

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 6850-Del-2015
(Assessment Year: 2008-09)

State Bank of Patiala, #416, 4 th Floor, World Trade Centre, Barakhamba Road, New Delhi PAN:AACCS0143D	Vs.	Addl CIT (TDS) Income Tax Office, Hapur Chungi, Ghazibad
(Appellant)		(Respondent)

ITA No. 6851/Del/2015
(Assessment Year: 2008-09)

Dena Bank, 416, 4 th Floor, Word Trade Center, Barakhamba Road, New Delhi PAN:AAACD4298B	Vs.	Addl. CIT (TDS), Income Tax Office, Hapur Chungi, Ghaziabad
(Appellant)		(Respondent)

Assessee by :	Sh. Pankaj Garg, Adv Sh. Milind Garg, Adv
Revenue by:	Sh SK Jain, DR
Date of Hearing	01/03/2017
Date of pronouncement	24/03/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These appeals have similar grounds of appeal as it involves the common issue whether appellant banks are required to withhold tax at sources on interest payments made to NOIDA (New Okhla Industrial Development Authority). Originally the Ld CIT (A) decided the issue in favour of the appellant banks holding that such tax was not required to be deducted which was upheld by the coordinate bench. However subsequently on an application made by the Ld Addl CIT TDS , ld CIT (A) revised his own order

holding that the appellant banks should have deducted tax at sources on payments made to NOIDA. The Application of the Addl CIT was based on the decision of Honourable Allahabad high court in WP No 1338 of 2005 on writ petition filed by NOIDA.

2. Therefore these appeals are filed by the assessees against the order Id CIT (A)-I, Noida u/s 154/250 of the Income Tax Act dated 27.10.2015.

3. The assessee has raised the following grounds of appeal:-

- “1. *Because, the impugned order dated 30.11.2015 passed by the Respondent No. 1 is bad in law, ultra vires and purely abuse to the process of law.*
2. *Because, the impugned order dated 30.11.2015 passed by the Respondent No. 1 is mechanically arbitrary and without applying the judicious mind and is a clear cut case of non understanding of law.*
3. *Because, the impugned order dated 30.11.2015 passed by the Respondent No. 1 is against the Principles of Natural Justice.*
4. *Because, the impugned order dated 30.11.2015 passed by the Respondent No. 1 is without giving an opportunity of being heard to the Appellant.*
5. *Because, the Respondents concluded the fact that order dated 07.08.2015 of this Hon'ble Tribunal as not being in conformity with the judgment of the Hon'ble Allahabad High Court thereby grossly ignoring and appreciating the actual facts and circumstances and legal scenario of the case.*
6. *Because, the Respondent No. 1 deliberately twisted the spirit of the judgment of the Hon'ble Allahabad High Court and the order of this Hon'ble Tribunal with the impression or anxiety that if they accepted the order of this Hon'ble Tribunal, the Revenue department would lose revenue and would also have no remedy to have the matter rectified.*

That for the purpose of the clarity, it is worthwhile mentioning herein that the parties to the Writ in Allahabad High Court were New Okhla Industrial Development Authority as 'Petitioner' and Chief Commissioner of Income Tax, Meerut Camp & others as 'Respondents' while the parties to the Appeal before Hon'ble Tribunal are Addl. CIT(TDS), Ghaziabad as 'Appellant' and M/s Dena Bank, Sector-18, Noida as 'Respondent'.

Secondly, in the Writ Petition No. 1338 of 2005, the sole contention raised before the Hon'ble High Court was 'Whether, after 1.4.2003, New Okhla Industrial Development Authority (Noida) (the Petitioner) is a local authority within the meaning of section 10 (20) of the Income Tax Act, 1961 (the Act) ', however in the Appeal before the Hon'ble Tribunal, the contentions raised were viz., 'jurisdiction of the Ld. CIT (A), Noida to pass the order and deletion of the demand created by the Addl. CIT(TDS), Ghaziabad under Section 201(1) and 201 (1A) of the Income Tax Act, 1961 towards failure of the Assessee to deduct tax at source from the interest paid by it to New Okhla Industrial Development Authority (NOIDA) .

