

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.217/DEL/2023
Assessment Year 2015-16

ITO Ward-77(1) New Delhi.	Vs.	Santur Builders Pvt. Ltd. E-6 Greater Kailash, Part-I New Delhi
TAN/PAN: AAICS4666F		
(Appellant)		(Respondent)

Appellant by:	Shri Sarthak Jain, Adv.		
Respondent by:	Shri Anuj Garg, Sr.DR		
Date of hearing:	18	07	2023
Date of pronouncement:	18	07	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-XXIII, New Delhi ('CIT(A)' in short) dated 06.10.2022 arising from the order dated 23.02.2022 passed by the Assessing Officer (AO) under Section 201/201(1A) of the Act, 1961 (the Act) concerning AY 2015-16.

2. As per its grounds of appeal, the assessee has challenged the action of the Assessing Officer for treating the assessee as 'assessee in default' towards failure to deduct tax as required under the provisions of Chapter XVIIB of the Act towards amount paid as External Development Charges (EDC) to Directorate of Town and Country Planning, Haryana (Haryana Government)

(DGTCP) through banking channel favouring Haryana Urban Development Authority (HUDA).

3. The issue is no longer *res integra*. The identical issue has came up for adjudication before the Co-ordinate Bench of Tribunal in the case of *Spaze Tower Pvt. Ltd. vs. JCIT, New Delhi in ITA No.5842/Del/2019, order dated 26.05.2022*. The relevant operative paragraphs of the order of the Co-ordinate Bench squarely covered the issue reads as under:

“6. We have carefully considered the rival submissions. The Assessing Officer/JCIT levied penalty of Rs.6,14,460/- under Section 271C for short deduction/non deduction of tax at source alleging default committed by the assessee under Section 194C on payment of External Development Charges (EDC) to Haryana Urban Development Authority (HUDA). With the assistance of the ld. counsel, we find that the Directorate of Town and Country Planning, Haryana (Haryana Government) has issued clarification on TDS deduction on EDC payments vide letter dated 19.06.2018 which is self explanatory and thus reproduced herein for ready reference:

*“To
The Chief Administrator,
Haryana Shahari Vikas Pradhikaran,
Panchkula,*

*Memo No.DTCP/ACCTTS/Assessing Officer(HQ)/CAO/2894/2018 Date:
19.6.2018*

Subject: Clarification on TDS Deductions on EDC Payments.

Please refer to the matter cited as subject above.

1. Section 2(g) of the Haryana Development and Regulation of Urban Areas Act, 1975 defines that external development works (hereinafter referred as EDW) shall includes any or all infrastructure development works like water supply, sewerage, drains, provisions of treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal, slaughter houses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc. and/or any other work which the Director may specify to be executed in the periphery of or outside colony/area for the benefit of the colony/area.

2- As per Section 3(3)(ii), license holder has to pay proportionate development charges if the external development works as defined in clause (g) of section 2 are to be carried out by the Government or any other local authority. The proportion in which and the time within which, such payment is to be made, shall be determined by the Director.

3. Presently, external development works in the periphery of or outside colony/area for the benefit of the colony/area are being executed by Haryana Shahari Vikas Pradhikaran thereafter HSVP) which is the Development Authority or state Govt. Earlier upto 31.03.2017, Department of Town & Country Planning used to collect the external development charges from the colonizer to whom licences have been granted under Act No. 8 of 1975 and the persons to whom permission for change of land use have been granted under Act No. 41 of 1963, in the shape of bank draft drawn in favour of CA, HSVP and send the same to CA, HSVP.

4. As the receipt on account of EDC was not sufficient to carry out the all development works under EDC for the urban estate as per approved development plans, therefore to meet out the shortfall, a new scheme Swaran Jayanti Haryana Urban Infrastructure Development Scheme (renamed as Mangal Nagar Vikas Yojana was approved by the State Govt. and appropriate budget provision for execution of development works has been made in the said scheme. From Financial Year 2017-18, the receipts on account of EDC is being deposited in the consolidated fund of the State under Major Receipt Head-0217 receipts and all license/CLU holders have also been directed vide order dated 12.05,2017 that payment of EDC in respect of license/CLU granted by TCP Deptt. may be made online through e-payment gateway or in shape of demand drafts favouring Director, Town & Country Planning, Haryana. Required funds for execution of development works are released to HSVP after granting the sanction from the Finance Department.

It is, therefore, clarified that HSVP is only an executing agency for and on behalf of State Govt. for carrying out EDW for which funds are given to HSVP by the Govt. through TCP Deptt. Since, payment for EDC has been made to TCP Deptt. of State Govt., no TDS was/is to be deducted out of payment made to Govt. for EDW.

Accounts officer (HO)
For: Director Town & Country Planning
Haryana, Chandigarh

7. On the basis of the aforesaid clarification, the assessee contends that the payment to HUDA is, in effect, payment to State Government and therefore such payment is exempt from obligations to deduct TDS in view of Section 196 of the Act.

8. We also notice that identical issue has been examined by the Co-ordinate Bench in the case of Perfect Constech Pvt. Ltd. vs. Additional Commissioner of Income Tax in ITA No.6907/Del/2019 order dated 29.12.2020 wherein Co-ordinate Bench found that the provisions of Section 194C are not applicable on payments to agencies like HUDA on behalf of the State Government. The imposition of penalty under Section 271C was consequently found to be unsustainable in the absence of default of Section 194C of the Act.

9. The facts and issue being identical, in the light of the clarification

noted above coupled with view taken by the Co-ordinate Bench in the identical facts situation, we see no reason to depart therefrom. Consequently, we find merit in the plea raised on behalf of the assessee for cancellation of penalty imposed under Section 271C of the Act.”

4. In consonance with view taken by the Co-ordinate Bench, we hold that imposition of demand of Rs.46,51,786/- computed under Section 201 of the Act and consequential interest of Rs.40,00,536/- under Section 201(1A) of the Act aggregating to Rs.86,52,322/- for the Assessment Year 2015-16 is not justified in view of the finding of the Co-ordinate Bench that the assessee has not committed any violation of provision of Chapter XVII B of the Act by making payment towards EDC charges to DGTCP Haryana through HUDA without deduction of TDS.

5. It is further noticed that Hon'ble Supreme Court in the case of *Union of India vs. Additional Commissioner of Income Tax (TDS), Kanpur, 136 taxmann.com 155 (SC)* in the context of Agra Development Authority observed that such authority was statutory body constituted under UP Urban Planning and Development Act, 1973 and covered by notification issued. After considering the terms of notification, it was held that TDS provisions for payments made to such Authority are not applicable. Same principles would apply *mutatis mutandis* in the instant case.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 18/07/2023

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: /07/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**