$~85,78,84,95,98,99,100,104,107,108,111&112

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

% *Date of Decision: 24.03.2023*

85+ **W.P.(C) 4351/2021**

DLF HOMES PANCHKULA PVT LTD ..... Petitioner

Versus

JOINT COMMISSIONER OF INCOME TAX (OSD) .... Respondent

AND

78+ **W.P.(C) 3790/2021**

EXPERION DEVELOPERS PVT LTD. ..... Petitioner

Versus

JOINT COMMISSIONER OF INCOME TAX (OSD). ..... Respondent

AND

84+ **W.P.(C) 4328/2021**

DLF HOME DEVELOPERS LTD ..... Petitioner

Versus

JOINT COMMISSIONER OF INCOME TAX (OSD) ..... Respondent

AND

95+ **W.P.(C) 4862/2022, CM Nos.14584 &14585/2022**

EXPERION DEVELOPERS PVT LTD ..... Petitioner

Versus

DY COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

AND

98+ **W.P.(C) 6282/2022 & CM No.18941/2022**

DLF HOMES PANCHKULA PVT LTD ..... Petitioner

Versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

AND

99+ **W.P.(C) 6308/2022& CM No.18996/2022**

DLF HOME DEVELOPERS LTD ..... Petitioner

Versus

DEPUTY COMMISSIONER OF
INCOME TAX & ANR. ..... Respondents

AND

100+ **W.P.(C) 6311/2022& CM No.19004/2022**

DLF LTD ..... Petitioner

Versus

DEPUTY COMMISSIONER OF INCOME TAX..... Respondent

AND

104+ **W.P.(C) 6693/2022& CM Nos.20330/2022 & 20331/2022**

M/S S.N. REALTORS PVT. LTD ..... Petitioner

Versus

INCOME TAX OFFICER & ORS. ..... Respondents

AND

107+ **W.P.(C) 6738/2022, CM Nos.20456/2022, 20457/2022 & 672/2023**

EMAAR INDIA LIMITED ..... Petitioner

Versus

DEPUTY COMMISSIONER OF INCOME
TAX CIRCLE 74(1), DELHI ..... Respondent

AND

108+ **W.P.(C) 6742/2022& CM Nos.20463/2022 & 20464/2022**

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

Versus

UNION OF INDIA & ORS. ..... Respondents

AND

111+ **W.P.(C) 8894/2022& CM No.26738/2022**

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

Versus

UNION OF INDIA & ORS. ..... Respondents

AND

112+ **W.P.(C) 9236/2022& CM No.27678/2022**

M/S SWIFTRANS INTERNATIONAL PVT. LTD..... Petitioner

Versus

UNION OF INDIA & ORS. ..... Respondents

Counsel for the Petitioners:

Ms. Kavita Jha, Mr. Vaibhav Kulkarni, Mr. Anant Mann & Mr. Himanshu Aggarwal, Advs. in item nos.78,84,85,95, 98,99 & 100.
Mr. Yuvraj Singh & Mr. Chetan Kumar Shukla, Advs. in item nos.104, 108,111 & 112.
Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Utkarsh Kumar Gupta, Mr. Sumit Lalchandani& Mr. Sanat Kapoor, Advs. in item no.107.

Counsel for the Respondents:
Mr. Sunil Agarwal, Mr. Shivansh B. Pandya & Mr. Utkarsh Tiwari, Advs. in item nos.84,85,98,99 & 100.
Mr. Shailendera Singh, Ms. Dacchita Shahi & Mr. Akash Saxena, Advs. in item no.84.
Mr. Abhishek Khanna & Mr. N.K. Aggarwal, Advs. in item no.104.
Ms. Aakanksha Kaul, Adv. for UOI in item no.112.
Mr. Puneet Rai, Mr. Ashvini Kumar & Ms. Madhavi Shukla, Advs. in item no.107.
Mr. Zoheb Hossain & Mr. Sanjeev Menon, Advs. in item nos.108, 111&112.
Mr. Niraj Kumar, Adv. in item nos.108 & 111.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. *(Oral)*

1. The petitioners in these petitions impugn orders passed under Section 201(1)/201(1A) of the Income Tax Act, 1961 (hereafter '**the Act**'), whereby demands of Tax Deducted at Source (hereafter '**TDS**') were raised by the Assessing Officer (hereafter '**the AO**') against the respective petitioners (assessees) on the premise that they were liable to withhold tax (TDS) on External Development Charges (also referred to as '**EDC**' in short) paid to Haryana Urban Development Authority (hereafter '**HUDA**'). EDC was paid by the petitioners pursuant to the respective agreements entered into by the petitioners

with the State Government of Haryana (through Director General, Town & Country Planning).

