. Sr. Counsel that the assessee has not any exclusive and absolute right to use the hotel/guest house rooms as per the agreement. The said rooms are available to all for booking through the e-platform of the appellant assessee.

14. The definition of 'rent' for the purpose of section 194I of the Act reads as under:

> *"rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement* ***for the use of (either separately or together)*** *any,—*
>
> *(a) land; or*
>
> *(b) building (including factory building); or*
>
> *(c) land appurtenant to a building (including factory building); or*
>
> *(d) machinery; or*
>
> *(e) plant; or*
>
> *(f) equipment; or*
>
> *(g) furniture; or*
>
> *(h) fittings,*
>
> *whether or not any or all of the above are owned by the payee;"*

15. The phrase '***for the use of (either separately or together)'*** refers to lessee who pays the rental for use of …… who is required to deduct tax at the time of payment or credit of rent in the lessor's account. Here, in the present case, the lessee is the appellant assessee.

16. We have gone through the decision of Hon'ble Supreme Court in the case of Japan Airlines Co. Limited (supra), wherein it has been held that the charges paid by the international airlines for landing and take-off services, and for parking of aircrafts are in substance not for the use of land but for various other facilities, such as air traffic services, ground safety services, aeronautical communication facilities, etc. The real character of the service provided for which the payment is made has to be judged, and the same need not be seen in isolation. The taxpayer did not rent out the lounge premises nor have exclusive use of the lounge for its customers. The customers of the taxpayer along with those of other airlines were allowed to use all such facilities at the lounge as per the agreed terms.

17. In view of the decision Hon'ble Supreme Court in the case of Japan Airlines Co. Limited (supra), we are of the considered opinion that following parameters are required to be looked into before invoking section 194I of the Act; (i) character of the services as per agreement & business model and (ii) right of exclusive use of room. Here, in the present case, the appellant assessee is not having exclusive right to use room(s) of any hotel/guest house for itself as per the agreement. The booking of rooms has to be made

available to general public at large through the e-platform of the appellant assessee. The perusal of the agreement in substance reveals that there is no lessor and lessee relationship between hotel/guest house owners and the appellant assessee, which gives exclusive right to the appellant assessee to use the said room(s) for itself only. the word 'sell' used by the Ld. CIT(A) in para 4.2.15 of his order in the ITA No.577/Del/2023 is not found in the agreement in the said context. The payment referred in para 4.2.13 of the Ld. CIT(A)'s order in the ITA No.577/Del/2023 refer to minimum guarantee fee for 18 rooms @ Rs.1,200/- per room exclusive of taxes for 30 days whether occupied or not. We, in view of the bare reading of the agreement do not see any substance in para 4.2.13 to 4.2.15 of the Ld. CIT(A)'s order in the ITA No.577/Del/2023.

18. Keeping in view the facts of the case, foregoing comments/discussion and judicial pronouncements relied upon by the Ld. Sr. Counsel, we are of the considered opinion that the guarantee fee paid to various hotels/guest houses for not meeting the contractual obligations for unsold rooms (booking of minimum number of rooms not met through e-platform of the appellant assessee) and loss from sold rooms (booking of rooms at a lesser price than the minimum agreed room tariff through e-platform of the appellant assessee) in accordance with the terms and conditions of the agreement is not rent as per section 194I of the Act as the same has been paid for not using any room for itself but for the default on the part of appellant assessee

to secure the number of bookings of rooms at a minimal tariff (for unsold rooms and loss from sold rooms). Ordered accordingly. Consequentially, we hold that the Ld. Assessing Officer (TDS) is not justified to treat payments aggregating to Rs.31,25,07,038 as rent liable for TDS under section under section 194I of the Act. Hence, the TDS liability upheld by the Ld. CIT(A) vide impugned order is hereby deleted. The assessee gets consequential relief. Thus, Grounds numbered 3 to 3.4 are allowed accordingly.

19. The second issue that whether the TDS demand be continued to be raised in TAN No. DLO04346G even after demerger of the business, in view of the above finding, has become academic. Hence, the same is not being adjudicated by us.

ITA No. 577/Del/2023 AY 2016-17

20. The relevant facts giving rise to this appeal is that the assessee filed its Income Tax Return ('ITR') of the relevant year on 30.11.2016 declaring loss of (-) Rs.464,66,92,672/-. The case was scrutinized and the consequential assessment was completed, vide order dated 24.12.2018 passed under section 143(3) of the Act; wherein the Ld. Assessing Officer disallowed (i) guarantee fee of Rs.42,58,93,218/- under section 40(a)(ia) of the Act and (ii) PF & ESI of Rs.62,04,444/- under section 2(24)(x) rws 36(1)(va) of the Act. Dissatisfied with the assessment order, the appellant assessee filed appeal Before the Ld. CIT(A) but did not succeed.

21. The first revolves around the issue that whether the assessee is liable to deduct tax on payment of minimum guarantee fee paid by it to hotels/guest house owners either under section 194C/194I of the Act. If the answer to this is in affirmative, then the disallowance of 30% guarantee fee of Rs. 141,96,44,061/- under section 40(a)(ia) of the Act will be justified otherwise not.

22. At the outset, the Ld. Sr. Counsel drew our attention to the Tribunal decision in the assessee's own case in ITA No. 6370/Del/2019 AY 2015-16; wherein it had been held that the provisions of section 194C of the Act were not attracted. Thereafter, the Revenue had accepted the decision in the assessee's own cases in AYs 2018-19 2019-20. Hence, he submitted that the issue of TDS, in the case of assessee, under section 194C of the Act had attained finality.

23. We have heard both parties and have perused the material available on record. Keeping in view the facts in totality, we find merit in the arguments/contentions/submission of the Ld. Sr. Counsel that the assessee is neither liable to deduct tax at source under section 194C of the Act nor under section 194I of the Act. In view of the above finding in ITA No. 452/Del/2023 AY 2020-21 and the decision of coordinate bench in the assessee's own case in ITA No. 6370/Del/2019 AY 2015-16, it is hereby held that the appellant assessee is not liable to deduct tax at source either under section 194C or under section 194I of the Act. Hence, the disallowance of

guarantee fee of Rs.42,58,93,218/- under section 40(a)(ia) of the Act made by the Assessing Officer and sustained by the Ld. CIT(A) is not justified. Hence, the same is deleted. The assessee gets consequential relief. Thus, Grounds numbered 1 to 3 are allowed accordingly.

24. The issue of disallowance of PF & ESI of Rs.62,04,444/- under section 2(24)(x) rws 36(1)(va) of the Act raised vide Grounds 4 to 4.2 was not pressed. Hence, these Grounds stand dismissed accordingly.

25. In the result, both appeals of the assessee are allowed as above.

Order pronounced in open Court on 21st November, 2025

Sd/-	**Sd/-**
(YOGESH KUMAR U.S.)	**(AVDHESH KUMAR MISHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21/11/2025
Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI