आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL DIVISION BENCH, 'B' CHANDIGARH

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 212/CHD/2025

निर्धारण वर्ष / Assessment Year: 2017-18

Simmi Gupta, 1076, Sector 37-B, Chandigarh.	Vs	The DCIT/ACIT (TDS), Chandigarh.
स्थायी लेखा सं./PAN NO: AFWPG4983R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri Parikshit Aggarwal, CA
Revenue by : Dr. Ranjit Kaur, Addl. CIT, Sr.DR
Date of Hearing : 10.12.2025
Date of Pronouncement : 22.12.2025

HYBRID HEARING

O R D E R

PER LALIET KUMAR, JM

The assessee is in appeal before the Tribunal against the order of the Commissioner of Income Tax (Appeals) [in short 'the CIT (A)'] dated 23.01.2025 passed for assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the order of the Ld. CIT (A) is contrary to law, facts and circumstances of the case.

2. On the facts and in the circumstances of the case, CIT (A) erred in not giving proper opportunity of being heard before passing of the impugned order which is in violation of the principles of natural justice.

3. On the facts and in the circumstances of the case, the learned CIT(A) failed to appreciate that the provisions of sections 194IA and 201(1)/201(1A) were wrongly applied by the AO although the appellant was not required to deduct and pay tax on the purchase of Property as the purchase consideration was less than 50 Lakhs.

4. The appellant craves leave to add, amend, alter or modify any ground(s) of appeal.

3. The facts of the case are that as per information received from the DDIT (Inv.)-2, Ludhiana vide letter dated 16.03.2021, proceedings u/s 132 of Income Tax Act, 1961 were conducted in the case of Homeland Group of cases on 26.02.2020 wherein assessee had purchased flat No. T-4/41 jointly, having 50% share, at Homeland Heights, Sector 70, Mohali for a total consideration of Rs.1,29,55,083/- on which no TDS was deducted u/s 194-IA of the Income Tax Act, 1961. Notice u/s 133(6) of the Act was issued vide letter dated 06.12.2023 and assessee furnished reply dated 11.12.2023. It was noticed that the assessee made cheque payment amounting to Rs.92,35,500/- and also paid cash amounting to Rs.19,75,000/- towards payment for purchase of the property. It was found that the assessee deducted TDS but did not pay the same within the due date, therefore assessee was liable for interest u/s 201(1A) of the Act. The ld.CIT (Appeals) dismissed the appeal of the assessee.

4. We have duly considered the rival contentions and gone through the record carefully. The submission of the assessee is two fold that in this case, the only allegation before us is that the assessee has failed to deduct the TDS in respect to the cash payment allegedly made by the assessee to the builder. It was submitted that as per the case of the AO, the total payment made by the assessee for purchase of the property was Rs.1,29,55,083/- and the assessee has made the payment of Rs.46,16,250/- vide banking channel but has not deducted the TDS on the remaining amount which was allegedly paid in cash and as such, the ld. AO had raised the demand against the assessee for not deducting the TDS at the time of making the payment for purchasing the property.

5. In appeal, the ld.CIT (Appeals) has concurred the view of the ld. AO (TDS) and has held that it was the duty of the assessee to deduct the TDS and non-deduction of TDS entails the invocation of the provision of Section 194(1A) of the Act. It was submitted by the ld. AR that the assessee at no point of time had admitted to have made the payment in cash before any authorities, much less the revenue authorities and

infact, she has not paid any amount in cash for purchase of the property and since the assessee has not paid amount in cash for buying the property, there was no obligation on her to deduct the TDS on the alleged imaginary figure of payment of cash. It was submitted, had there been a case of making the payment in cash, then the Revenue Authority should have initiated the action u/s 148 of the Act for making the addition in the hands of the assessee. To that point, the Bench has directed the ld. Sr.DR to find out from the Department wherein any proceeding u/s 148 were initiated against the assessee or not. Today, on inspection, the ld. Sr.DR Dr. Ranjit Kaur made a statement that no proceedings u/s 148 were initiated for alleged cash payment by the assessee. With respect to the merit, ld. DR relied upon order passed by the lower authorities.

