A M/S NEW OKHLA INDUSTRIAL DEVELOPMENT AUTHORITY

v.

COMMISSIONER OF INCOME TAX – APPEALS & ORS.

B (Civil Appeal No. 15613 of 2017)

JULY 02, 2018

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Income Tax Act, 1961 – s.10(20) – Applicability of – Local authority – Noida – Held: Noida is not a local authority within the meaning of s.10(20) as amended by Finance Act, 2002 w.e.f 01.04.2003 by virtue of decision in Civil Appeal No. 792-793 of 2014 – Uttar Pradesh Industrial Area Development Act, 1976.

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Income Tax Act, 1961 – s.194A(3)(iii)(f) – Exemption of interest income by virtue of Notification dated 24.10.1970 – Held, it was decided in Commissioner of Income Tax v. Canara Bank that Noida is covered by the said notification and Noida/Greater Noida is entitled to the benefit of s.194A(3)(iii)(f) – The said view is approved.

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Income Tax Act, 1961 – s.194-I – Deduction of tax at source on payment of lease rent – Held: Tax is deductible at source on payment of lease rent to the Greater Noida as per s.194-I of the Act.

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Dismissing the appeals, the Court

HELD: 1. The definition of rent as contained in the explanation to Section 194-I is a very wide definition. Explanation states that "rent" means any payment, by whatever name called, under any lease, sublease, 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. The High Court rightly held that TDS shall be deducted on the payment of the lease rent to the Greater Noida as per Section 194-I. A perusal of circular dated 30.01.1995 indicate that the query which has been answered in the circular is "Whether requirement of deduction of income-

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tax at source under Section 194-I applies in case of payment by way of rent to Government, statutory authorities referred to in Section 10(20A) and local authorities whose income under the head "Income from house property" or "Income from other sources" is exempt from income-tax." A perusal of the circular indicate that circular was issued on the strength of Section 10(20A) and Section 10(20) as it existed at the relevant time. Section 10(20) has been amended by Finance Act, 2002 by adding an explanation and further Section 10(20A) has been omitted w.e.f. 01.04.2003. The very basis of the circular has been knocked out by the amendments made by Finance Act, 2002. Thus, the Circular cannot be relied by Noida/Greater Noida to contend that there is no requirement of deduction of tax at source under Section 194-I. Thus, deduction at source is on payment of rent under Section 194-I, which is clearly the statutory liability of the respondent-company. [Paras 14, 16][895-G-H; 896-A-B, F-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 15613 of 2017.

From the Judgment and Order dated 16.02.2017 of the High Court of Delhi at New Delhi in WP No. 1214 of 2016.

WITH

C.A. Nos. 9365/2017, 12750/2017, 15615/2017, 9199/2017, 15130/2017, 15614/2017, 51/2018, 6115/2018 and 6113/2018.

Balbir Singh, K. Radhakrishnan, Sr. Advs., Jasmeet Singh, Naman Joshi, Ms. Ruhsheet J. Saluja, Hemant Jain, S. N. Tayag Rajan, Kiran Kondaparthy, Nitesh Shrivastava, R. S. Saluja, Ms. Rubal Maini, Sandeep Chilana, Mohd. Raiz, Prbhu Dayal Chilana, Ms. Seema Joshi, D. L. Chidananda, Arijit Prasad, Shekar Vyas, Mrs. Anil Katiyar, Ravi Prakash Mehrotra, Debesh Panda, Neil Chatterjee, V. D. Verma, Ravindra Kumar, Ms. Arti Singh, Ms. Pooja Singh, Jasmeet Singh, Ms. Kavita Jha, Advs. for the appearing parties.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Delay condoned.

