IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B"NEW DELHI

BEFORE SHRIMAHAVIR SINGH, HON'BLE VICE PRESIDENT
AND
SHRISANJAY AWASTHI, ACCOUNTANT MEMBER

आ.अ.सं/.I.T.A No.2862/Del/2025
निर्धारणवर्ष/Assessment Year: 2017-18

DEPUTY GOTHWAL CONSTRUCTIONS P. LTD. L-73, Mahipalpur Extension, South Delhi. PAN No.AACCD9703C	बनाम **Vs.**	DCIT, Circle 74(1), New Delhi.
अपीलार्थी Appellant		**प्रत्यर्थी/Respondent**

Assessee by	Shri C.S. Aggarwal, Sr. Advocate Shri Ravi Pratap Mall, Advocate Shri Madhur Aggarwal, Advocate
Revenue by	Shri Rajesh Kumar Dhanesta, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	10.12.2025
उद्घोषणाकीतारीख/Pronouncement on	17.12.2025

आदेश /O R D E R

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. This appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), dated 10.02.2025, passed by Addl./JCIT(A)-1, Hyderabad. In this case the assessee did not appear before the first appellate authority and thus, the impugned order is an *ex parte*order even though the merits have been discussed. In this case the Ld. AO vide order u/s 201(1)/201(1A) of the Act, dated 27.03.2024, has found the assessee to be in default for not deducting tax at source u/s 194C of the Act. The Ld. AO has worked out a default of Rs.17,20,400/-.

As mentioned earlier, the impugned order is an *ex parte*one through which the action of ld.AO has been confirmed.

1.1 Aggrieved with the action of Ld. Addl./JCIT (Appeal) the assessee has approached the ITAT with the following grounds:

> *"1. That on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in confirming the action of the Assessing Officer in treating the appellant as an assessee-in-default u/s 201(1) of the Income Tax Act, 1961 and in levying interest u/s 201(1A), for non-deduction of TDS of Rs.8,00,400/- and interest of Rs.9,20,000/- respectively on External Development Charges (EDC) amounting to Rs.4,60,00,000/-, paid by the appellant to the Directorate of Town and Country Planning (DTCP), Haryana.*
>
> *2. That the Ld. CIT(A) has failed to appreciate that the payment of EDC was made by the appellant to the payees HUDA in compliance with a statutory obligation arising under the Haryana Development and Regulation of Urban Areas Act, pursuant to the license granted by DTCP Haryana for development of a group housing project in Village Kakrola, Gurugram, and not under any contract or work arrangement, and hence, provisions of Section 194C of the Act were not attracted.*
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> *3. That the Ld. CIT(A) has erred in law and on facts in holding that TDS was deductible u/s 194C without appreciating that the payment of EDC was made to a State Government Department (DTCP), and hence by virtue of Section 196 of the Act, such payment is exempt from TDS.*
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> *4. That the Ld. CIT(A) has erred in sustaining the order of the AO despite the absence of any contractual relationship or execution of any work by DTCP/HUDA on behalf of the assessee; and has failed to appreciate that DTCP/HUDA are not contractors in terms of Section 194C.*
>
> *5. That the Ld. CIT(A) has erred in confirming an order that is barred by limitation and also passed in violation of the mandatory requirement of granting the assessee a fair and meaningful opportunity of being heard before passing an adverse order.*
>
> *6. That the Ld. CIT(A) has further violated the principles of natural justice by passing the appellate order dated 10.02.2025 without affording a proper and adequate opportunity of being*

heard to the appellant, thereby rendering the said order null and void and liable to be quashed.

7. That the Ld. CIT(A) has upheld additions made on mere surmises and conjectures, without any factual or legal foundation, and the impugned findings are perverse, arbitrary, and bad in law.

8. That the Ld. CIT(A) has erred in not considering the fact the AO has wrongly initiated penalty proceedings u/s 271(l)(c) on the basis of the addition made by treating the appellant as an assessee- in-default, despite the fact that the appellant was under a bona fide belief, supported by legal advice, that no TDS was deductible u/s 194C on payment of External Development Charges (EDC) to DTCP. The issue is highly contentious and debatable, as evidenced by conflicting decisions from various courts and is presently pending before the Hon'ble Supreme Court in a Special Leave Petition (SLP) against an order of the Hon'ble Delhi High Court dated 13.02.2024. Accordingly, no penalty is leviable in such circumstances.

9. That the findings of the learned CIT(A) the appeal has been dismissed on account of non-prosecution is misconceived since the appellant being aggrieved had filed the appeal before the ld CIT(A) to prosecute the same. In fact the CIT(A) has failed to grant proper and meaningful opportunity which in in violation of the principles of natural justice, and hence the same is vitiated in law.

