

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.3931/Del/2017
Asstt. Year: 2012-13

M/s. Ajnara India Ltd., 502, Plot No. 17, Sachdeva Corporate Towers, Comm. Centre, Karkardooma, Delhi - 110 092	Vs.	ITO, TDS Ward-49(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Kanav Bali, Sr. DR
Date of Hearing	29.08.2022
Date of pronouncement	29.08.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 15.03.2017 of the Ld. Commissioner of Income Tax (Appeals) - 41, New Delhi ("**CIT(A)**") pertaining to assessment year ("**AY**") 2012-13.

2. The assessee has taken the following grounds of appeal:-

1. *"That under the facts and circumstances, the impugned order passed u/s 201(1) & 201(1A) is absolutely illegal, without jurisdiction & unsustainable in law.*

2. *That under the facts and circumstances, lease payments of Rs. 1,86,28,674/- to Noida/Greater Noida development authority (GNoida) is not covered under section 194-1 thus is not subjected to TDS, although CIT(A) has rightfully held the assessee as not an assessee in default u/s 201(1) in respect of said payments.*
3. *That under the facts and circumstances, the assessee cannot be held liable for interest u/s 201(1A) for the alleged default in payment of TDS on said lease payment of Rs. 1,86,28,674/-.*
4. *That without prejudice, the period for calculation of interest u/s 201(1A), as directed by Ld. CIT(A), is also wrong, erroneous and excessive.”*

3. Briefly stated the assessee is a company engaged in the business of development, construction of real estate and infrastructure projects. Vide lease deed executed on 01.10.2010 the assessee acquired a plot from NOIDA Authority on perpetual lease for development of a residential and commercial project and made payments during the year on account of annual lease rent without deduction of tax at source. The Ld. Assessing Officer (**“AO”**) held that the lease rental amounts paid by the assessee attracted TDS provisions under section 194-I of the Income Tax Act, 1961 (**the “Act”**). Holding the assessee as an assessee-in-default, the Ld. AO passed order under section 201(1)/201(1A) on 29.03.2014 raising demand of Rs. 18,62,868/- under section 201(1) and interest thereon under section 201(1A) of the Act.

4. The assessee challenged the aforesaid findings of the Ld. AO in appeal before the Ld. CIT(A). It was contended that payments of lease premium and lease rent for acquiring lease hold rights cannot be treated as payment of rent for use of land as contemplated under section 194-I of the Act. The assessee was, therefore, not liable to deduct tax at source on such payments of lease rent. It was also contended that the recipient NOIDA Authority must have considered the payments to it as its income in the return. Therefore, the assessee should not be treated as an assessee-in-default.

5. The contention of the assessee about non applicability of the TDS provisions of section 194-I was not acceptable to the Ld. CIT(A) who was of the view that payment of lease rentals on annual basis would attract TDS liability and therefore, the assessee was liable to deduct tax at source on such payments. However, the Ld. CIT(A) accepted the contention of the assessee that the assessee should not be treated as an assessee-in-default following the decision of Hon'ble Delhi High Court, in Rajesh Projects (India) (P) Ltd. vs. CIT (TDS)-II, (2017) 78 Taxmann.com 263 (Delhi). None-the-less, the Ld. CIT(A) held that even if the assessee is not an assessee-in-default, it cannot be absolved from interest liability under section 201(1A). He, therefore, directed the Ld. AO, in view of the provisions of First Proviso to section 201(1) of the Act, to modify the demand after ascertaining that the deductee, namely NOIDA Authority has taken into account such payments by the assessee for computing its income. He further directed the Ld. AO to re-calculate the interest under section 201(1A) from the date on which tax was deductible till date of filing of Return by the deductee.

6. The assessee being dissatisfied is before the Tribunal and has challenged the finding of the Ld. CIT(A) regarding applicability of the TDS provisions of section 194-I and its liability to pay interest under section 201(1A). Without prejudice, the assessee also agitated the period for calculation of said interest as directed by the Ld. CIT(A).

7. Despite several opportunities, given to the assessee by fixing the date of hearing on 01.09.2021, 02.11.2021, 05.01.2022, 14.03.2022 and lastly on 29.08.2022 none attended for the assessee, though Ld. DR was present when the appeal was called for hearing on the above dates. We, therefore, proceeded to decide the appeal ex-parte after hearing the Ld. DR.

8. We have perused the orders of the Ld. AO/CIT(A). It is observed that the Ld. CIT(A) examined the Lease Deed Agreement between the assessee and NOIDA Authority filed before him during the appellate proceedings and

extracted the relevant recitals in para 4.8 and 4.9 of his order to reach the conclusion that reading of Lease Deed Agreement, CBDT Circular dated 13.10.2016 and provisions of section 194-I of the Act clearly bring out the difference between payment of premium, one time lease rent and annual lease rent. According to the Ld. CIT(A) the four payments aggregating to Rs. 1,86,28,674/- made by the assessee during the year to NOIDA Authority were for lease rent on annual basis which do not confer the rights over the land to the assessee. In coming to the conclusion that the said payments attracted TDS liability under section 194-I of the Act, the Ld. CIT(A) derived support from the decision in Rajesh Projects (India) (P) Ltd. (supra) of the Hon'ble Delhi High Court. We, therefore, do not find any infirmity in the order of the Ld. CIT(A) and, thus we reject the assessee's ground of appeal on this issue and hold that the assessee is liable for interest under section 201(1A) of the Act.

9. In the absence of any material brought on record by the assessee before us in support of its contention that the period for calculation of the said interest under section 201(1A) of the Act, as directed by the Ld. CIT(A) is wrong, erroneous and excessive, we reject this ground of the assessee as well.

10. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open court at the time of hearing itself
i.e. on 29th August, 2022.**

sd/-

sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 24/11/2022

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Copy forwarded to -

1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