2. These appeals have been filed against the common judgment of Delhi High Court dated 16.02.2017 by which the Delhi High Court

A has allowed the writ petitions filed by the private respondents herein. The appeals have been filed by New Okhla Industrial Development Authority, Greater Noida Industrial Development Authority, Commissioner of Income Tax as well as Income Tax Officer and others. The facts and issues in all the appeals being common, it shall be sufficient to refer the facts and pleadings in Civil Appeal No. - 15130 of 2017 – Commissioner of Income Tax (TDS) – II & Ors. Vs. Rajesh Projects (India) Pvt. Ltd. & Anr. for deciding this batch of appeals.

3. The respondent Rajesh Projects (India) is a private limited company engaged in the business of real estate activities of constructing, selling residential units etc. On 03.11.2010, the respondent-company entered into a long-term lease for 90 years with the Greater Noida Industrial Development Authority for Plot No. GH-07A for development and marketing of Group Flats. As per terms of the lease deed, the company partially paid the consideration amount for the acquisition of the plot to Greater Noida at the time of execution of the lease deed and is also paying the balance lease premium annually as per the terms and conditions of the lease deed. Notice under Section 201/201(A) of the Income Tax Act, 1961 was issued by the Income Tax department inquiring regarding non-deduction of tax at source under Section 194-I of the Income Tax Act from the annual lease rent paid to Greater Noida. The respondent-company replied the notices. The respondents case was that it did not deduct tax at source as it was advised by Greater Noida that it is a Government authority, hence the tax deduction at source provisions are not applicable. The Assessing Officer passed the order dated 31.03.2014 for the Financial Year 2010-2011 and 2011-2012, the respondent was held as "assessee-in-default" for non-deduction/non-deposit of TDS on account of payment of lease rent and interest made to Greater Noida. Consequent demand was raised against the respondents. Aggrieved by assessment order, the respondent-company filed an appeal before the Commissioner of Income Tax-Appeals. Respondents prayed to stay the demand which was refused and recovery proceedings were initiated. Aggrieved by assessment and recovery proceedings emanating therefrom, the respondent-company filed a Writ Petition No. 8085 of 2014 praying for various reliefs including the relief that respondent-company be not treated as "assessee-in-default" under the Income Tax Act for non-deduction/depositing the tax at source in respect of payment of rent on lease land and in respect of other charges paid to Greater Noida. Different other entities also filed the writ petitions

in the Delhi High Court praying for more or less the same reliefs relating to lease rent payment and for payment of interest to Greater Noida. All the writ petitions involving common questions of law and facts were heard together and were allowed by the Delhi High Court by its judgment dated 16.02.2017. Before the High Court, Greater Noida and the Noida authorities contended that they are local authorities within the meaning of Section 10(20) of the Income Tax Act, 1961, hence their income is exempt from the Income Tax. It was further contended that the interest received by them is exempt under Section 194A(3)(iii)(f) of the Income Tax Act and they are exempted from payment of any tax on the interest.

4. The revenue refuted the contention of Greater Noida and Noida contending that w.e.f. 01.04.2003, the Greater Noida and Noida is not a local authority within the meaning of Section 10(20) and further they are also not entitled for the benefit of notification issued under Section 194A(3)(iii)(f). It was further contended that with regard to payment of rent to the Noida and Greater Noida, the respondent-company was liable to deduct the tax on payment of interest, no income-tax was deducted by the respondent-company while paying rent to Noida and Greater Noida, hence they are "assessee-in-default". The revenue also relied on Division Bench judgment of Allahabad High Court in Writ Petition Tax No. 1338 of 2005 decided on 28.02.2011 where the Allahabad High Court has held that Noida is not a local authority within the meaning of Section 10(20) as amended by Finance Act, 2002. The Delhi High Court after hearing all the parties allowed the writ petitions. The Delhi High Court held that Noida and Greater Noida are not local authorities within the meaning of Section 10(20) as amended w.e.f. 01.04.2003. Delhi High Court further held that interest income of the Noida and Greater Noida is exempted under the notification dated 22.10.1970 issued under Section 194A(3)(iii)(f) of the Income Tax Act. The High Court further held that as far as payment of rent to the Noida and Greater Noida, the respondent-company was liable to deduct income tax at source. The High Court recorded its conclusions in Para 20 of the judgment, which is to the following effect:-

