

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3034/Del/2017
Assessment Year: 2012-13

M/s. Skytech Construction Pvt. Ltd., 385, Kohat Enclave, Pitampura, Delhi	Vs.	Income Tax Officer(TDS), Ward-51(3), New Delhi
PAN :AAICS5940A		
(Appellant)		(Respondent)

Appellant by	Shri Vivek Bansal, Adv.
Respondent by	Shri Shailesh Kumar, Sr.DR

Date of hearing	17.10.2019
Date of pronouncement	30.10.2019

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 30/03/2017 passed by the Ld. Commissioner of Income-tax (Appeals)-41, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13 raising following grounds:

That under the facts and circumstances of the case Ld. CIT(A) has erred in law and in fact in upholding the interest liability under the proviso to section 201(1A) of the Act i.e., from the date on which tax was deductible till the date of filing of the return by the deductee. While issuing such directions to the the AO, Ld. CIT(A) has failed to appreciate:-

- i) *That Such direction is contrary to the decision of jurisdictional High Court in the case of Rajesh Projects (P) Ltd. (78 taxmann.com 263(Del)) where it has been held by High Court that since deduction of tax could not be made due to insistence of GNOIDA, the liability to*

pay the deduction of tax with interest till the date of judgment (16.02.2017) would be of GNOIDA and after that the liability to deduct tax will be on the deductor. (Para 20(2) and 21 of the Judgment).

- ii) That when the assessee is held to be the assessee not-in-default then first proviso to section 201(1) cannot be applied.*
- iii) That the afore-mentioned decision of High Court is applicable to all income tax authorities which includes CIT(A) and she is bound by the decision of jurisdictional High Court.*
- iv) Therefore, Ld. CIT(A) has erred in not following the directions of Hon'ble High Court so far as it related to charging of interest under proviso to sub-section (IA) to section 201 of the Act.*

2. Brief facts of the case are that the assessee, a real estate developer, purchased a plot of land on 29/07/2010 from the Noida Authority for development purposes for a total consideration of Rs.40,67,98,900/-, out of which, 10% being a sum of ₹ 4,26,79,890/-, was paid as allotment money and balance 90% was payable in 16 equal half yearly installments after a moratorium period of 24 months. The balance payment of 90% was bearing interest at the rate of 11% per annum. During the year under consideration, the assessee paid annual lease rent of ₹ 32,56,250/- to the Noida Authority. The Assessing Officer observed that the assessee had not deducted tax at source (TDS) on such lease rental payment and interest to the Noida Authority, accordingly, he passed order under section 201(1)/201(1A) of the Act, holding the assessee as assessee-in-default and demand was raised under section 201(1) and interest under section 201(1A) of the Act. The learned CIT(A) after considering various decisions of the Hon'ble Courts, held that assessee was liable to deduct TDS on the annual lease rent payment made to the Noida Authority.

However, in view of the decision of the Hon'ble Delhi High Court in the case of Rajesh Project (India) (P) Ltd. Vs CIT (TDS)-II, (2017) 78 taxmann.com 263 (Delhi), the learned CIT(A) deleted the liability under section 201(1), but sustained the interest liability under section 201(1A) of the Act, observing as under:

“4.11 In view of the letter received from NOIDA Authority the appellant had reasonable cause not to deduct TDS on payments made to NOIDA. Therefore, following the decision of the Hon'ble Delhi High Court the appellant is not considered to be an assessee-in-default; however, it does not absolve the appellant from the interest liability u/s 201(1 A). Hence, in view of the provisions of the First Proviso to section 201(1), the Assessing Officer is directed to modify the demand after ascertaining that the deductee has taken into account such sum for computing its income. The AO is further directed to re-calculate the interest u/s 201(1 A) from the date on which tax was deductible till date of filing of Return by the deductee. This claim of the appellant is therefore partly allowed.”