6. In the present case, the case of the AO is that the assessee had made the cheque payment amounting to Rs.92,35,500/- and had also paid cash amount of Rs.19,75,000/- during the year under consideration for purchase of the property. It was noted by the AO that the cash amount of Rs.19,75,000/- was recorded by the employees of M/s Homeland Buildwell Pvt. Ltd. A Show Cause

Notice was issued based on the statement of the employees as to why the assessee should not be treated as an assessee in default u/s 201(1)/201(1A) of the Income Tax Act. Further, it was mentioned in the assessment order that the statement of Shri Monu and Shri Sanjiv Garg, employees of M/s Homeland Buildwell Pvt. Ltd. Sector 70, Mohali was recorded wherein they had confirmed that cash was paid by the assessee for the purchase of the flat. In response to the Show Cause Notice, the assessee has submitted reply on 25.02.2024 and stated that assessee has not paid any amount in cash and therefore, there was no occasion to deduct the tax u/s 194-1A of the Act. The ld. AO has not accepted the explanation given by the assessee and in paragraph 8 and 9, the ld. AO has recorded that the assessee had paid an amount of Rs.46,16,250/- through the banking channel and had paid the cash of Rs.9,87,500/- in cash during the assessment year under consideration without deducting the tax and therefore, had declared the assessee as assessee in default u/s 201 read with Section 194-IA of the Act. The assessee's appeal was dismissed by the ld.CIT (Appeals).

7. The whole premises of the addition/declaring the assessee as assessee in default was that the statement of the employees of M/s Homeland Buildwell Pvt. Ltd. were recorded whereby they have stated that the assessee had made the payment in cash and therefore, the ld. AO has recorded that there is violation of the provisions of Section 201 read with Section 194-1A and therefore, the assessee was declared the assessee in default. We had made enquiries from the ld. Sr.DR as to whether any additions were made u/s 148 or 153-C against the assessee for the alleged cash payment made by the assessee by the AO. However, on the date of hearing i.e. on 10.12.2025, the ld. Sr.DR, made a statement that no proceedings were initiated either u/s 148 or u/s 153-C of the Act against the assessee. Having faced with the situation that the Revenue has not initiated any proceeding u/s 148/153-C against the assessee for making the addition of the cash payment, now the question arises whether the Revenue can declare the assessee "as assessee in default" for non-deduction of the TDS on the alleged cash payment.

7.1 It is also brought to our notice by the ld. AR that even the additions allegedly made in the hands of M/s Homeland Buildwell Pvt. Ltd. have already been deleted by the Tribunal.

7.2 Be that as it may, for the purpose of the present controversy, whether the assessee can be declared as an assessee in default or not, it is necessary to reproduce Section 194-IA of the Act, which reads as under :

> ***"194-IA.*** *(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum or the stamp duty value of such property, whichever is higher, as income tax thereon.*
>
> *(2). No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property and the stamp duty value of such property, are both, less than fifty lakh rupees.*
>
> *(3). The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this Section."*
>
> *Explanation — For the purposes of this section,—*
>
> *(a) "agricultural land" means agricultural land in India, not being a land situated in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;*
>
> *(aa) "consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property;'*
>
> *(b) "immovable property" means any land (other than agricultural land) or any building or part of a building.*
>
> *(c) "stamp duty value" shall have the same meaning as assigned to it in clause (f) of the Explanation to clause (vii) of sub-section (2) of Section 56."*

8. From the perusal of Section 194-1A, it is abundantly clear that in case, any payment is made by the assessee for purchase of property, then it is incumbent upon the assessee to deduct the TDS and deposit the amount so deducted with the Treasury of the Government. In the present case, the Revenue has not brought on record any evidence to show that any cash payment was made by the assessee for purchase of the property. Further more, it is confirmed by the ld. Sr.DR that no additions u/s 148/153-C were made by the AO based on the alleged statement given by Mr. Monu and Shri Sanjiv Garg in the hands of the assessee. In our considered opinion, it is necessary for the Revenue to demonstrate that the assessee has made the payment in cash for buying the property. Since the pre-requisite for deducting the TDS i.e. making the payment either in cash or banking channel have not been proved by the clinching evidence, therefore, the question of deducting the TDS on the alleged hypothetical payment of cash/cheque for buying the property by the assessee does not arise.

8.1 In view of the above, once the Revenue failed to prove the payment of cash/cheque, by cogent evidence, therefore, we are of

the considered opinion the assessee was not required to deduct the TDS and in the light of the above, we found that the assessee has made out a good case and hence, the AO's order is not sustainable. In view of the above, the assessment order and the appellate order are quashed and the appeal of the assessee is allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced on 22.12.2025.

Sd/- Sd/-

(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

(LALIET KUMAR)
JUDICIAL MEMBER

"Poonam"

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

सहायक पंजीकार/ Assistant Registrar