10. That the appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal at the time of hearing."

2. Before us the Ld.AR filed detailed paper books and a compendium of cases laws. The Ld. AR also filed written submissions which were extensively used by him to argue that the assessee had no liability whatsoever to deduct tax at source. The Ld. AR read out from his submissions and for the sake of capturing the salient pointsof his argumentthat the assessee had no obligation to deduct tax at source.Relevant portions from the same deserve to be extracted:

"7. The assessee being aggrieved has preferred the instant appeal. At the outset it is submitted that none of the three notices of hearing as allegedly issued had been received by the assessee and thus the assessee could not appear before the learned CIT(A) in response to the notices allegedly issued by him. It is thus submitted the appellant was prevented by sufficient cause, when it had failed to appear and furnish its detailed explanation in support that it was under no obligation to have deducted the tax at source on the sums remitted by it. It is thus submitted the learned CIT(A) had erred in disposing off the appeal without granting a fair and proper opportunity of being heard. It is prayed the order of the learned CIT(A) be set aside and it be held that no valid and proper opportunity had been granted to the appellant. Without prejudice it is however submitted that both the learned DCIT and learned CIT(A) have committed fundamental error in assuming that the assessee was under an obligation to have deducted the tax at source on the sums remitted by it and paid to HUDA. It is submitted that the assessee was under no obligation to have deducted tax at source on the sums remitted by the appellant to HUDA as it is an undisputed fact that HUDA was required to collect the EDC on behalf of Directorate of Town & Country Planning (DTCP), Haryana and such EDC was to be paid by the license holders. In support, the assessee seeks to rely upon the following office MemorandumNo.DTCP/ACCTTS/AO(HQ)/CAO/2894/2018 dated 19.06.2018 issued by Directorate of Town & Country Planning (DTCP), Haryana (see page 35-36 of PB). In the said office memorandum it has specifically been stated in Paras 2 and 3 (Pg. 35 of PB) as under:……

It is thus submitted thus EDC charges were to be paid and deposited by the license holders and not the remitter and the Department of Town & Country Planning was to collect the amount from licensees.

7.1 It is further contended that the finding of the AO that the amount collected was an income of M/s HUDA is also misconceived. It is an undisputed factthat HUD A was merely a collecting agency and the sum to be collected as EDC was to be reimbursed to DTCP.

7.2 That In any case the learned AO has failed to appreciate that the assessee, the appellant company was under no obligation to have either paid or deposited the sums of External Development Charges (EDC) either to Directorate of Town & Country Planning (DTCP), Haryana or to HUDA. Infact, DTCP had not issued any license to the appellant and was thus not a license holder which could oblige it to deposit EDC and pay the same to DTCP. Infact the License No. 53 of 2010 dated 10.07.2010 (See pages 26- 29 of PB) had been granted under the Haryana Development and

Regulation of Urban Areas Act, 1975 & the Rules 1976 to the following seventeen land owners:…….

And not to the appellant company M/s Deputy Gothwal Constructions Pvt. Ltd. and thus there was no obligation of the appellant to have deposited the EDC under section 3(3)(ii) of Haryana Development and Regulation of Urban Areas Act, 1975.

8. It is submitted that, since the license had not been granted to the appellant by the Directorate of Town & Country Planning (DTCP) Haryana, there arose no occasion for it to have either paid any sum by way of External Development Charges (EDC) or deposit the same, which sum was to be paid by the license holders. Infact, what the assessee did was that it had deposited the sums after having been paid by the land owners, (who had been granted the licenses to develop the lands owned by them). It is submitted the perusal of license clearly reflects the names of the land owners as per Schedule (Pg. 28 -29) who alone had been granted license to develop the land. It is submitted the appellant company is thus neither the license holder nor is the developer of land. That the role of the assessee was to merely deposit the said sums on behalf of the owners and thus under the Income Tax Act, there being no provision to make it liable to deduct the tax at source u/s 194C of the Act, it did not deduct the tax u/s 194C of the Act. The findings of the learned AO and the learned CIT(A) are thus clearly erroneous. It is submitted that there has to be relationship between the payer and payee as of contractor and contractee. Since the assessee wasnot a contractee and HUDA was not a contractor, the provisions of section 194C of the Income Tax Act were inapplicable on the amounts deposited by it. In such a situation it is evident that there was no obligation of the appellant company to have either deducted the tax at source or to have deposited the same. This primary and fundamental factor has been completely overlooked both by the learned DCIT and the learned CIT(A), when it overlooked that the assessee was not a license holder and also not……..”