7. *Because, it is again worthwhile mentioning herein that the judgment of Hon'ble Allahabad High Court and the order of Hon'ble Tribunal are way different from each other and in no way the judgment of the Hon'ble High Court is binding precedent and covered by the doctrine of constructive res-judicata the conclusions of Respondent No. 1, therefore the question of adhering to the judgment dated 28.02.2011 of Hon'ble Allahabad High Court doesn't arise and stands at all.*
 8. *Because, had there been any such scenario where the judgment of the Hon'ble Allahabad High Court had a binding precedent effect, then at the first instance, the same would have been pointed out by the Respondent No. 2 during the course of the hearing of the Appeal. The failure to point out such a creamy fact during the course of hearing of the Appeal and pointing at this stage clearly demonstrates the deliberate and planned strategy of disobeying and disrespecting the order of this Hon'ble Tribunal.*
 9. *That it is submitted before this Hon'ble Tribunal that the Respondents deliberately and intentionally flouted the principles of judicial discipline which requires that the order of the Higher Appellate authorities should be followed unreservedly by the subordinate authorities. That it is also submitted - that the mere fact that the order of the Appellate Authority is not "acceptable" to the department- in itself is an objectionable phrase, thereby calling and inviting the Contempt of Court proceedings.*
 10. *That it is also submitted that if this healthy rule is not followed and such tactics of the Respondents are not stopped, the result will only be undue harassment to Assesseees and chaos in administration of tax laws.*
 11. *That the Appellant craves leave to add, alter, amend and/ or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary."*
4. Brief facts of the case is that Additional CIT TDS Range, Ghaziabad vide application dated 14.07.2014 applied for rectification of order passed by the 1d CIT(A) allowing the appeals of the assessee quashing the orders passed by the 1d Assessing Officer raising the demand u/s 201(1) and 201(1A) treating the appellant's bank to be assessee in default. Vide the impugned order in these appeals the 1d CIT (A) has reversed his decision and held that on the interest paid by the banks to New Okhla Industrial Development Authority tax was required to be deducted relying on the order of the Hon'ble Allahabad High Court by its judgment dated 28.02.2011 in WP No. 1338/2005 Noida Vs. CIT wherein, the writ petition filed by the NOIDA for claiming exemption u/s 10(20) of the Act were dismissed. Against that order of the 1d CIT(A) the present appeal is preferred.

5. The ld AR relied upon the orders of the coordinate bench in ITA No. 1356 & 1359/Del/2014 wherein, it has been held that the assessee bank cannot be treated as assessee in default u/s 201(1) and 201(1A) of the Act. further the ld AR relied upon the decision of the Hon'ble Allahabad High Court in ITA No. 64/2016 dated 04.04.2016 wherein, the orders of the coordinate bench were upheld.
6. The ld DR relied upon the orders of ld CIT(A) and further submitted that the revenue has filed an SLP before Hon'ble Supreme Court against the order of the Hon'ble Allahabad High Court which is admitted on 18.11.2016 and therefore he submitted that appellant bank should have deducted tax at source on interest payment made to NOIDA.
7. We have carefully considered the rival contentions. The decision of the Hon'ble Allahabad High Court upholding the orders of the coordinate bench vide its order dated 04.04.2016 has held as under:-

*“AFR
Court No.39*

*Case :- INCOME TAX APPEAL No. - 64 of 2016
Appellant :- Commissioner Of Income Tax (Tds) And Another
Respondent :- Canara Bank
Counsel for Appellant :- Ashok Kumar, Praveen Kumar*

*Hon'ble Dilip Gupta, J.
Hon'ble Surya Prakash Kesarwani, J.*

This appeal, which has been filed under section 260-A of the Income Tax Act, 1961 at the instance of the Department, was admitted on the following question of law :

"(A) Whether the ITAT as well as the Commissioner of Income Tax (A) have erroneously interpreted that NOIDA (New Okhla Industrial Development Authority) is a corporation established by U.P. Industrial Area Development Act, 1976 and not a body established under the aforesaid Act."

It transpires from the records of the appeal that the Assessing Officer noticed that for the Assessment Years 2006-07 and 2007-08, M/s. Canara Bank² failed to deduct tax at source under section 194-A(1) of the Act on the interest credited/paid on the fixed deposit receipts purchased by the New Okhla Industrial Development Authority³. In the present Appeal, we are concerned with the Assessment Year 2006-07. Accordingly, a notice was issued to the Bank. The contention of the Bank that NOIDA is a Corporation established by a State Act and, therefore, exempted from deduction of income tax at source in view of the notification dated 22 October 1970 issued under section 194-

A(3)(iii)(f) of the Act was not accepted. The Assessing Officer also did not accept that NOIDA was a local authority even after 1 April 2003 within the meaning of section 10(20) of the Act and, therefore, entitled to exemption from payment of income-tax. The Bank was held to be an assessee in default and an order under section 201(1)/201(1-A) of the Act was passed on 28 February 2013 . A demand notice under section 156 was issued and penalty proceedings under section 271-C of the Act were directed to be initiated separately.