2. The petitioners are engaged in real estate development. The learned counsels appearing for the parties state that the impugned orders passed in these petitions are similar in material aspects, inasmuch as the AO has held that the petitioners were liable to deduct tax at the rate of 10% per annum on the aforesaid EDC under Section 194-I of the Act.

3. The principal question to be addressed is whether the petitioners were required to deduct TDS under Section 194-I of the Act on EDC paid to HUDA.

4. For the purpose of addressing the controversy, we refer to the facts obtaining in W.P.(C) No.4351/2021 and treat the said petition as the lead matter. The learned counsels appearing for the parties agree that the decision of this case will be dispositive of other petitions as well.

W.P.(C) No.4351/2021

5. The petitioner in W.P.(C) No.4351/2021 (hereafter referred to as '**the petitioner**') is a company incorporated in India and is engaged in the business of developing real estate. The petitioner had applied to the Director General, Town & Country Planning for grant of licenses for setting up an IT Park in village Begampur Khatola, Sector-74, Gurgaon-Manesar Urban Complex, Sector-108, District Gurgaon as

well as a Group Housing Colony in village Maidawas, Sector-63, Gurgaon-Manesar Urban Complex, District Gurgaon.

5. In terms of Rule 11[1] of the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereafter '**HDRUA Rules**'), the petitioner entered into an agreement dated 18.10.2011 with the State Government of Haryana acting through the Director General, Town & Country Planning for setting up an IT Park in village Begampur Khatola, Sector-74, Gurgaon-Manesar Urban Complex, Sector-108, District Gurgaon. Thereafter on 20.12.2012, the petitioner entered into another agreement for setting up the Group Housing Colony at village Maidawas, Sector-63, Gurgaon-Manesar Urban Complex, District Gurgaon.

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[1]Clauses (a), (c) (g) and (h) of Rule 11 are set out below :

11. Conditions required to be fulfilled by applicant

(a) furnish to the Director either a bank guarantee equal to twenty-five percent of the estimated cost of the development works or mortgage a part of the licenced land, as determined by the Director and enter into an agreement in form LC-IV for carrying out and completion of development works in accordance with the licence finally granted:

xxxx xxxx xxxxx

(c) undertake to pay proportionate development charges if the main lines of roads, drainage, sewerage, water supply and electricity are to be laid out and constructed by the Government or any other local authority. The proportion in which and the time within which such payment is to be made shall be determined by the Director;

xxxx xxxx xxxxx

(g) pay such development charges including the cost of development of State/National Highways, Transport, Irrigation and Power facilities as determined by Director (given in the {Schedule-A} to these rules); and [Haryana] (h) execute bilateral agreement in Form LC-IV-A for group housing colony, in Form LC-IV-B for plotted colony, in Form LC-IV-C for industrial colony and in Form LC-IV-D for commercial colony.

(h) execute bilateral agreement in Form LC-IV-A for group housing colony, in Form LC-IV-B for plotted colony, in Form LC-IV-C for industrial colony and in Form LC-IV-D for commercial colony.

6. The aforementioned agreements required the petitioner to comply with the requirements of Haryana Development and Regulation of Urban Areas Act, 1975 (hereafter '**HDRUA Act**') and HDRUA Rules and pay a proportionate development charges as and when required and as determined by the Director General Town and Country Planning.

7. The respondents issued four show cause notices dated 20.02.2021, 22.03.2021, 24.03.2021 and 25.03.2021 calling upon the petitioner to show cause, inter alia, as to why the petitioner may not be treated as an 'assessee in default' in respect of TDS deductible in terms of Sections 194C[2]/194J of the Act on the amount of EDC paid

[2] Section 194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

to HUDA.

