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

% *Date of Decision : 18.08.2025*

\+ ITA 308/2025

COMMISSIONER OF INCOME TAX (TDS)-2 .....Appellant

Through: Mr. Vipul Agrawal, SSC with Ms. Sakashi Shairwal, JSC, Mr. Akshat Singh, JSC, Mr. Gaoraang Ranjan and Ms. Harshita Kotru, Advs.

versus

M/S SS GROUP PVT. LTD. .....Respondent

Through: Mr. Puneet Agarwal, Mr. Yuvraj Singh, Ms. Mansi Khurana, Ms. Shruti Garg and Mr. Chetan Kumar Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO, J. (*ORAL*)

CM APPL. 50519/2025 (Condonation of delay)

1. For the reasons stated in the application, the delay of 400 days in re-filing the appeal is condoned. The same is allowed.

2. The application stands disposed of.

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3. This appeal has been filed by the Revenue challenging the order of the Income Tax Appellate Tribunal ('*ITAT*', hereinafter) dated 14.02.2024.

4. The assessee who is the respondent herein is engaged in the business of real estate development as a colonizer, developer of residential and

commercial properties. Upon receiving certain information from the office of the Deputy Commissioner of Income Tax (TDS) Circle, Panchkula, a survey/inspection under Section 133A of the Income Tax Act 1961 ('*the Act*', hereinafter) was carried out at the premises of Haryana Urban Development Authority (HUDA) and also Sky-High Land Con Pvt. Ltd. It was noted that some External Development Charges (EDC) were received by HUDA from some private persons/builders in which TDS has not been deducted.

5. An order under Section 201(1) of the Act was passed by the Assessing Officer (AO) wherein it was observed that the cost of acquisition of land was paid by HUDA while giving possession of land to private builders, who have to pay user fee, i.e., EDC, for the developed urban infrastructure. As such EDC would amount to rent and would be subject to TDS under Section 194 of the Act. The order held the assessee in default since it failed to deduct tax on the EDC which resulted in the demand of ₹1,13,50,000/- and ₹1,08,96,000/- under Sections 201(1) & 201(1A) of the Act respectively, adding up to ₹2,22,46,000/-.

6. Aggrieved by the order passed by the AO, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) referred to the judgment of this Court titled ***DLF Homes Panchkula Pvt. Ltd. v. Joint Commissioner Of Income Tax (Osd), WP(C) 4351/2021*** where the assessee itself was before this Court, and held as under:

> *"In view of the above, the issue in this appeal stands decided in favour of the appellant. The appellant itself was one of the petitioners in this case. Therefore, in compliance with the order the Hon'ble Delhi High Court, the grounds of appeal as per grounds 3 & 4 of the appellant are allowed"*

7. The Revenue preferred an appeal against the order before the ITAT, which was dismissed by observing that the CIT(A) was right in following the judgment of this Court in the assessee's own case.

8. Mr. Vipul Agrawal, learned counsel for the Revenue submits that Chapter XVII-B of the Act, particularly Section 190 thereof contains a *non-obstante* clause and places a responsibility upon a person effecting a payment which is taxable under the provisions of the Act to deduct and collect taxes at source. It is only in certain contingencies such as those described under Section 195 of the Act that the statute enables a person responsible for effecting a payment to consider whether the amount sought to be paid would be chargeable under the Act.

9. He also submits that this Court in the case of ***Puri Constructions Pvt. Ltd. vs. Addl. CIT & Ors. (2024) 462 1TR 326)*** while dealing with identical facts and issues with regard to TDS on EDC, has held as under:

> *"73. Ultimately, the question which warrants consideration is hether external development charges was a payment to the State. This must necessarily be answered in the negative bearing in mind the undisputed Act that the income was placed in the hands and at he disposal of Haryana Shehri Vikas Pradhikaran. We note that undisputedly at least till March 31, 2017 all external development charges payments even as per the Directorate of Town and Country Planning were being made out in favour of Haryana Shehri Vikas Pradhikaran. It is only thereafter that external development charges was deposited with the Directorate of Town and Country Planning. This too leads us to the irresistible conclusion that the payments made to Haryana Shehri Vikas Pradhikaran would not fall within section 196"*

10. Though in his appeal, Mr. Agrawal has put forth multiple grounds of objection to the order of the ITAT, his primary argument is with regard to

the applicability of Section 194C to the present case. He states the AO has proceeded on the premise that EDC is rent. It is a fact that payment made to the contractor attract the provisions of TDS under Section 194 of the Act. He has again drawn our attention to ***Puri Constructions (supra)*** wherein it is stated as under:

> *"In our considered opinion the fact that EDC is determined, computed or is recoverable by the DTCP is wholly inconsequential since Section 194C is solely concerned with a payment being made to a contractor who has an arrangement with a specified person. Merely because an exercise of quantification is undertaken by the specified person, the same would have no bearing on the applicability of Section I94C. We would thus be of the opinion that the moment the petitioners effected a payment in favour of HSVP in connection with the external development work which was to be executed by it pursuant to the arrangement that existed between the said entity and the State Government, the provisions of Section 194C stood attracted"*

11. According to him, the judgment leaves no doubt to the fact that payment of EDC is a payment made to a contractor, and as such is taxable under Section 194C. Holding otherwise and allowing the order of the ITAT to stand would result in loss of huge amounts as TDS to the Revenue.