Feeling aggrieved, the Bank filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals), however, after examination of the provisions of Uttar Pradesh Industrial Area Development Act, 1974 held that the NOIDA was a corporation established by the said Act and, therefore, entitled to the benefit of the notification dated 22 October 1970. The appeal was, accordingly, allowed. The department filed an appeal before the Income Tax Appellate Tribunal which by order dated 7 August 2015 dismissed the appeal filed by the department.

This appeal under section 260-A of the Act has, accordingly, been filed by the department.

The issue that arises for consideration in this appeal is as to whether NOIDA is a corporation entitled for exemption from deduction of tax at source under the provisions of the notification dated 22 October 1970 issued under section 194-A(3)(iii)(f) of the Act. This notification provides that the provisions of sub-section (1) of section 194-A of the Act shall not apply to any corporation established by a Central, State or Provincial Act. According to the appellants, the NOIDA is not a corporation that has been established by Industrial Act and, therefore, would not be entitled for exemption while according to the Bank, it is a corporation established by the Industrial Act and, therefore, entitled for exemption. In order to appreciate the rival contentions, it will be appropriate to refer to the provisions of the Acts involved and the notification.

Section 194-A(1) of the Act provides that any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force. However, sub-section (3) of section 194-A provides that the provisions of sub-section (1) shall not apply in certain cases. In the present case, we are concerned with sub-clause (iii)(f) of section 194-A(3) which exempts income credited or paid to such other institution, association or body or classes or class of institutions, association or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette. It is under this provision that the notification dated 22 October 1970 was issued by the Central Government which reads as follows : "In pursuance of sub-clause (f) of clause (iii) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notify the following for the purposes of the said sub clause:-

(i) any corporation established by a Central, State or Provincial Act; (ii) any company in which all the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a Corporation owned by that Bank; and (iii) any undertaking or body, including a society registered under the Societies Registration Act, 1860 (21 of 1860), financed wholly by the Government."

Sri Ashok Kumar and Sri Praveen Kumar, learned counsel appearing for the appellants submit that NOIDA is not a "local authority" within the meaning of section 10(20) of the Act after 1 April 2003 in view of a Division Bench judgment of this Court in Writ-Tax No.1338 of 20055 and, therefore, it was required to file return of income. It is also their submission that NOIDA is not a 'corporation' established by a State Act and, therefore, is also not entitled for exemption under section 194-A of the Act from deducting tax at source. In this connection learned counsel have drawn a distinction between a corporation that is established by a Central, State or Provincial Act and a corporation that established under a Central, State or Provincial Act. In support of this contention, learned counsel have placed reliance upon the decision of the Supreme Court in *Dalco Engineering Private Limited Vs. Satish Prabhakar Padhye & Ors.*

Sri Balbir Singh, learned Senior Counsel appearing for the Bank assisted by Sri Abhinav Mehrotra and Sri Ankit Vijaywargiya has, while relying upon the same decision of the Supreme Court in *Dalco Engineering Pvt. Ltd. (supra)* submitted that NOIDA is a corporation established by the Industrial Act and, therefore, entitled for exemption from deduction of income tax at source. We have carefully considered the submissions advanced by learned counsel for the parties.

In order to appreciate the contentions advanced by learned counsel for the parties, it will be appropriate at this stage to refer to the provisions of Industrial Act so as to determine whether NOIDA is a corporation that has been established by a State Act or it has been established under a State Act.

The State Act in issue is the Industrial Act. The preamble to the said Act states that it is an Act to provide for the constitution of an Authority for the development of certain areas in the State into industrial and urban township and for matters connected therewith. Section 3 provides that the State Government may, by notification, constitute for the purposes of the Act, an Authority to be called (Name of the area) Industrial Development Authority, for any industrial development area. Sub-section (2) of section 3 also provides that the Authority shall be a body corporate, while sub-section (3) provides for the constitution of the Authority. "Authority" has been defined under section 2(b) to mean Authority constituted under section 3 of the Act. The State Government by notification dated 17 April 1976 declared that the area comprising the villages mentioned in the Schedule annexed with the notification shall be an "Industrial Development Area" called "New Okhla Industrial Development Authority". The constitution of the Authority has also been provided as also the list of 37 villages of Tehsil Sikandarabad of District Bulandshahr. The constitution of the Authority is as follows :

(i) Secretary to the Government, Uttar Pradesh, Industries Department, Ex-officio Member Chairman.