Thus, to sum up the arguments of Ld. AR it needs to be mentioned that since the license was not granted to the assessee but had been granted to 17 different persons, it was not the responsibility of the assessee to deduct any tax at source. Furthermore, it was the submission that the assessee was not covered u/s 194C of the Act since the licensee was not the assessee but the17 persons in whose names the licenses have been

granted. To further emphasized this point the Ld. AR has averred that the assessee is merely responsible for remitting the money and is certainly not responsible for deducting tax at source. It has also been averred that there was no contract entered into between the assessee and the Directorate of Town Country Planning, Haryana and the assessee had not developed any land as it did not own the same.

2.1 The Ld. AR has also preferred an alternative submission to the extent that HUDA has been furnishing its return of income and would certainly have been offering the impugned receipts in its profit & loss account so that its income could be assessed. If this be so then following several authorities, notably the case of Hindustan Coca Cola Beverage Pvt. Ltd. reported in 293 ITR 226 (SC), the assessee could not be held to be in default for non-deduction of tax at source. The Ld. AR also relied on the case of GE India Technology Centre Pvt. Ltd. reported in 327 ITR 456 (SC). Lastly, the Ld. AR distinguished the case of Puri Construction Pvt. Ltd. reported in 462 ITR 326 (Del).

3. The Ld. DR, on the other hand, relied on the case of Puri Constructions Pvt. Ltd. [2024] 462 ITR 326 (Del.) and read out the head notes as under: -

> *"Section 194C, read with sections 196 and 271C, of the Income-tax Act, 1961 - Deduction of tax at source Contactors/subcontractors, payments to (Scope of provision) - Assessee was granted license to carry out a development project under Haryana Development and Regulation of Urban Areas Act, 1975 - Assessee paid External Development Charges (EDC) to Haryana Shahari Vikas*

Pradhikaran(HSVP) on directions of Department of Town and Country Planing (DTCP) - Assessing Officer opined that EDC would fall withi ambit of section 194C - He, thus, held that assessee was in default for non-deduction of TDS and penalty was to be levied under section 271C - Assessees contended that payments made to HSVP were pursuant to directives of DTCP and in aid of external development work being carried out, those payments should be viewed as sums which were payable to Government of Haryana - It was noted from communication of DTCP that an arrangement was in existence as per which DTCP was used to collect EDC and sent to HSV - Communication further asserted that HSVP was executing agency working for and on behalf of state government for carrying out external development works for which funds were provided to HSVP through DTCP - Whether since assessees effected a payment in favour of HSVP in connection with extern; development work which was to be executed by it pursuant to arrangement that existed between said entity and State Government, provisions of section 194C would stand attracted - Held, yes - Whether mere fact that HSVP was constituted under a statutory enactment and was discharging functions akin to or similar to governmental obligations or performing activities closely connected with State functions, same would not result in recognizing HSVP as Government - Held, yes - Whether thus, EDC payments would be covered under section 194C - Held, yes [Paras 63, 69 and 88] [In favour of revenue]"

It was the submission by the Ld. DR that the case was squarely covered by the judgment of the Hon'ble Delhi High Court in the case of Puri Constructions (supra).

4. We have carefully considered the rival submissions and have gone through the records before us. We have also perused the documents in the paper book filed by the assessee and the case laws relied upon by the Ld. AR. Right at the outset, it needs to be mentioned that the assessee did not make any significant presentation of facts before either of the authorities below. Thus, *prima facie,* the case of Puri Constructions (supra) would hold fort in this case. We are conscious of the fact that there could be a factual distinguishing feature in as much as a plain

reading of the Puri Construction case (supra) reveals that the appellant there was apparently the license holder for the proposed development, whereas in this case it appears that the license has been granted individually to 17 persons. Since there is absolutely no fact finding at the lower level in this regard we are unable to comment on whether this distinguishing feature could lead to a different view than whatever has been propounded in the Puri Construction case (supra) by the Hon'ble Jurisdictional High Court. However, the alternative submission of the Ld.AR that HUDA would be filing its returns of income and would be showing the receipts on account of EDC thereon, has considerable persuasive value since it is not only the Hindustan Coca Cola case (supra) but also a subsequent amendment in section 201(1) where a proviso has been inserted w.e.f. 01.07.2012 where a person would not be in default in case the payee has (i) furnished his return of income u/s 139; (ii) has taken into account such sum for computing income in such return of income; and (iii) has paid the tax due on the income declared by him in such return of income.There is also a directive in this section that the person needs to furnish a certificate to this effect from an Accountant in such form as may be prescribed. Accordingly, we deem it fit to set aside the impugned order and remand this matter back to the file of Ld. AO for verifying whether the conditions mentioned in the first proviso to section 201(1) of the Act have been fulfilled or not. In case the said conditions

have been fulfilled, then the assessee cannot be saddled with any liability u/s 201(1)/201(1A) of the Act.

5. In the result, this appeal is allowed for statistical purposes.

Order pronounced in the open court on 17.12.2025

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(SANJAY AWASTHI)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 17.12.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI