

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH,
RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं./ITA No. 175/RPR/2023
निर्धारण वर्ष /Assessment Year: 2019-20

Jaimeet Sawaria, C/o Hotel Maurya, Near Raj Talkies G.E. Road Raipur – 492001 (CG)	V s	Income Tax Officer (TDS) TDS Wing, 4 th Floor Above Nexa Showroom Rajendra Nagar Chowk Raipur – 492001 (CG)
PAN: ASKPS7064G		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
निर्धारित की ओर से /Assessee by	:	Shri Nikhilesh Begani, CA
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Shama, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	08/09/2023
घोषणा की तारीख/ Date of Pronouncement	:	12/09/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The captioned appeal is directed against the order of Ld Commissioner of Income Tax (Appeals), National Faceless Centre (NFAC), Delhi u/s 250 of the Income Tax Act, 1961 dated 21/04/2023 for the AY 2019-20, passed vide the appeal instituted against the order u/s 201 of the Income Tax Act 1961 issued by Ld AO, ITO(TDS), Raipur dated 08/02/2021.

Grounds appeal raised by the assessee in the present appeal are as under:

GROUND NO. I

1. That the Order passed under section 201 r.ws. 234E of the Income Tax Act, 1961 (*"the Act"*) is highly illegal, bad in law, suffers from legal infirmities, without affording adequate opportunity of being heard and hence liable to be quashed. It is prayed that the Appellate Order passed by the Ld. Commissioner of Income Tax (Appeals), National " Faceless Appeal Center (*"the Ld.CIT(AT)*) under section 250 of the Income Tax Act, 1961 (*"the Act"*) may please be cancelled/set-aside on this ground alone.

GROUND NO. II

2. On the facts and in the circumstances of the case as well as in law, the Ld.CIT(A) has grossly erred in confirming the action of the Learned Income Tax Officer (TDS) (*"the Ld.AO"*) in treating the appellant as "an assessee in default" u/s.201(1) of the Act thereby determining the liability for deduction of tax at source invoking the provisions of section 194-IA of the which is highly illegal, unjustified, unwarranted, not proper on facts and not in accordance with the provisions of law.

He has failed to appreciate that since, the threshold limit of Rs.50,00,000 was not reached qua 'each' individual purchaser with reference to 'each' immovable property in their own right hence, there was no liability to deduct & deposit tax at source as per section 194-IA of the Act. Hence, it is earnestly prayed that the demand of Rs.2,16,995/- may please be deleted.

GROUND NO. III

3. On the facts and in the circumstances of the case as well as in law, the Ld.CIT(A) has erred in confirming the Order of the Ld.AO in holding the appellant liable for late filing fees to the extent of Rs.1,90,000/- as per section 234E of the Act which is highly illegal, unjustified, unwarranted, not proper on facts and not in accordance with the provisions of law. Hence, it is earnestly prayed that the demand of late filing fees of Rs.1,90,000/- may please be deleted.

GROUND NO.IV

4. On the facts and in the circumstances of the case as well as in law, the Ld.CIT(A) has erred in confirming the Order of the Ld.AO in holding the appellant liable for payment of an interest of Rs.26,995/- as per section 201(1A) of the Act which is highly illegal, unjustified, unwarranted, not

proper on facts and not in accordance with the provisions of law. Hence, it is earnestly prayed that the demand of interest of Rs.26,995/- may please be deleted.

GROUND NO. V

5. That the Appellant craves leave to add, amend, alter or delete all or any of the grounds of appeal at the time of hearing of the appeal.