> **"20. In view of the above analysis, the court hereby concludes as follows:(1) Amounts paid as part of the lease premium in terms of the time-schedule(s) to the Lease Deeds executed between the petitioners and GNOIDA, or bi-annual or annual payments for a limited/specific period**

towards acquisition of lease hold rights are not subject to TDS, being capital payments;

(2) Amounts constituting annual lease rent, expressed in terms of percentage (e.g. 1%) of the total premium for the duration of the lease, are rent, and therefore subject to TDS. Since the petitioners could not make the deductions due to the insistence of GNOIDA, a direction is issued to the said authority (GNOIDA) to comply with the provisions of law and make all payments, which would have been otherwise part of the deductions, for the periods, in question, till end of the date of this judgment. All payments to be made to it, henceforth, shall be subject to TDS.

(3) Amounts which are payable towards interest on the payment of lump sum lease premium, in terms of the Lease which are covered by Section 194-A are covered by the exemption under Section 194A(3)(f) and therefore, not subjected to TDS.

(4) For the reason mentioned in (3) above, any payment of interest accrued in favour of GNOIDA by any petitioner who is a bank - to the GNOIDA, towards fixed deposits, are also exempt from TDS."

5. Aggrieved by the aforesaid judgment of Delhi High Court, Greater Noida, Noida as well as Revenue has filed these appeals.

6. Learned counsel appearing for the Noida and Greater Noida contended that Noida and Greater Noida have been constituted under Section 3 of the Uttar Pradesh Industrial Area Development Act, 1976 and is a local authority within the meaning of Section 10(20) of the Income Tax Act, 1961. Reliance on notification dated 24.12.2001 issued by the Governor of the State of Uttar Pradesh under the proviso to Article 243Q(1) has also been placed to contend that by virtue of said notification both Greater Noida and Noida are municipalities and are covered by the local authorities as explained under the explanation to Section 10(20) of the Income Tax Act. It is further contended that interest income of the authorities is exempted under the notification issued under Section 194A(3)(iii)(f). Further reliance has been placed on Circular No. 35/2016 dated 13.10.2016 wherein it has been clarified that provision of

Section 194-I of the Income Tax Act, 1961 on lump-sum lease premium paid for acquisition of long-term lands is not applicable.

7. It is further submitted that the question as to whether Noida/ Greater Noida is local authority is engaging attention of this Court in Civil Appeal No. 792-793 of 2014, in which judgment has already been reserved. On tax deduction at source, it is further submitted that the said issue is also pending consideration of this Court in Special Leave Petition (Civil) No. 33260 of 2016, in which judgment has also been reserved. With regard to tax deduction at source on the payment of lease rent, reliance has been placed on Circular dated 30.01.1995.

8. Learned counsel for the revenue in support of its appeal submits that Noida and Greater Noida are not covered by the definition of local authority as contained under Section 10(20) and their income is not exempted under Section 10(20). Judgment of Allahabad High Court dated 28.02.2011 in Writ Petition Tax No. 1338 of 2005 was also relied by the revenue against which appeal has already been filed by Noida and has been heard. With regard to income tax deduction at source under Section 194A, the revenue has referred to its appeal in Special Leave Petition (C) No.34530 of 2016 Commissioner of Income Tax – TDS – Kanpur Vs. Central Bank of India, where the arguments has already been concluded and judgment is reserved.

9. Learned counsel for the revenue submits that Noida/Greater Noida is not entitled for the benefit of Section 194A(3)(iii)(f).