3. Before us, the Ld. counsel of the assessee relying on the decision of the Rajesh Projects (India) Pvt. Ltd (supra) submitted that once the original demand under section 201(1) of the Act has already been deleted and thus, the assessee is no more assessee-in-default, the interest liability under section 201(1A) cannot be enforced upon the assessee. The Ld. counsel also submitted that in the subsequent order passed by the Commissioner of Income-tax (Appeals) on 12/09/2019 for assessment year 2011-12, he has deleted liability of interest under section 201(1A) in the case of the assessee and no further appeal has been preferred by the department against the said order of the Ld. first appellate authority.

4. On the contrary, the Ld. DR submitted that learned CIT(A) has followed the decision of the Hon'ble Delhi High Court in the case of Rajesh Projects (India) (P) Ltd (supra) and accordingly,

retained the interest liability for non-deduction of tax at source, to be paid by the assessee.

5. We have heard the rival submission and perused the relevant material on record. We find that the Hon'ble Delhi High Court in the case of Rajesh projects (India) (P) Ltd (supra) has directed as under:

*“21. In view of the above conclusions, it is hereby directed that wherever amounts have been paid by the petitioners, towards TDS as a result of the coercive process used by the Revenue, the GNOIDA shall make appropriate orders to credit/reimburse such payments. In case payments are made through deposit, over and above the rental amounts paid to the GNOIDA, without TDS, the income tax authorities shall not pursue any coercive proceedings; GNOIDA shall duly reimburse the petitioners for such amounts. Any amounts deposited in the court or with the Revenue, shall, to the extent of TDS liability only be appropriated for such purpose. It is clarified that GNOIDA shall ensure that reimbursement is made to compensate the petitioners' excess payments; **the income tax authorities shall not pursue any coercive methods for recovery of the amounts, or penalty, once the basic liability (with interest, to be paid by GNOIDA) is satisfied.** The impugned orders are quashed; the Revenue shall make consequential orders, to give effect to this judgment, after duly hearing the petitioners and those likely to be affected, within 12 weeks from today.”*

(Emphasis supplied externally)

6. Thus, it is evident that Hon'ble Court has directed not to take any coercive method for recovery of the amount or penalty once the basic liability (with interest to be paid by the GNOIDA) is satisfied. In view of the direction, it is clear that if the tax on the under dispute lease rental income along with the interest has been paid by the deductee, i.e., GNOIDA, no recovery can be made from the deductor. In the light of the ratio of the decision, in the instant case, the NOIDA authority is required to pay tax as well as interest if any corresponding to the lease rental paid the assessee. However, if such tax and interest are not paid by the

NOIDA, the assessee cannot be exonerated from the liability under section 201(1) and 201(1A). We find that in the instant case, the learned CIT(A) has deleted liability under section 201(1) of the Act but retained the interest liability under section 201(1A) of the Act. The first appellate authority in assessment year 2011-12, has deleted the interest liability observing as under:

“5(v). Thus, the directions given by Hon’ble Jurisdictional Delhi High Court in the case of Rajesh Projects (India) (P.) Ltd. Vs CIT (supra) have also been upheld by Hon’ble Supreme Court and these directions are upheld on the ground of “adjusted equities”. Considering the above position of fact and law. I am lead to concluded the appellant has not been considered to be liable for deduction of tax and NOIDA has been held to be under an obligation to comply with the provision of law relating to TDS and also for making all related payments. Thus the appellant cannot be saddled with the liability of interest u/s 201(1A). Therefore, the interest liability of the appellant is directed to be deleted.”

7. Thus, learned First Appellate Authority in assessment year 2011-12 has held that Noida Authorities are under an obligation to comply with the provision of the law relating to TDS and also for making all related payments. In our opinion, if the interest has already been paid by the NOIDA Authority on the lease rental income corresponding to payment of the assessee (i.e. Rs.32,56,250/-), no liability can be raised on the assessee u/s 201(1A) of the Act. This is a matter of verification and cannot be presumed. In view of the facts and circumstances, we feel it appropriate to restore this issue to the file of the Assessing Officer for verifying the facts of interest paid on the tax liability by the Noida Authority, corresponding to lease rental paid by the assessee, and decide the issue in accordance with law. It is

needless to mention that the assessee shall be afforded adequate opportunity for producing all the relevant records and of being heard. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 30th October, 2019.

Sd/-

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 30th October, 2019.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi