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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 252/2024

COMMISSIONER OF INCOME TAX (TDS)-2 .....Appellant
Through: Mr Vipul Agarwal, Advocate.
versus
M/S SANTUR BUILDERS PVT. LTD. .....Respondent
Through: Mr Debarshi Chakraborty and Mr Sarthak Jain, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

O R D E R

% **19.03.2025**

1. The Revenue has filed the present appeal impugning an order dated 07.12.2023 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.1973/Del/2023 captioned *Income Tax Officer v. Santur Builders P. Ltd.* in respect of Assessment Year [**AY**] 2016-17.

2. The Revenue had filed the aforementioned appeal [ITA 1973/Del/2023] assailing an order dated 10.05.2023 passed by the learned Commissioner of Income Tax (Appeals) [**CIT(A)**] whereby the Assessee's appeal against an order dated 22.03.2023 passed by the Assessing Officer[**AO**] under Section 201(1)/201(1A) of the Income Tax Act, 1961 [**the Act**], was allowed.

3. The AO had issued a Show Cause Notice dated 02.03.2023 calling upon the respondent [**Assessee**] to show cause as to why it should not be treated as an "assessee in default" within the meaning of Section 201(1) of the Act "*in respect of TDS on amount of Rs. 14,29,20,000/- paid to HUDA/DTCP during the Financial Year 2015-16"* and why interest under

Section 201/201(1A) of the Act may not be charged on account of the said default.

4. Whilst the Show Cause Notice dated 02.03.2023 mentioned that there was a default on the part of the Assessee in respect of TDS, it did not mention any provision of law under which the Assessee was required to deduct TDS on the payments made by it to Haryana Urban Development Authority[**HUDA**] or the Director Town and Country Planning, Government of Haryana[**DTCP**] on account of External Development Charges[**EDC**].

5. It is the Assessee's case that no tax was required to be deducted at source on the payment of EDC as it was made in the nature of payment to Government in compliance with the statutory provisions.

6. The proceedings initiated pursuant to the aforementioned Show Cause Notice, culminated in an order dated 22.03.2023 raising a demand of ₹2,65,83,120/-, which comprised of an amount of ₹1,42,92,000/- for default under Section 201(1) of the Act and an amount of ₹1,22,91,120/- on account of interest under Section 201(1A) of the Act. It is material to note that the AO held that the payments made by the Assessee to HUDA were in the nature of rent and therefore, the Assessee was required to deduct tax at source under Section 194I of the Act. The said reasoning is set out below:

> **"6. Applicability of TDS provisions on EDC:**
>
> (i) EDC payments are in the nature of rent u/s 194I and required to be subjected to TDS accordingly. The definition of rent provided u/s 194I is wide enough to cover EDC payments. The definition is as under:
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> "Explanation – For the purposes of this section, –
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> (ii) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other

agreement or arrangement for the use of (either separately or together) any, –

(a) Land; or

(b) Building (including factory building); or

(c) Land appurtenant to a building (including factory building); or

(d) Machinery; or

(e) Plant; or

(f) Furniture; or

(g) Fittings,

Whether or not any or all of the above are owned by the payee;"

The cost of acquisition of land is paid by HUDA which transfers and gives possession of land to private builders. HUDA develops urban infrastructure on land by undertaking EDWs. HUDA transfers land to private builders who has to pay user fee for the developed urban infrastructure which is named as EDC (external development charges) under the license to set up commercial set ups. EDC would be called rent '*... any other agreement or arrangement for the use of (either separately or together) any, - (a) land; or ....*'. Therefore, EDC ought to be subject to TDS under 194I @ 10%.

S. No.	Amount paid	TDS deductable @ 10% u/s 194I
1.	10,00,00,000	1,00,00,000
2	4,28,00,000	42,80,000
3	1,20,000	12,000
4	14,29,20,000/-	1,42,92,000/-

In view of the above, the deductor assessee has failed to deduct the tax as required under the provisions of Chapter XVII-B of the Income-tax Act, 1961. Hence, the demand of Rs. 1,42,92,000/- is raised against the assessee on account of non-deduction of TDS u/s

201(1) of the IT Act.

The deductor assessee has failed to deduct the tax as required under the provisions of Chapter XVII-B of the Income-Tax Act, 1961. Hence, the assessee is liable for Penalty u/s 271C of the Income-tax Act, 1961."

7. The Assessee appealed the said decision before the learned CIT(A). The learned CIT(A) allowed the said appeal following the decision of the learned ITAT in ***M/s RPS Infrastructure Limited v. Additional Commissioner of Income Tax: 2019 (9) TMI 39 ITAT (Delhi)***). In the said decision it was held that HUDA was executing works for and on behalf of DTCP, which is a government department and therefore, the assessee was not required to deduct tax at source. The Revenue appealed the said decision before the learned ITAT and the learned ITAT, following its earlier decisions, dismissed the appeal.

8. In view of the above, the Revenue has projected the following questions of law for consideration of this Court:

"A. Whether the ld. ITAT erred in, deleting the applicability of tax deduction on EDC payment made to HUDA?

B. Whether the Hon'ble ITAT erred in not remanding the case back to the AO to decide the applicability of the tax deduction under the provisions of Income-tax Act, 1961 afresh on merits considering the nature of payment made to HUDA?"

9. The question whether the EDC charges are in the nature of rent and TDS is required to be deducted on the said charges under Section 194I of the Act is squarely covered in favour of the Assessee by an earlier decision of this Court in ***DLF Homes Panchkula Pvt. Ltd. v. Joint Commissioner of Income Tax: 2023 SCC OnLine Del 2026***.

10. In view of the above, the AO's order dated 22.03.2023, which was the subject matter of Assessee's appeal before the learned CIT(A) and the Revenue's appeal before the learned ITAT is unsustainable. In this regard, no substantial question of law would arise in the given facts of this case.

11. Having stated the above, we also take note of the contentions advanced on behalf of the Revenue that the question whether TDS was payable under Section 194C of the Act in respect of EDC charges is covered by a decision of a Coordinate Bench of this Court in ***Puri Constructions Private Limited v. Additional Commissioner of Income Tax and Others: (2024) SCC OnLine Del 939.*** However, as noted above, it was the Revenue's case that the TDS was payable under Section 194I of the Act and not Section 194C of the Act, which concededly is unsustainable.

12. In view of the above, no substantial question of law arises in the present petition. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 19, 2025
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Click here to check corrigendum, if any