[Under clause (a)] (ii) Secretary to the Government, Uttar Pradesh, Public Works Department, Ex-officio Member [Under clause (b)] (iii) Secretary to the Government, Uttar Pradesh, Local Self-Government Department, Ex-officio Member [Under clause (c)] (iv) Secretary to the Government, Uttar Pradesh, Finance Department, Ex-officio Member [Under clause (d)] (v) Managing Director, U.P. State Industrial Development Corporation Ltd., Ex-officio Member [Under clause (e)] (vi) Chairman, U.P. State Electricity Board, Ex-officio Member [Nominated under clause (f)] (vii) Managing Director, U.P. Jal Nigam, Ex-officio Member [Nominated under clause (f)] (viii) Chief Engineer, Irrigation Department, U.P. Ex-officio Member [Nominated under clause (f)] (ix) Chief Town and Country Planner, U.P., Ex-officio Member [Nominated under clause (f)] (x) (District Magistrate), Secy. Planning, Bulandshahr, Ex-officio Member [Nominated under clause (f)] (xi) Chief Executive Officer Member-Secretary [Under clause (g)]

Section 6 deals with the object and the functions of the Authority. The object is to secure the planned development of the Industrial Development Areas. The functions amongst others are : (i) to acquire land in the industrial development area by agreement or through proceedings under the Land Acquisition Act for the purpose of the Act; (ii) to prepare a plan for the development of the industrial area; and (iii) to provide amenities. Section 11 deals with levy of tax. It provides that for the purposes of providing, maintaining or continuing any amenities in the industrial development area, the Authority may with the previous approval of the State Government, levy such taxes as it may consider necessary in respect of any site or building on the transferee or occupier thereof, provided that the total incidence of such tax shall not exceed twenty five per cent of the annual value of such site or building. Section 20 deals with the funds of the Authority and sub-section (1) of section 20 is as follows :

"20. Fund of the Authority (1) The Authority shall have and maintain its own fund to which shall be credited

(a) all moneys received by the Authority from the State Government by way of grants, loans, advances or otherwise; (b) all moneys borrowed by the Authority from securities other than the State Government by way of loans or debentures; (c) all fees, tolls and charges received by the Authority under the Act, (d) all moneys received by the Authority from the deposit of lands, buildings and other properties movable and immovable; and (e) all moneys received by the Authority by way of rents and profits or in any other manner or from any other source."

Section 21 deals with the budget of the Authority while section 22 deals with the accounts and audit. These sections are reproduced below :

"21. Budget of the Authority--The Authority shall prepare in such form and at such time every year as the State Government may specify, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure of the Authority.

22. Accounts and Audit--(1) The Authority shall maintain proper accounts and other relevant records and prepare annual statement of accounts including the Balance Sheet in such form as the State Government may specify.

(2) The accounts of the Authority shall be subject to audit by the examiner Local Fund Accounts.

(3).....

(4).....

(5)....."

Section 23 provides that the Authority shall prepare for every year a report of its activities during that year and submit the report to the State Government in such form and on or before such date as the State Government may specify and such report shall be laid before both the Houses of the Legislature.

Section 41 deals with the control by the State Government while section 58 deals with the dissolution of the Authority. Section 58(1) provides that where the State Government is satisfied that the purposes for which the Authority was established under this Act have been substantially achieved so as to render the continued existence of the Authority in the opinion of the State Government unnecessary, the Government may by notification in the Gazette declare that the authority shall be dissolved with effect from such date as may be specified in the notification and the Authority shall be deemed to be dissolved accordingly.

The aforesaid provisions of the Industrial Act have to be kept in mind while examining the provisions of section 194-A of the Act in order to determine whether the Bank is exempted from deduction of tax at source. The relevant provisions of section 194-A of the Act for the purpose of deciding the controversy involved in this appeal, are reproduced below :

"194A - (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:

.....

.....

(3) The provisions of sub-section (1) shall not apply-

.....

.....

