IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1" NEW DELHI
BEFORE SHRI P.K. BANSAL : ACCOUNTANT MEMBER

ITA no. 1067/Del/2014
Asstt. Yrs: 2006-07

Raj Kumar Jindal, Prop. Jindal Industries, Sirsa Road, Fatehabad. PAN: AFWPJ 9255 K	Vs.	Income-tax Officer, Ward-1, Fatehabad.
(Appellant)		(Respondent)

Appellant by : Shri Gautam Jain Adv.
Respondent by : Shri P. Dam Kanunjna Sr. DR

Date of hearing : 13/11/2015.
Date of order : 30/11/2015.

O R D E R

This appeal has been filed by the assessee against the order dated 03/01/2014, passed by the CIT(A), Rohtak, in appeal no. 22/RTK/2012-13 for A.Y. 2006-07.

2. The only issue involved in this appeal relates to disallowance made u/s 40a(ia) by applying the provisions of section 154.

3. Brief facts of the case are that the assessment u/s 143(3) was completed at an income of Rs. 2,76,690/- plus Rs. 1,00,000/- agricultural income. Later on, it was noticed that the assessee had paid lease rent on account of factory building @ 5,000/- per month and Rs. 10,000/- per month on account of plant & machinery, which the assessee has paid to M/s Jindal Stuff Board Pvt. Ltd., Fatehabad.

4. According to the AO, the assessee was under statutory obligation to deduct the tax at source u/s 194I. Out of these payments as the amount of the rent was Rs. 1,80,000/-, therefore, the said sum has to be disallowed u/s 40a(ia). When the show cause notice issued, the assessee submitted that the assessee had entered into two agreements with M/s Jindal Stuff Board Pvt. Ltd., Fatehabad. Under one agreement the assessee had taken building M/s Jindal Stuff Board Pvt. Ltd., on lease at a consideration of Rs. 5,000/- per month. Under the other agreement the assessee had taken on lease plant and machinery at a consideration of Rs. 10,000/- per month. Both the agreements were separate and the rent paid for building, furniture and fittings and land appurtenant thereto, did not exceed Rs. 1,20,000/- as per the provisions existing during the impugned assessment year. The AO did not agree but rectified the assessment order. When the matter went before the CIT(A), the CIT(A) dismissed the appeal.

5. I heard the rival submissions and carefully considered the same, along with the order of the tax authorities below. I noted that the provision of section 194I was inserted by the Finance Act, 1994 w.e.f. 1-6-1994. Thus, section, which was in existence during the impugned assessment year required any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, 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 the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of –

(a) Fifteen per cent if the payee is an individual or a Hindu undivided family; and
(b) twenty per cent in other cases.

6. First proviso further states that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed one hundred and twenty thousand rupees.

7. The rent has been defined under Explanation (i) as under:

> *"(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee;*"

8. From Explanation (i) it is apparent that the rate for the purpose of section 194I does not include within the ambit of payment made for the use of machinery or plant or equipment. In the case of the assessee I noted, there were two different agreements – one agreement relating for the use of the building @ Rs. 5,000/- per month and the other agreement related for the lease of plant and machinery @ Rs. 10,000/- per month. Payment towards the rent on plant and machinery was not subject to TDS u/s 194I. This has been included within the definition of rent w.e.f. 13-7-2006 i.e. after the assessment year 2006-07. The rent paid by the assessee in respect of the building in the impugned case comes to Rs. 60,000/-. In view of this fact, I am of the view, since the rent, as defined u/s 194I, inthe case of the assessee during the impugned year does not exceed Rs. 1,20,000/- and, therefore, it is not a case where it can be said that there was a mistake apparent on record in the

assessment order passed on 12-11-2008. I, accordingly, quash the order passed u/s 154.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in open court on 30/11/2015.

Sd/-
(P.K. BANSAL)
ACCOUNTANT MEMBER

Dated: 30/11/2015.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.