

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 1680/Ahd/2018
(निर्धारण वर्ष / Assessment Year : 2014-15)

Bhikhabhai Hirabhai Patel 68, 69, Prerna Park, Nr. Jahalawadi Patel Society, Ahmedabad - 380008	बनाम/ Vs.	Deputy Commissioner of Income Tax CPC, TDS, Ghaziabad - 201010
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMQPP5792C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. V. Agrawal, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Umesh Kumar Agarwal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	30/01/2020
घोषणा की तारीख /Date of Pronouncement	31/01/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-8, Ahmedabad ('CIT(A)' in short), dated 07.05.2018 arising in the assessment order dated 03.02.2016 passed by the Assessing Officer (AO) under s. 200A of the Income Tax Act, 1961 (the Act) concerning AY 2014-15.

2. As per main grounds of appeal, the assessee has challenged the applicability of Section 234E r.w.s. 204 of the Act whereby late filing fees of Rs.4,39,245/- was imposed for the FY 2013-14 concerning AY 2014-15.

3. It is the case of the assessee that section 200A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is machinery provision providing mechanism for processing a statement of deduction of tax at source and for making adjustments which are arithmetical or prima facie in nature and does not create any charge in any manner. This provision specifically provides for computing fee payable under s.234E w.e.f. 01/06/2015. It is thus the case of the assessee that section 234-E being a charging provision creating a charge for levying fee for certain defaults in filing statements and fees prescribed under s.234-E cannot be levied without a regulatory provision found in section 200A for computation of fee prior to 01/06/2015.

4. We find that the legal issue raised by the Assessee has been addressed by Hon'ble Gujarat High Court in favour of the Revenue and against the assessee in the case of *Rajesh Kourani vs. Union of India* (2017) 83 *Taxmann.com* 137 (Guj.). The Hon'ble Gujarat High Court held that section 234E of the Act is a charging provision creating a charge for levying fee for certain defaults in filing statements and fee prescribed under s.234E could be levied even in the absence of a regulatory provision being found in section 200A for computation of fee. In the light of aforesaid decision of the Hon'ble Gujarat High Court, we decline to interfere with the action of the Revenue authorities. In view of the decision of the Hon'ble Gujarat High Court in *Rajesh Kourani (supra)*, the issue is no longer *res integra*.

5. In parity, the main grounds of appeal of the assessee are dismissed.

6. We now advert to the additional ground raised by the assessee as under:

“1. The deduction of TDS at 1% u/s. 194IA(1) is not applicable in respect of transfer of immovable property of less than Rs. 50 Lakhs by any person being transferee. Section 194IA(2) is applicable only w.r.t. the amount related to each transferee and not with reference to the amount as per sale deed. In the instant case, there are 8 transferee's and in case of 4 transferee's consideration is below Rs. 50 Lakhs, whereby, provisions of section 194IA(1) is not applicable. Accordingly, late fees u/s. 234E is not applicable in case of these 4 transferee's.”

7. The additional ground raised being legal in nature and for which relevant facts are available on record, stands admitted under Rule 11 of the ITAT Rules.

8. As per the additional grounds of appeal, the assessee has taken alternative plea that obligation to deduct TDS @ 1% under s.194IA(1) of the Act is not applicable in respect of transfer of immovable property of less than Rs.50 Lakhs by any person to a transferee. It was contended on behalf of the assessee that obligation to deduct TDS under s.194IA of the Act is applicable *qua* each transferor/payee of the immovable property and cannot be seen with reference to the aggregate value of the immovable property under transfer to several transferees jointly. In this context, a tabulated statement of details of TDS under s.194IA and late fee computed under s.234E was referred to in the course of hearing which is reproduced hereunder:

(2)

BHIKHABHAI HIRABHAI PATEL

ITA NO: 1680/AHD/2018, BENCH 'C'