12. In any case, he states he is not praying for a final relief in the matter, but is only requesting that the matter be remanded back to the AO so that appropriate action could be taken with respect to the applicability of tax deduction under the Act.

13. On the other hand, Mr. Puneet Agarwal, learned counsel for the respondent would submit that the respondent's case is covered by the judgment in ***DLF Homes Panchkula Pvt. Ltd. (supra),*** as the respondent

itself was one of the parties in that batch of petitions, and the same has attained finality as can be seen from the order of the Supreme Court in ***Union of India & Ors. v. M/s SS Group Pvt. Ltd. SLP Diary No.14188/2024.***

14. He states that the issue having been finally settled *inter se* parties, now the Revenue cannot come in appeal and contend that Section 194C is applicable to the matter. In support of his submission he has referred to the judgment in the case of ***BPTP Ltd v. Principal Commissioner of Income Tax (Central III) & Ors. WP(C) 13803/2018*** decided on 28.11.2019.

15. He prays the appeal be dismissed on the basis of the above.

16. Having heard the learned counsel for the parties and perused the record, at the outset, we may state that in the assessment order passed by the AO on 26.03.2021, he concludes that EDC is subject to TDS under Section 194I of the Act as it is in the nature of an arrangement for use of land and as such, TDS needs to be paid as if the payment was rent.

17. The questions of law which have been proposed in the present appeal are the following:

> *"A. Whether the Hon'ble ITAT is right in not remanding the case back to the AO to decide the applicability of the tax deduction provisions under the Income-tax Act, 1961afresh on merits considering the nature of payment made to HUDA and the judgment of this Hon'ble Court in the case of Puri Constructions Pvt. Ltd. vs. Addl. CIT & Ors. (2024) 462 ITR 326?*
> *B. Whether the Id. ITAT is correct in deleting the applicability of tax deduction on EDC payment made to HUDA by not appreciating the clarification of the CBDT vide F.No.370133/37/2017-TPL dated 23rd December 2017?"*

18. In fact, the plea urged by Mr. Aggarwal is for remanding the matter

to AO to decide the applicability of tax deduction under the Act keeping in view the nature of payment and the judgment of this Court in ***Puri Constructions Pvt. Ltd. (supra)***.

19. We are unable to agree with the submission made by the learned counsel for the appellant. This we say so, because a similar issue arose in a batch of petitions, one of which concern the respondent herein, wherein similar submissions were rejected by this Court. In ***DLF Homes Panchkula Pvt. Ltd. (supra),*** which included WP(C) 6742/2022 which was the matter relating to the respondent, decided on 24.03.2023, this Court observed as under:

> *"12. The learned counsel appearing for the respondents readily admitted that Section 194-I of the Act is not applicable and the payment of EDC cannot be construed as rent attracting the obligation to deduct TDS at the rate of 10% on the said payment. However, they earnestly contended that since the AO has the jurisdiction to determine whether TDS is payable or not, the impugned order be set aside and the matter be remanded to the AO. According to them, the AO has erroneously mentioned that TDS was required to be deducted under Section 194-I of the Act instead of Section 194C of the Act. It is contended that merely mentioning an incorrect provision is a curable defect; it does not affect the substratum of the impugned order or renders it vulnerable to challenge.*
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> *13. We do not find any merit in the contention that the substratum of the impugned order is correct, and the AO has merely referred to a wrong provision of law.*
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> *14. The question as to the nature of EDC payment was squarely one of the issues that was required to be addressed by the AO. He had concluded that the same was 'rent' as it was in nature of an arrangement to use land. It is not open for the respondents to now contend that EDC charges are payment made to a contractor under a contract and not 'rent' under an arrangement to use land."*

20. The SLP against aforesaid judgment was dismissed vide order dated 29.04.2024 ***UoI Vs. M/s SS Group Pvt. Ltd. SLP (c) D. No.14188/2024*** The order of the Supreme Court reads as under:

> *"...*
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> *Further, following the order dated 23.02.2024 passed by this Court in SLP (c) D. No.2630/2024, we do not find any merit in the Special Leave Petition. The special leave petition is dismissed both on the ground of delay as well as on merits.*
> *..."*

21. It is necessary to state here that the plea for remanding the matter to the AO for proceeding afresh by treating the payment as a payment to the contractor was also rejected by this Court as can be seen from paragraphs 12 and 14 of the order which we have already reproduced above.

22. In view of the fact that the issue with regard to the same assessee in respect of an identical nature of an assessment order has been decided in favour of the assessee-respondent, no substantial question of law arises for consideration in this appeal. We do not see any reason to interfere with the order of the ITAT.

23. The appeal is dismissed in favour of the respondent and against the appellant.

V. KAMESWAR RAO, J

VINOD KUMAR, J

AUGUST 18, 2025
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