8. The petitioner responded to the said show cause notices, *inter alia*, contending that the EDC were paid pursuant to the statutory obligations under the HDRUA Act and the Rules made thereunder. Payment of EDC is one of the conditions for obtaining license from Director General, Town & Country Planning for developing land. The petitioner claimed that the said payments were, in fact, payments of charges to the State Government of Haryana and therefore, the petitioner had no obligation to deduct TDS.

9. The petitioner also referred to various other provisions of the Act relating to withholding of TDS and submitted that none of the Sections (that is, Section 192 to 194LB) of the Act were applicable. The petitioner specifically submitted that "*Section 194C/ 194J are not*

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(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed thirty thousand rupees :

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds seventy five thousand rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

applicable as there is no contractual obligation to use the services of the other party to carry on any development work on behalf of the developer".

10. The AO was not satisfied with the petitioner's reply to the show-cause notices and passed an order dated 30.03.2021, which is impugned herein. Although, the AO did not mention that Sections 194C/194J of the Act were inapplicable, he held that the EDC were in the nature of 'rent' and therefore, TDS was liable to be deducted under Section 194-I[3] of the Act at the rate of 10% of the amount paid/credited. The AO quantified the demand at ₹12,27,91,027/- [₹6,46,78,089/- under Section 201(1) of the Act and ₹5,81,12,938/- under Section 201(1A) of the Act].

11. As stated above, the reasoning of the AO that the petitioner was liable to withhold TDS on the payments of EDC rested on the finding

[3] Section 194-I. Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of–

(e) two per cent for the use of any machinery or plant or equipment; and

(b) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (Including factory building) or furniture or fittings:

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed one hundred and eighty thousand rupees:

Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.

that such payments are in the nature of rent and therefore, the petitioner was liable to deduct TDS at the rate of 10% under Section 194-I of the Act. Paragraph 6 of the impugned order, which sets out the aforesaid reasoning, reads as under:

> "6. **Applicability of TDS provisions on EDC Charges paid to HUDA:**
>
> HUDA is a taxable entity carrying out business activities to acquire, develop and dispose off land for residential, industrial, commercial and institutional purposes in urban estates developed in State of Haryana. Its business income is taxed by Income Tax Department which includes EDC.
>
> Lands developed by HUDA is though identified and acquired by the Urban Estate Department, Haryana Government, yet the ownership and possession of land is transferred to HUDA for consideration paid by HUDA. The hierarchy is as:
>
> (a) Land to be developed is identified and surveyed by the DGTCP, Haryana. The said land is ready for acquisition by Land Acquisition Officer *('LAO')* of the Urban Estate Department, Haryana.
>
> (b) LAO request its superior authority, Director General, Urban Estate Department, Haryana for administrative approval for acquiring the land.
>
> (c) The Urban Estate Department, Haryana conveys administrative approval of acquisition of land to Director General, Urban Estate Department, Haryana. It asks LAO to acquire land as per Law and a copy of this approval is marked to HUDA.
>
> (d) HUDA authorizes its Bank to disburse payment for award for land to LAO.
>
> (e) LAO transfers the ownership and possession of land to HUDA.
>
> As narrated above that the cost of land is paid by HUDA. HUDA develops urban infrastructure on land by undertaking EDWs. HUDA transfers land to private builders who has to pay user fee for this developed urban infrastructure which is name as

> EDC 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 subjected to TDS undersection 1941 of the Act@10%."

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.

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.

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.

15. As noted above, it was specifically contended on behalf of the petitioner that provisions of Sections 194C/194J of the Act did not apply. The AO did not allude to the said provisions, which requires a resident person paying any amount to a contractor to deduct TDS; according to the AO, the nature of the EDC is rent. As stated above, the AO has reasoned that the agreement between the petitioner and the State Government of Haryana (license under the HDRUA Act and the HDRUA Rules made thereunder) would be covered under the expression, "any other agreement or arrangement for use of land".

16. As noted above, it is conceded by the learned counsel appearing for the respondents that the view of the AO is patently erroneous.