A.Y.2014-15

DETAILS OF TDS U/S 194IA & LATE FEES U/S 234E

SR. NO.	NAME OF SELLER	TRANSACTION AMOUNT (RS.)			TDS AMOUNT @ 1% (RS.)	DUE DATE OF TDS RETURN	TDS RETURN FILED ON	LATE FEES U/S 234E (RS.)
		Date of Payment	Amount Paid (Rs.)	1/2 Share of Assessee (Rs.)				
1	Chetan Vaghjibhai Shah	23-07-2013	2,51,000	1,02,50,000	1,02,500	31-10-2013	28-02-2015	1,01,800
		31-08-2013	2,02,49,000					
			2,05,00,000					
2	Lalitkumar Hiralal Udemani	30-10-2013	30,00,000	84,37,500	84,375	31-12-2013	28-02-2015	84,375
		30-10-2013	7,50,000					
		31-10-2013	1,31,25,000					
			1,68,75,000					
3	Ghanshyamdas Udemani	21-10-2013	10,50,000	59,06,250	59,063	31-12-2013	28-02-2015	59,063
		30-10-2013	15,75,000					
		31-10-2013	91,87,500					
			1,18,12,500					
4	Kaushalya Ghanshyamdas Udemani	28-10-2013	12,50,000	59,06,250	59,063	31-12-2013	28-02-2015	59,063
		30-10-2013	10,00,000					
		31-10-2013	3,75,000					
		31-10-2013	91,87,500					
	1,18,12,500							
5	Tulsidas Relumai Udemani	21-10-2013	6,00,000	33,75,000	33,750	31-12-2013	28-02-2015	33,750
		30-10-2013	9,00,000					
		31-10-2013	52,50,000					
			67,50,000					
6	Seemaben Tulsidas Udemani	28-10-2013	11,50,000	33,75,000	33,750	31-12-2013	28-02-2015	33,750
		01-11-2013	3,50,000					
		31-10-2013	52,50,000					
			67,50,000					
7	Balkrishna Relumai Udemani	21-10-2013	6,00,000	33,75,000	33,750	31-12-2013	28-02-2015	33,750
		28-10-2013	5,50,000					
		31-10-2013	3,50,000					
		31-10-2013	52,50,000					
	67,50,000							
8	Malaben Balkrishna Udemani	28-10-2013	11,50,000	33,75,000	33,750	31-12-2013	28-02-2015	33,750
		30-10-2013	3,50,000					
		31-10-2013	52,50,000					
			67,50,000					
TOTAL			8,80,00,000	4,40,00,000	4,40,000			4,39,301

9. With reference to the above tabulated statement, the learned AR submitted that late filing fee is not applicable with reference to last four entries where the share of consideration paid by the assessee to each transferor for acquisition of property is less than Rs.50 Lakhs. Therefore, the assessee was not under obligation under s.194IA of the Act for deduction of TDS @ 1% on such

consideration on behalf of the transferor/seller. It was thus contended that in the absence of any liability of deduction under s.194IA of the Act, in so far as last four entries in the table are concerned, the consequent late filing fees aggregate to Rs.1,35,000/- imposed on the transferee assessee is not sustainable in law in the absence of any default *per se*.

10. We find that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of Tribunal in *Vinod Soni vs. ITO & Ors. ITA No.2736/Del/2015 order dated 10.12.2018*. The relevant operative para is reproduced hereunder:

“5. We have heard both the parties and perused the records especially the impugned order as well as the provisions of law on the subject and the case laws cited by the Ld. DR in his written submissions. We find that in the instant case Sh. Pradeep Soni; Smt. Babli Soni; Sh. Vinod Soni and Smt. Beena Soni of same family, purchased 1/4th undivided equal shares in immovable property, Plot No. 94, Block-F, SLF Model Town, Sector-10, Faridabad vide single registered sale deed dated 3.7.2013 for Rs. 1,50,00,000/-. The 1/4th share purchase consideration for each person was only Rs. 37,50,000/- each. The AO held that since the value of the property purchases under single sale deed was exceeding Rs. 50,00,000/- therefore, as per section 194 IA(2), the assessee was required to deduct TDS @1%. The AO thus held that all the four assessees as defaulter u/s. 201(1) and created a total liability @ 1% i.e. Rs. 1,50,000/- by a common order u/s. 201(1) of the Act and Ld. CIT(A) confirmed the findings of the AO. During the hearing, Ld. Counsel for the assessee draw our attention towards the Paper Book-I Page no. 1 to 8 which is a copy of purchase deed dated 3.7.2013 was attached especially page no. 6 para no. 4 of the Sale Deed which is reproduced as under:-

“4. That the actual physical possession of the said Residential Plot No. 94, Block-F, Area Measuring 500 sq. yards in the residential known as DLF’s Model Town, Sector-10, Faridabad situated in Village Sihi, Tehsil Ballabgarh, Distt. Faridabad has been handed over and delivered by the Vendor to the Vendees and the Vendees have become the absolute and undisputed owner of above said plot in equal share.”