(ii).....

(iii) to such income credited or paid to (a) any banking company to which the Banking Regulation Act, 1949, applies or any co-operative

society engaged in carrying on the business of banking; or (b) any financial corporation established by or under a Central, State or Provincial Act; or (c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956; or (d) the Unit Trust of India established under the Unit Trust of India Act, 1963; or (e) any company or co-operative society carrying on the business of insurance; or (f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

.....
"

A perusal of section 194(1)(3)(iii) clearly indicates that the provisions of sub-section (1) of section 194-A of the Act shall not apply to such income credited or paid to banking company to which the Banking Regulation Act, 1949 applies, or any co-operative society engaged in the business of banking, financial corporation established by or under a Central or State Act, Life Insurance Corporation of India, Unit Trust of India or those notified under section 194-A(1)(3)(iii)(f) of the Act. The notification dated 22 October 1970 exempts any Corporation established by a Central, State or Provincial Act. The Bank asserts that NOIDA is a Corporation established by a State Act and is, therefore, exempted from deduction of income tax on the basis of the notification dated 22 October 1970 issued under section 194-A(3)(iii)(f) of the Act.

Learned counsel for the parties have relied upon the decision of the Supreme Court in *Dalco Engineering Pvt. Ltd. (supra)*. Two Civil Appeals were decided. The first Civil Appeal was filed by *Dalco Engineering Pvt. Ltd.*, a Private Limited Company incorporated under the provisions of Companies Act, 1956. The respondent *Satish Prabhakar Padhye* claimed the benefit of section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and filed the writ petition in the Bombay High Court for not only quashing the order dated 12 October 2001 issued by the Disability Commissioner suggesting to the employer to undertake the essential responsibility of re-employing the said respondent to discharge any other work as he had acquired hearing impairment during service but also for a direction upon the employer to implement the provisions of the Disabilities Act by directing the employer to reinstate the employee in service on a suitable post. The Bombay High Court allowed the writ petition by judgment dated 23 December 2005 and directed the employer to reinstate the said respondent and shift him to a suitable post after holding that though *Dalco Engineering* was a private limited company but it was an "establishment" within the meaning of section 2(k) of the Disabilities Act and consequently section 47 enjoined it not to dispense with the services of its employee who had acquired a disability.

Section 47 of the Disabilities Act which deals with non-discrimination in government employment is reproduced below :

"(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

The term "establishment" is defined in section 2(k) of the Disabilities Act and is as follows :

"2. Definitions.--In this Act, unless the context otherwise requires, -

(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government;"

The issue that arose before the Supreme Court was whether a Company incorporated under the Companies Act other than a government Company, as defined in section 617 of the Companies Act, was an "establishment" as defined in section 2(k) of the Disabilities Act and as to whether the respondent was entitled to claim any relief with reference to section 47 of the Disabilities Act. It is in this context that the Supreme Court observed that the words "a corporation established by or under a Central, Provincial or State Act" is a standard term used in several enactments to denote a statutory corporation established or brought into existence by or under a statute. The Supreme Court referred to the definition of "public property" contained in the Prevention of Damage to Public Property Act, 1984 to mean any property owned by, or in the possession of, or under the control of - (i) the Central Government; or (ii) any State Government; or (iii) any local authority; or (iv) any corporation established by, or under, a Central, Provincial or State Act; or (v) any company as defined in Section 617 of the Companies Act, 1956; or (vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in that behalf provided that the Central Government

shall not specify any institution, concern or undertaking under that sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central Government and partly by one or more State Governments. The Supreme Court observed that the term is always used to denote certain categories of authorities which are "State" as contrasted from non-statutory companies which do not fall under the ambit of "State". After considering the earlier judgments rendered in *S.S. Dhanoa Vs. Municipal Corporation, Delhi & Ors.*⁹ and *Vaish Degree College Vs. Lakshmi Narain*¹⁰, the Supreme Court further observed that a "company" is not "established" under the Companies Act as an incorporated company formed by the act of any seven or more persons (or two or more persons for a private company) associated for any lawful purpose subscribing their names to a memorandum of association and by complying with the requirements of the Companies Act in respect of registration. Therefore, a "company" is incorporated and registered under the Companies Act and not established under the Companies Act. On the contrary, the Companies Act itself establishes the National Company Law Tribunal and the National Company Law Appellate Tribunal and those two statutory authorities owe their existence to the Companies Act. In this context, it will be useful to reproduce paragraphs 21, 22 and 23 of the judgment which are as follows :

"21. Where the definition of "establishment" uses the term "a corporation established by or under an Act", the emphasis should be on the word "established" in addition to the words "by or under". The word "established" refers to coming into existence by virtue of an enactment. It does not refer to a company, which, when it comes into existence, is governed in accordance with the provisions of the Companies Act. But then, what is the difference between "established by a Central Act" and "established under a Central Act"?"