17. It is also relevant to refer to the decision of the Coordinate Bench of this Court in ***BPTP Ltd. v. Principal Commissioner of Income Tax, (Central)-III***[4]. The controversy in the said petition related to the reopening of the assessments under Section 147 of the Act. The reasons that prompted the AO to initiate proceedings for reopening of assessment was that the assessee had not deducted TDS from payment of EDC, and therefore, the same was not allowable as expenditure by virtue of Section 40(a)(ia) of the Act. The fact that the assessee had not deducted TDS from EDC payments was set up as a reason to believe that the assessee's income for the relevant assessment year had escaped assessment.

18. This Court faulted the reasoning of the AO for initiating the

[4] 2019 SCC OnLIne Del 12358

reassessment proceedings as the fundamental premise that tax was required to be withheld from EDC payment was found to be unsustainable.

19. It is relevant to note that in *BPTP Ltd's case*[5], the Revenue sought to sustain the initiation of reassessment proceedings by contending that TDS on EDC was required to be withheld under Section 194 of the Act, which related to TDS on dividends. However, during the course of the proceedings, it was also contended by the Revenue that EDC was in the nature of rent. This Court found the said contentions unmerited.

20. The relevant extract from the decision in *BPTP Ltd's case*[6] is set out below:

> "**26.** The AO in paragraph 2 of the recorded reasons quotes that "EDC is covered by the provisions of section 194 of the Income-tax Act, 1961. The Assessee has failed to deduct TDS on the payments made to the HUDA". There is no explanation or rationale for the aforesaid observation made by the AO. We, therefore, cannot understand as to how the payment of EDC-being in the nature of statutory fees, could be subject to withholding tax under section 194 of the Act, a provision that is applicable to dividends. The nature of dividend payment is intrinsically different from EDC and, therefore, the apparent reason for reopening seems to be erroneous, irrational and fallacious. The subsequent observation in paragraph 2 "as per the provisions of section 40(a)(ia) of the Income-tax Act, any sum payable on which tax is deductible at source under Chapter XVIIB but the same has not been deducted" appears to be based on the understanding that the provisions of section 194 are attracted to EDC and, therefore, it is subject to withholding tax and consequently the provisions of section 40(a)(ia) of the Act would be attracted. Even if one were to ignore the provision of law quoted and relied upon by the AO, and we were to agree with the contention of Revenue that

[5] supra
[6] supra

while exercising the power, the source may not be specifically referred to or if wrongly mentioned to, it would not render the exercise of such power to be invalid, yet, we are unable to fathom as to how the AO has arrived at the conclusion that the EDC payment was subject to tax deduction at source. Revenue in its counter affidavit has sought to elaborate on the aforesaid reasons by contending that the EDC payment is akin to rent. However, we are not impressed with this submission. Firstly, such an understanding is not borne out from the recorded reasons and, secondly, the department cannot by way of a counter affidavit supplement the recorded reasons by introducing such legal submissions. The source of the power in this case, as sought to be argued, is not discernible.

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27. We would also like to reflect on section 194-I and its explanation which deals with rent and has been relied upon by the Revenue to contend that the definition of 'rent' is broad and would also envisage the payment of EDC and is subject to withholding tax. In support of this provision, Revenue has relied upon the observations of the Supreme Court in *New Okhla Industrial Development Authority (supra)*, the relevant portion whereof is reproduced herein below:–

> "The definition of rent as contained in the *Explanation* isa very wide definition. Explanation states that "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land. The High Court has read the relevant clauses of the lease deed and has rightly come to the conclusion that payment which is to be made as annual rent is rent within the meaning of section 194-I, we do not find any infirmity in the aforesaid conclusion of the High Court. The High Court has rightly held that TDS shall be deducted on the payment of the lease rent to the Greater Noida as per section 194-I. Reliance on circular dated 30-1-1995 has been placed by the Noida/Greater Noida Authority. A perusal of the Circular dated 30-1-1995 indicate that the query which has been answered in the above circular is "Whether requirement of deduction of income tax at source under section 194-I applies in case of payment by way of rent to the Government, statutory authorities referred to in section 10(20-A) and local