2. Brief facts of the case are that the appellant an individual, along with his father Shri Bharat. Sawaria and his mother Smt. Kalpana Sawaria jointly purchased Two immovable properties viz. two flats bearing number A2-303 and A2-403 at Shrijan Premium, Raipur. These properties were registered by way of a single sale deed. The aggregate consideration in respect of two flats was fixed at Rs. 1,90,00,000/- i.e. consideration required to be paid in respect of each flat was fixed at 95,00,000/-. A Consolidated Purchase deed in respect of two flats was registered with the sub registrar Raipur on 5th March 2019 though, advance payments were given to the seller and on the date of registration entire consideration was paid there on and TDS was deducted on 5th March 2019 only by the appellant, deposited to the government exchequer and Form 26QB was filed accordingly. The aforesaid transaction of purchase of two immovable property came for verification before the Ld. ITO(TDS). Ld. ITO(TDS) passed an exparte order under section 201(1A) of the Act on 8th February 2021 determining a demand of Rs. 2,16,995/-, holding the appellant as liable for interest on such late payment of Rs. 26,995/-and late filing fee under the provisions of section 234E of the Act to the extent of rupees 1,90,000/-. Aggrieved by such an order of the Ld AO, assessee

preferred an appeal before the LD CIT(A), but was failed to succeed. The assessee is therefore filed this appeal before the ITAT to challenge the findings of the LD CIT(A).

3. At the outset, Ld. AR reiterated the facts of the case and submitted that the 2 properties being two flats purchased by the assessee along with his parents in total 3 persons purchased two properties. The payments made by the these 3 individuals towards individual property works out below the threshold limit for applicability of TDS u/s 194IA i.e Rs. 50,00,000/-. A chart showing payment by each co-buyer of the property is also furnished the same is extracted as under:-

JAIMEET SAWARIA
I.T.A.No.: 175/RPR/2023
Assessment Year 2019-2020

Details/Bifurcation of Payments made towards Acquisition of Flats at Shrijan Premium

Date of Payment	Mode of Payment	Name of Bank	Jaimeet Sawaria	Smt.Kalpana Sawaria	Shri Bharat Kumar Sawaria
06.11.2015	Ch.No.000006	HDFC Bank	500000		
12.01.2016	Ch.No.000007	HDFC Bank	500000		
01.02.2016	Ch.No.000007	HDFC Bank	500000		
23.02.2016	Ch.No.000014	HDFC Bank	1000000		
23.02.2016	NEFT	HDFC Bank			1000000
17.03.2016	Ch.No.000019	HDFC Bank	350000		
21.07.2016	RIGS	HDFC Bank	500000		
23.06.2017	RTGS	HDFC Bank	2000000		
01.03.2018	NEFT	HDFC Bank	500000		
02.05.2018	NEFT	Andhra Bank		3000000	
02.05.2018	NEFT	Andhra Bank			2000000
01.03.2019	Ch.No.631952	HDFC Bank	2301666.67	2301666.67	2301666.67
05.03.2019	Ch.No.000066	HDFC Bank	55000		
04.03.2019	TDS		190000		
Aggregate Consideration for Flat No.A2-303 & A2-403 (A)			8396666.67	5301666.67	5301666.67
Aggregate Consideration per Immovable Property i.e. per Flat [(A) / 2]			4198333.333	2650833.33	2650833.33

6905000

Note : Home Loan of Rs.69,00,000/- from HDFC Bank is divided equally between the co-owners.

4. According to the aforesaid details / bifurcation of payments made towards acquisition of flats at Shrijan Premium by the Assessee along with his parents the consideration paid by the individual buyer for individual flat was less than the prescribed limit of Rs. 50.00, therefore this was the contention of the Ld AR that the assessee was not liable to make deduction of Tax under the provisions of section 194IA. Regarding TDS already done and paid to the Government Account, Ld AR submitted that the same was done by the assessee under abandon caution, however the same was not the mandate of law to deduct tax u/s 194IA. It was thus the submission of Ld AR that since the liability to deduct tax was not mandatory on the assessee or his parents, assessee should not be penalized for the abandon caution under bona fide belief. Ld AR further without prejudice to the aforesaid arguments, submitted that the calculation of the penalty was also wrong and needs to be recalculated.