22. The difference is best explained by some illustrations. A corporation is established by an Act, where the Act itself establishes the corporation. For example, Section 3 of State Bank of India Act, 1955 provides that a bank to be called State Bank of India shall be constituted to carry on the business of banking. Section 3 of the Life Insurance Corporation Act, 1956 provides that

3. Establishment and incorporation of Life Insurance Corporation of India.-- (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be established a Corporation called the Life Insurance Corporation of India."

State Bank of India and Life Insurance Corporation of India are two examples of corporations established by "a Central Act".

23. We may next refer to the State Financial Corporation Act, 1951 which provides for establishment of various financial corporations under that Act. Section 3 of that Act relates to establishment of State

Financial Corporations and provides that "the State Government may, by notification in the Official Gazette, establish a financial corporation for the State under such name as may be specified in the notification" and such financial corporation shall be a body corporate by the name notified. Thus, a State Financial Corporation is established under a Central Act. Therefore, when the words "by and under an Act" are preceded by the words "established", it is clear that the reference is to a corporation established, that it is brought into existence, by an Act or under an Act. In short, the term refers to a statutory corporation as contrasted from a non-statutory corporation incorporated or registered under the Companies Act."

(emphasis supplied)

In S.S. Dhanoa (supra), on which reliance was placed in the aforesaid judgment, the Supreme Court had observed :

"9. Corporation, in its widest sense, may mean any association of individuals entitled to act as an individual. But that certainly is not the sense in which it is used here. Corporation established by or under an Act of legislature can only mean a body corporate which owes its existence, and not merely its corporate status, to the Act. For example, a Municipality, a Zilla Parishad or a Gram Panchayat owes its existence and status to an Act of legislature. On the other hand, an association of persons constituting themselves into a Company under the Companies Act or a Society under the Societies Registration Act owes its existence not to the Act of legislature but to acts of parties though, it may owe its status as a body corporate to an Act of legislature.

10. There is a distinction between a corporation established by or under an Act and a body incorporated under an Act. The distinction was brought out by this Court in Sukhdev Singh and Ors. v. Bhagatram Sardar Singh Raghuvanshi and Ors., (1975) 1 SCC 421. It was observed:

"25. A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act."

There is thus a well-marked distinction between a body created by a statute and a body which, after coming into existence, is governed in accordance with the provisions of a statute."

(emphasis supplied)"

In Vaish Degree College (supra), the Supreme Court had also observed as follows :

"10. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such case to be asked is, if there is no statute, would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any

reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.

(emphasis supplied)"

The contention of Sri Ashok Kumar and Sri Praveen Kumar, learned counsel for the appellants is that NOIDA has been created under the provisions of Industrial Act and, therefore, would not be exempted under section 194-A of the Act. The submission of learned counsel is that it is only when the corporation is established by an Act, as is contemplated under the notification dated 22 October 1970, that it would be exempted from deduction of tax at source under section 194-A(1) of the Act. In this connection, learned counsel pointed out that NOIDA has been constituted by the State Government by a notification after identifying the areas. According to them, this is an example of a corporation having been constituted under the State Act. In order to draw a distinction from a corporation having been established by a State Act, learned counsel referred to the establishment of the State Bank of India under the provisions of State Bank of India Act, 1955 as also the constitution of the Life Insurance Corporation of India under the provisions of the Life Insurance Corporation Act, 1956. Learned counsel pointed out that these two corporations have been established by a Central Act. The distinction that is sought to be made by learned counsel for the appellants is that whereas the State Bank of India and Life Insurance Corporation of India have been established by an Act for the reason that they have been named in the Act but NOIDA has neither been named nor its area has been determined. Learned counsel for the appellants in fact have submitted that like NOIDA, the State Financial Corporation has also been established under the State Financial Corporation Act, 1951. Their contention is that section 3 of the State Financial Corporation Act relates to establishment of State Financial Corporations and provides that the State Government may, like in the case of an Authority under the provisions of the Industrial Act, by a notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification. According to him, there is no distinction between the State Government establishing a Financial Corporation under such name as may be specified in the notification and the State Government constituting an Industrial Development Authority under section 3(1) of the Industrial Act. Learned counsel, therefore, submitted that the Commissioner of Income Tax (Appeals) as also the Income Tax Appellate Tribunal committed gross illegality in holding that the NOIDA has been established by the State Act and, accordingly, granting exemption from deduction of tax under section 194-A(1) of the Act.