> authorities whose income under the head "Income from house property" or "Income from other sources" is exempt from income-tax"
>
> 29. We are unable to see as to how the above provision and decision is of any assistance to the Revenue. It can be seen from the quoted portion of the said judgment that in the said case, the payment of annual rent was considered to be falling within the ambit of section 194-I, a conclusion drawn by the Court on a reading of the relevant clauses of the lease deed. In the present case, the EDC charges, on the aforesaid rationality, cannot he subjected to section 194-I of the Act. Moreover, if such was the understanding of the Revenue, it should have been well founded and disclosed in the reasons recorder by the AO. Deduction at source is dealt under Chapter XVII of the Income Tax Act. The provisions enumerated thereunder, stipulate requirement of deduction of tax at source. Revenue is unable to point out any specific provision which deals with EDC payment except for alluding to section 194-I. We need not delve into this question any further as we do not find this to be a ground spelt out in the reasons for reopening the assessment under section 147 of the Act. The statutory orders containing reasons have to be judged on the basis of what is apparent and not what is explained later. Revenue cannot be permitted to improve the same by offering better explanation during the course of the proceedings. On this issue we would like to refer the view of the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner [1978] 1 SCC 405* where it has been held "The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise….".
>
> (Emphasis Added)

21. In the present case, the Revenue does not seek to support the decision of the AO that EDC are 'rent' or in the nature of 'rent'. Thus, concededly, the fundamental reasoning on which the impugned order rests is fundamentally flawed.

22. The contention that the AO has merely referred to a wrong Section of the Act and therefore, the said reference may be ignored is also without merit. As noticed above, the AO has not only held that

TDS was liable to be deducted under Section 194-I of the Act, he has also proceeded to analyse the said Section and hold that EDC are in the nature of rent. He has, in addition, also applied the rate of TDS at the rate of 10% for assessing the petitioner's liability.

23. The reasoning of the AO for finding that the petitioner was obliged to deduct TDS is important. The determination of the nature of payment is vital for ascertaining whether there was any obligation on the part of the petitioner to deduct and deposit TDS on EDC. The Revenue appears to be approaching the issue from quite the reverse direction; it has for an inexplicable reason, concluded that assessees ought to deduct TDS from EDC and now seeks to find provisions of law to sustain the said conclusion. In BPTP's case (supra), the AO had initiated reassessment proceedings on the ground that assessee was required to deduct TDS under Section 194[7] of the Act; apparently, on

[7] Section 194. Dividends.– The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment in cash or before issuing any cheque or warrant in respect of any dividend or before making any distribution or payment to a shareholder, who is resident in India, of any dividend within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2, deduct from the amount of such dividend, income-tax at the rates in force:

Provided that no such deduction shall be made in the case of a shareholder, being an individual, if—

(a) the dividend is paid by the company by an account payee cheque; and

(b) the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder, does not exceed two thousand five hundred rupees:

Provided further that the provisions of this section shall not apply to such income credited or paid to—

the premise that EDC is dividend. However, before the court, it was argued on behalf of the Revenue that EDC is rent and therefore TDS was required to be deducted from payment of EDC. In the present case, the AO has proceeded on the basis that EDC is rent but the Revenue contends that it is a payment to contractor attracting the provisions of TDS under Section 194C of the Act.

24. It is apparent from the above, that the approach of the Revenue is flawed. We reject the contention that the findings of the AO regarding the nature of EDC charges as well at the provisions referred by him for determining the petitioner's liability are not material.

25. Accordingly, for the reasons stated above, the order impugned in W.P.(C) No.4351/2021 is set aside and the said petition is allowed.

26. As already observed at the outset; it is common ground that the decision in W.P.(C) No.4351/2021 would be dispositive of other petitions as well. This is because the orders impugned therein are also founded on finding that the petitioners in these petitions were required

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(a) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), in respect of any shares owned by it or in which it has full beneficial interest;

(b) the General Insurance Corporation of India (hereafter in this proviso referred to as the Corporation) or to any of the four companies (hereafter in this proviso referred to as such company), formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), in respect of any shares owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest;

(c) any other insurer in respect of any shares owned by it or in which it has full beneficial interest:

Provided also that no such deduction shall be made in respect of any dividends referred to in section 115-O.

to deduct TDS from EDC under Section 194-I of the Act.

27. Consequently, the above captioned petitions are allowed and the orders passed by the AO raising a demand under Section 201(1) and Section 201(1A) of the Act, which are impugned in these petitions, are set aside. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 24, 2023
'gsr'