5. Contrary to the submission of Ld AR, Ld Sr DR strongly supported the orders of revenue authorities. It was the submission that the assessee was non-compliant before the Ld AO. The assessee himself has deducted and paid the TDS u/s 194IA and when he was found to be on default, an artificial division of the total payments among the assessee and his parents were made to bring the figure below the prescribed limit of Rs. 50.00 Lac, which is evident from the order of Ld CIT(A) that it was undisputed fact that all the payments were made by assessee only. Under such facts and circumstances

the order of Ld CIT(A) confirming the order of penalty u/s 201(1A) and 234E deserves to be upheld.

6. We have considered the rival contentions, perused the material on record and orders of the authorities below. On factual matrix of the case, it is the admitted fact that the assessee Shri Jaimeet Sawaria along with his parents i.e his father Shri Bharat. Sawaria and his mother Smt. Kalpana Sawaria jointly purchased Two immovable properties viz. two flats bearing number A2-303 and A2-403 at Shrijan Premium, Raipur. These properties were registered by way of a single sale deed. The aggregate consideration in respect of two flats was fixed at Rs. 1,90,00,000/-. The issue pertaining to applicability of provisions of section 194IA in a case where the consideration is more than Rs. 50.00 Lac is also not disputed by either the assessee or the revenue. The only question to be answered remains that whether the consideration paid for individual flat purchased by the individual co-buyers under a joint registry paid was below the prescribed limit of Rs. 50.00 Lac or not. Ld AR of the assessee demonstrated the fact by submitting a working of bifurcation (extracted supra) of payments made by each participant buyer with supporting evidence in the form of copies of bank statements of each participant. On perusal of the said statement of working and the supporting bank statements it is observed that the Home Loan of Rs. 69,00,000/- from HDFC Bank is divided equally

between the co-owners but was not supported with any evidence. Moreover, on perusal of the submission of assessee before the Ld CIT(A), wherein the assessee had a different working, have divided the aggregate consideration of Rs. 1,90,00,000/-, equally between the 3 buyers in 1/3 ratio stating that the share of each assessee per flat is Rs. 31,66,667/- thus the case of all the assessee's falls much below the threshold limit of Rs. 50,00,000/-. Such contention of the assessee was totally disregarded by the Ld CIT(A) observing that the argument of the appellant to artificially divide the payment among three persons when the payment is made by the appellant only is not tenable in law. Here since the additional information in the form of bifurcation of amount of consideration paid by each joint buyer is demonstrated with the support of copies of bank statement thus the same could be relied upon but still the assessee is lacking in not submitting the document pertaining loan from HDFC, that the same is equally extended by the bank to all the joint buyers. The blatant statement of the assessee that the amount of loan is divided equally between the three co-owners does not inspire our confidence under the circumstance when the assessee was non-compliant before the Ld AO on 22.10.2020, 07.01.2021 and 28.01.2021, again before the Ld CIT(A) assessee had submitted that the payment of consideration was equally made by each co-owner and now with a shifting contentions, some deferent figures of share in consideration were projected and furnished before us. We are also not

oblivious of the fact that the observation of Ld CIT(A) that total payments were made by the appellant assessee only is not the correct fact, when the registered sale deed itself shows that the payments were made by different purchasers.

7. Under such circumstances, in the interest of justice, we find it fit to set aside orders of the revenue authorities and to restore the issue back to the files of Ld AO, so as to verify with supporting evidence, the actual status of the payment of consideration by each co-owner towards each flat/ property and adjudicate the issue afresh in terms of provisions of section 194IA. Assessee shall be provided with reasonable opportunity of being heard. In case assessee fails to comply with during the set aside assessment proceedings, Ld AO would be at liberty to pass an order in accordance with law. In the result ground no 1-4 of the appeal of the assessee are partly allowed for statistical purposes.

8. In the result appeal of the assessee is partly allowed for statistical purposes, in terms of our observations herein above.

Order pronounced in the court on 12/09/2023.

Sd/-
(RAVISH SOOD)
न्यायिक सदस्य /
JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)
लेखा सदस्य /
ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 12/09/2023

SB

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय
अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY
ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, रायपुर/ITAT,
Raipur