10. We have considered the submissions of the learned counsel for the parties and perused the records.

11. Insofar as the appeals filed by Noida/Greater Noida are concerned, the principal submission raised by the appellant is applicability of Section 10(20) of the Income Tax Act. Learned counsel for the Noida has submitted that the said issue has already been addressed in detail in Civil Appeal No. 792-793 of 2014. By our judgment of the date in Civil Appeal No. 792-793 of 2014 New Okhla Industrial Development Authority Vs. Commissioner of Income Tax- Appeals & Ors., we have held that Noida is not a "local authority" within the meaning of Section 10(20) of the Income Tax Act as amended by the Finance Act, 2002 w.e.f. 01.04.2003. For the reasons given by our judgment of the date in the above appeals, this submission has to be rejected.

A 12. Now coming to the appeals filed by the revenue, insofar as the question relating to exemption under Section 194A(3)(iii)(f) by virtue of notification dated 24.10.1970, i.e. the exemption of interest income of the Noida, we have already decided the said controversy in CIVIL APPEAL NO._____ OF 2018 (arising out of SLP (C) No. 3168 of 2017) - Commissioner of Income Tax(TDS) Kanpur and Anr. Vs. Canara Bank. Having held that Noida is covered by the notification dated 22.10.1970, the judgment of the Delhi High Court holding that Noida/Greater Noida is entitled for the benefit of Section 194A(3)(iii)(f) has to be approved.

C 13. Now coming to the direction of the High Court regarding deduction of tax at source on the payment of lease rent as per Section 194-I of the Income Tax Act, 1961, the authority has relied on Circular dated 30.01.1995. Section 194-I of the Income Tax Act provides as follows:-

D "Section 194-I : Rent

2[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-

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4[(a) 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:]

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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 5[one hundred eighty thousand rupees] :

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6[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

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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.]

1[Provided also that no deduction shall be made under this section where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust.]

Explanation : For the purposes of this section,-

2[(i) "rent" means any payment, by whatever name called, under any lease, sublease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,-

(a) land; or

(b) building (including factory building); or

(c) land appurtenant to a building (including factory building); or

(d) machinery; or

(e) plant; or

(f) equipment; or

(g) furniture; or

(h) fittings,

whether or not any or all of the above are owned by the payee;]

(ii) where any income 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."

14. The definition of rent as contained in the explanation is a very wide definition. Explanation states that "rent" means any payment, by whatever name called, under any lease, sublease, 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

A 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 30.01.1995 has been placed by the Noida/Greater Noida. A perusal of the circular dated 30.01.1995 indicate that the query which has been answered in the above B 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 Government, statutory authorities referred to in Section 10(20A) and local authorities whose income under the head "Income from house property" or "Income from other sources" is exempt from income-tax."

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15. In Paragraph 3 of the circular, it was stated that income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, is exempt from income-tax D under Section 10(20A). In view of the aforesaid, in Paragraph 4 of the circular, following was stated:-

> "In view of the aforesaid, there is no requirement to deduct income-tax at source on income by way of 'rent' if the payee is the Government. In the case of the local authorities and the statutory E authorities referred to in para 3 of this circular, there will be no requirement to deduct income-tax at source from income by way of rent if the person responsible for paying it is satisfied about their tax-exempt status under clause(20) or (20A) of Section 10 on the basis of a certificate to this effect given by the said authorities."

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16. A perusal of the above circular indicate that circular was issued on the strength of Section 10(20A) and Section 10(20) as it existed at the relevant time. Section 10(20) has been amended by Finance Act, 2002 by adding an explanation and further Section 10(20A) has been omitted w.e.f. 01.04.2003. The very basis of the circular has been G knocked out by the amendments made by Finance Act, 2002. Thus, the Circular cannot be relied by Noida/Greater Noida to contend that there is no requirement of deduction of tax at source under Section 194-I. Thus, deduction at source is on payment of rent under Section 194-I, which is clearly the statutory liability of the respondent-company. The

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High Court has adjusted the equities by recording its conclusion in Paragraph 20 and issuing a direction in Paragraph 21. A

17. In view of what has been stated above, we do not find any error in the judgment of the High Court dated 16.02.2017. In result, all the appeals are dismissed.

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Devika Gujral Appeals dismissed.