Sri Balbir Singh, learned Senior Counsel appearing for the Bank, however, submitted that there can be no doubt that the NOIDA has been constituted by the Industrial Act. His contention is that except for naming NOIDA or any other Industrial Development Authority all matters have been specified in section 3(1) and the other provisions of the Industrial Act and, therefore, it is not a case where NOIDA has been constituted under the provisions of the Industrial Act. His submission is that even otherwise it would not be appropriate to examine as to

whether NOIDA has been constituted by the State Act or under the State Act having regard to the provisions of section 194-A(3)(iii)(c) of the Act for the reason that even Life Insurance Corporation of India is referred to in that section. According to him, there is no need to meticulously examine the difference in using "by" or "under" when the Legislature itself has not considered it necessary to place such a fine distinction as is sought to be raised by learned counsel for the appellants. His contention is that in view of the exemptions granted under section 194-A(3)(iii)(f) of the Act as also the notification dated 22 October 1970, NOIDA is exempted from deduction of tax at source under section 194-A(1) of the Act.

With regard to the decision of the Supreme Court in Dalco Engineering Pvt. Ltd. (supra), which deals with the State Financial Corporation Act, 1951, learned Senior Counsel submitted that the Central Act in section 3 provides that the State Government may, by notification in the Official Gazette, establish a Financial Corporation for the State under such name as may be specified in the notification, while in the case of NOIDA, the State Act itself provides for constitution of an Authority by issuance of a notification. His submission is that it is for this reason that the Supreme Court in paragraph 23 of the judgment rendered in Dalco Engineering Pvt. Ltd. (supra) observed that the State Financial Corporation had been established under a State Act.

What is important to notice is that in Dalco Engineering Pvt. Ltd. (supra), the Supreme Court while dealing with the State Financial Corporation, specifically observed that when the words "by or under an Act" are preceded by the words "established", it is clear that the reference is to a corporation that it is brought into existence by an Act or under an Act.

It also needs to be noted is, as is also clear from the preamble to the Industrial Act, that the Act provides for the constitution of an Authority for the development of certain areas in the State. Thus, the Act itself constitutes the Authority. Section 3(1) of the Act provides that the name of the area shall be added before the Industrial Development Authority. In other words, whether it be NOIDA or any other Authority that is to be constituted under section 3(1) of the Act, the name of the Authority has been indicated. So far as the NOIDA is concerned, the name of the Authority is the New Okhla Industrial Development Authority. Thus, except for naming a particular Industrial Area Development Authority, since more than one Authority could be constituted, the Authority has been constituted by the Act and merely because the area of the Authority has not been defined under the Act and has been left to the discretion of the State Government, cannot, in our opinion, make any difference for the purposes of determining whether it has been established by an Act.

The Authority is a body corporate and consists of officers of the State Government. The objects and functions of the Authority have been clearly defined under section 6 of the Industrial Act. The main functions are to acquire land in the industrial development area by agreement or by acquisition under the Land Acquisition Act; to prepare a plan for the development of the industrial area and to provide amenities. The

Authority has also been empowered to levy tax as is clear from the provisions of section 11. It empowers the Authority with the previous approval of the State Government to levy such taxes, as it may consider necessary, for maintaining or continuing any amenities in the industrial development area. The Authority has to maintain its own fund. The object of the Authority is to prepare in such form and at such time every year as the State Government may specify, a budget. Section 41 deals with the control of the State Government over the Authority. The dissolution of the Authority is also provided for in section 58. It can appropriately be gathered from the aforesaid provisions that NOIDA has been established by the Industrial Act and otherwise also even by necessary implications it is more than apparent that NOIDA has been established by the State Industrial Act. There is, therefore, no doubt that NOIDA owes its existence to a Statute which is the fountainhead of its powers.