5.1 He further draw our attention towards Paper Book-II Page No. 14 having the details of party wise payment for purchase of property and page no. 15 to 20 which are the copies of Banks Statements

showing payment by Sh. Pradeep Soni; Smt. Babli Soni; Sh. Vinod Soni and Sh. Beena Soni and also draw our attention towards page no. 21 which the copy of Loan Statement ICICI showing payment (all 04 parties).

5.2 After perusing the Paper Book and the relevant provisions of law, we find that Section 194-IA(2) provides that Section 194-IA(1) will not be applicable where the consideration for transfer of immovable property is less than Rs. 50,00,000/-. However, section 194-IA(1) is applicable on any person being a transferee, so section 194-IA(2) is also, obviously, applicable only w.r.t. the amount related to each transferee and not with reference to the amount as per sale deed. In the instant case there are 04 separate transferees and the sale consideration w.r.t. each transferee is Rs. 37,50,000/-, hence, less than Rs. 50,00,000/- each. Each transferee is a separate income tax entity therefore, the law has to be applied with reference to each transferee as an individual transferee / person. It is also noted that Section 194-IA was introduced by Finance Act, 2013 effective from 1.6.2013. It is also noted from the Memorandum explaining the provisions brought out along with the Finance Bill wherein it was stated that "in order to reduce the compliance burden on the small tax payers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than fifty lakhs rupees." We further find that the main reason by the AO is that the amount as per sale deed is Rs. 1,50,00,000/-. The law cannot be interpreted and applied differently for the same transaction, if carried out in different ways. The point to be made is that, the law cannot be read as that in case of four separate purchase deeds for four persons separately, Section 194-IA was not applicable, and in case of a single purchase deed for four persons Section 194-IA will be applicable. It is noted that AO has passed a common order u/s. 201(1) for all the four transferees. In order to justify his action since in case of separate orders for each transferee separately, apparently, provisions of section 194IA could not have been made applicable since in each case purchase consideration is only Rs. 37,50,000/-. This action of AO shows that he was also clear in his mind that with reference to each transferee, Section 194IA was not applicable. Hence, we are of the considered view that the addition made by the AO and confirmed by the Ld. CIT(A) is not sustainable in the eyes of law, thus the same is deleted. As far as issue of charging interest is concerned, the same is consequential in nature, hence, need not be adjudicated. As regards the case laws cited by the Ld. DR are concerned, the same are on distinguished facts and therefore, not applicable in the present case. Accordingly, the grounds raised by the assessee stand allowed and as a result thereof, the appeal of the assessee is allowed.

6. Since in all the other 03 appeals, i.e., in the case of Vinod Soni vs. ITO in ITA 2736/Del/2015 (AY 2014-15); Babli Soni vs. ITO in ITA No. 2737/Del/2015 (AY 2014-15) and Beena Soni vs. ITO in ITA No. 2738/Del/2015 (AY 2014-15), similar facts are permeating,

therefore, our finding given above in ITA No. 2739/Del/2015 (AY 2014-15) in the case of Pradeep Kumar Soni vs. ITO will apply mutatis mutandis in these three appeals also, because the facts and circumstances of the case are exactly the same.

7. In the result, all the 04 appeals filed by the assessee are allowed.”

11. The co-ordinate bench has thus held that the obligation under s.194IA of the Act is fastened on the transferee *qua* each transferor and where the consideration paid to any transferor is less than Rs.50 Lakhs, the provisions of Section 194IA of the Act would not apply. In parity with the view already expressed on the issue, in the absence of any default under s.194IA of the Act, consequential late filing fees under s.234E of the Act to the extent of Rs.1,35,000/- out of total late fee of Rs.4,39,301/- is directed to be deleted.

12. In the result, appeal of the assessee is partly allowed.

This Order pronounced in Open Court on 31/01/2020
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Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad: Dated 31/01/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।