Even otherwise, the fine distinction sought to be made by learned counsel for the appellants losses significance when the provisions of section 194-A(3)(iii)(c) and (d) are examined. They provide that the income credited or paid to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1952 or the Unit Trust of India established under the Unit Trust of India Act, 1963 are exempted from payment of tax at source. There is no doubt that Life Insurance Corporation of India and the Unit Trust of India are established by the Acts. The Act, therefore, does not place any emphasis on 'by' or 'under' the Act.

In this view of the matter, reference to the Financial Corporation Act by learned counsel for the appellants to substantiate that NOIDA has been established under a State Act is not of significance. This apart, as has been pointed out by learned Senior Counsel for the respondent-Bank, the said Central Act authorised the State Government to issue the notification whereas the Industrial Act authorises the State Government to issue the notification.

In this connection, we need to remind ourselves by observations made in paragraph 9 in the judgment of S.S. Dhanoa (supra). The Supreme Court pointed out that a Corporation established "by" or "under" an Act of Legislature can only mean a body corporate which owes its existence and not merely its corporate status to the Act and in this connection the Supreme Court referred to : a municipality; a zila parishad; or a gram panchayat which owe their existence and status to an Act of Legislature.

NOIDA has been granted a status of a Municipality under Article 243-Q of the Constitution of India which deals with the constitution of a Municipality. The said Article provides that there shall be constituted in every State, - (a) a Nagar Panchayat for a transitional area, that is to say, an area in transition from a rural area to an urban area; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area. The proviso to Article 243-Q, however, stipulates that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in

that area and such other factors as he may deem fit, specify to be an industrial township. The State Government has issued a notification dated 24 December 2001 in exercise of the powers conferred under the proviso to clause (1) of Article 243-Q of the Constitution. The said notification provides that having regard to the size of NOIDA which has been declared to be an Industrial Development Area by a notification dated 17 April 1976 and the municipal services being provided by NOIDA, the Governor is pleased to specify that NOIDA would be an "Industrial Township" with effect from the date of publication of the notification. This clearly means that instead of Municipal Corporation providing services, NOIDA would provide the said services and if that be so, then as observed by the Supreme Court in S.S. Dhanoa (supra), NOIDA will owe its existence to an Act of the State.

We have, therefore, no manner of doubt from a reading of the provisions of the Industrial Area Development Act that the NOIDA has been constituted by the State Act and, therefore, entitled to exemption of payment of tax at source under section 194-A(1) of the Act. The decision of the Division Bench of this Court in New Okhla Industrial Development Authority (supra), on which reliance has been placed by learned counsel for the appellants, would, therefore, not come to the aid of the appellants as it was restricted to the issue as to whether NOIDA would be a local authority or not and did not deal with the issue involved in this appeal as to whether the NOIDA is a Corporation established by a State Act.

We, therefore, answer the question of law framed by us in negative and hold that NOIDA is a Corporation established by the Uttar Pradesh Industrial Area Development Act, 1976.

The appeal is, accordingly, dismissed."

8. The Hon'ble Allahabad High Court has considered decision of Hon'ble high Court in Writ Tax No. 1338/2005 based on which the ld CIT(A) has reversed the order, while deciding the issue of applicability of withholding tax on interest payment by the appellant to NOIDA. Hon'ble high Court has conclusively held that the decision in that particular case does not come to aid of the revenue as it was restricted to the issue as to whether NOIDA would be a local authority or not and did not deal with the issue of whether NOIDA is a corporation established by State Act. Hon High court has conclusively held that NOIDA is 'corporation' established Uttar Pradesh Industrial Area Development Act, 1976 and therefore it is entitled to exemption from deduction of tax at source u/s 194A of the Income Tax Act. Therefore, respectfully following the decision of Honourable high court in Income tax Appeal No 64 of 206 dated 4.4.2016, we hold that the order of the ld CIT(A) in challenge before us is not sustainable. Further as the matter

has reached before Hon'ble Supreme Court for adjudication whether tax is required to be deducted on interest payments made by the banks to NOIDA, itself suggests that the issue was debatable and do not fall in the purview of provisions of section 154 of the Act under which the impugned order was passed by the 1d CIT (A). On this count also the 1d CIT(A) erred in reversing his order based on application of the Addl. CIT, TDS. Hence, we quash the order of the 1d CIT (A).

9. In the result appeals filed by the appellant are allowed.

Order pronounced in the open court on 24/03/2017.

-Sd/-

**(H.S.SIDHU)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 24/03/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi