

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No. 2736/Del/2015
Assessment Year: 2014-15

VINOD SONI, C/O RAJ KUMAR & ASSOCIATES, CHARTERED ACCOUNTANTS, L-7A, SOUTH EXTENSION, PART-2, NEW DELHI - 110 049 (PAN: BCRPK1001P)	Vs.	ITO, TDS-WARD, FARIDABAD
(Appellant)		(Respondent)

ITA No. 2737/Del/2015
Assessment Year: 2014-15

BABLI SONI, C/O RAJ KUMAR & ASSOCIATES, CHARTERED ACCOUNTANTS, L-7A, SOUTH EXTENSION, PART-2, NEW DELHI - 110 049 (PAN: DCGPS0613J)	Vs.	ITO, TDS-WARD, FARIDABAD
(Appellant)		(Respondent)

ITA No. 2738/Del/2015
Assessment Year: 2014-15

BEENA SONI, C/O RAJ KUMAR & ASSOCIATES, CHARTERED ACCOUNTANTS, L-7A, SOUTH EXTENSION, PART-2, NEW DELHI - 110 049 (PAN: DDNPS8805N)	Vs.	ITO, TDS-WARD, FARIDABAD
(Appellant)		(Respondent)

ITA No. 2739/Del/2015
Assessment Year: 2014-15

PRADEEP KUMAR SONI, C/P RAJ KUMAR & ASSOCIATES, CHARTERED ACCOUNTANTS, L-7A, SOUTH EXTENSION, PART-2, NEW DELHI - 110 049 (PAN: AOXPS4782E)	Vs.	ITO, TDS-WARD, FARIDABAD
(Appellant)		(Respondent)

Assessee by	Sh. Raj Kumar, CA
Department by	Sh. B.S. Rajpurohit, Sr. DR.

ORDER

PER H.S. SIDHU, JM

These appeals are filed by the different Assessee against the common order dated 26.3.2015 passed by the Ld. CIT(A), Faridabad relating to assessment year 2014-15. Since the grounds raised in these appeals are common, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 2739/Del/2015 (AY 2014-15) – Pradeep Kumar Soni vs. ITO, TDS Ward. The following are the common grounds raised by all the 04 assessees, hence, the ground in the case of Pradeep Kumar Soni are only reproduced hereunder:-

1. That under the facts and circumstances, the provisions of deduction of TDS @1% u/s. 194-IA are not applicable qua assessee as the purchase consideration qua

assessee is only Rs. 37,50,000/- being less than Rs. 50,00,000/- being 1/4th un-divided equal share of the property of which total purchase consideration is Rs. 1,50,00,000/- for 4 persons, consequently, both the lower authorities erred in law as well as on merits in invoking provisions of section 201(1) and 201(1A) and consequently calculating amount payable u/s. 201(1) as Rs. 1,50,000/- / Rs. 37,500/- and intt. u/s. 201(1A) Rs. 27,000/- / Rs. 6,750/-.

2. That without prejudice, the liabilities created u/s. 201 & 201(1A) for the part of purchase consideration paid prior to 1.6.2013 is un-sustainable as provisions of section 194-IA are operative w.e.f. 1.6.2013.
3. That without prejudice, in view of 1st proviso to Section 201(1), no liability should have been created u/s. 201(1).
4. That without prejudice, inttt. u/s. 201(1A) have been wrongly charged @1.5% per month against correctly @1% as provided in Sec. 201(1A)(i).
5. That without prejudice, in any case, intt. u/s. 201(1A) has to be charged only for the period as prescribed in proviso to Sec. 201(iA), i.e. till the date of furnishing the return of income by such resident person from whom property has been purchased.

6. That without prejudice, no reasonable opportunity of hearing has been allowed.
7. That without prejudice, the whole proceedings are vitiated in law and unsustainable as single and common proceedings have been initiated in respect of 4 individual buyers namely Pradeep Soni, Babita Soni, Vinod Soni and Beena Soni and a common order has been passed treating all these four as one single unit/ one single assessee.

2. The brief facts of the case are that as per the information received from the sub-registrar, Ballabgarh vide his office letter No. 69 dated 18.2.2014, Sh. Pradeep Soni, Smt. Babli Soni, Sh. Vinod Soni & Smt. Beena Soni had purchased an immovable property of Rs. 1,50,00,000/- vide registry made on 3.7.2012. AO observed that as per the provisions of Section 194-IA of the I.T. Act, 1961 w.e.f. 1st June, 2013, "any persons 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 cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one percent of such sum as income tax thereon". AO further observed that sub-section (2) of Section 194IA of the I.T. Act, 1961 further provides that no deduction under sub-section (1) shall be

made where the consideration for the transfer of an immovable property is less than fifty lakh rupees. Accordingly, the assessee was required to deduct tax @ 1% on this amount and deposit the same to the credit of the Central govt. account. To verify such compliance of TDS provisions, specific information was called for u/s. 133(6) of the Income Tax Act from the assessee vide AO's letter no. 2356 dated 19.2.2014. In response to the same, it was submitted that by the Persons Responsible that the said property was purchased for a consideration of Rs. 1.50 crores from Smt. Rutash Kumari by Sh. Pardeep Soni, Smt. Babli Soni and Smt. Beena Soni. It was further submitted that every co-owner having equal share in the property i.e. share of every co-owner comes on amounting to Rs. 37,50,000/- which is under the threshold limit as provided by Section 194IA of the Income Tax Act, hence, Section 194IA is not applicable. AO further observed that sub-section (2) of section 194IA of the Income Tax Act, 1961 provides that no deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees. AO further observed that in the instant case, consideration for the transfer of an immovable property is Rs. 1,50,00,000./- i.e. more than Rs. Fifty lakhs and the same is executed through a single sale deed made on 3.7.2013 and duly registered with Sub-Registrar, Ballabgarh in respect of the transfer of an immovable property. As such, provisions of section 194IA are very much applicable in this case. Accordingly, a show cause notice was sent to the assessee, but no compliance was made by the Assessee. However, AO observed that

as per the provisions of Rule 30(2) of the Income Tax Rules, 1962, the Persons Responsible were required to deduct tax u/s. 194(IA) and deposit the same to the credit of the Central Govt. account within a period of seven days from the end of the month. In view of the above, AO held that the Person Responsible in default of TDS and charge the tax deductible u/s. 194(IA) of the I.T. Act, 1961 and charge the non deduction of TDS u/s. 201(1) and interest thereon u/s. 201(1A) on the payments made and accordingly made the demand of Rs. 1,77,000/- vide his common order dated 10.7.2014 and also observed that since all the Persons Responsible (Sh. Pardeep Soni, Smt. Babli Soni, Sh. Vinod Soni and Smt. Beena Soni) are the joint buyers of the immovable property, they are jointly and severally responsible for payment of taxes. Against the order u/s. 201(1) & 201(1A) of the Act, dated 10.7.2014, assessee appealed before the Id. CIT(A), Faridabad who vide his impugned exparte order dated 26.3.2015 has dismissed the appeal of the assessee by observing that in the absence of any rebuttal offered by the assessee despite repeated opportunities during the course of appellate proceedings, Id. CIT(A) held that the AO has rightly made the additions. Aggrieved with the impugned exparte order, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee submitted that the provisions of deduction of TDS @1% u/s. 194-IA are not applicable qua assessee as the purchase consideration qua assessee is only Rs. 37,50,000/- being less than Rs. 50,00,000/- being 1/4th undivided equal share of the

property of which total purchase consideration is Rs. 1,50,00,000/- for 4 persons consequently, both the lower authorities erred in law as well as on merits in invoking provision of section 201(1) & 201(IA) and consequently calculating amount payable u/s. 201(1) as Rs. 1,50,000/-; Rs. 37,500/- and interest u/s. 201(1A) Rs. 27,000; Rs. 6,750/-. It was further submitted that the liabilities created u/s. 201 & 201(1A) for the part of purchase consideration paid prior to 1.6.2013 is un-sustainable as provisions of Section 194-IA are operative w.e.f. 01.6.2013. It was further submitted that in view of 1st proviso to section 201(1), no liability should have been created u/s. 201(1). It was further submitted that intt. u/s. 201(1A) have been wrongly charged @1.5% per month against correctly @1% as provided in Sec. 201(1A)(i) and in any case, intt. u/s. 201(1A) has to be charged only for the period as prescribed in proviso to Sec. 201(iA), i.e. till the date of furnishing the return of income by such resident person from whom property has been purchased and the whole proceedings are vitiate in law and un-sustainable as single and common proceedings have been initiated in respect of 4 individual buyers namely Pradeep Soni, Babita Soni, Vinod soni and Beena Soni and a common order has been passed treating all these four as one single unit/one single assessee. To support his case, he filed two paper books i.e. Paper Book-I which is containing pages 1 to 13 in which he has attached the copy of purchase deed dated 3.7.2013; copy of letter to AO dated 27.2.2014; copy of show cause notice dated 21.4.2014 by the AO and the Memorandum to Finance Bill, 2013. In second Paper Book-II which is

containing pages 1 to 21 having the copy of 1st Paper Book; details of party wise payment for purchase of property; Canara Bank statement showing payment (Pradeep Soni); ICICI Bank Statement showing payment (Pradeep Soni); ICICI Bank statement showing payment (Babli Soni); HDFC Bank statement showing payment (Vinod Soni); HDFC Bank Statement showing payment (Beena Soni) and Loan Statement ICICI showing payment (All 04 parties).

4. On the other hand, Ld. DR strongly relied upon the orders of the authorities below, which does not need any interference on our part. To support the order of the authorities below, he relied upon few cases mentioned the Written Submissions.

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 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 alongwith 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 deed 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 had 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.

Order pronounced on 10-12-2018.

Sd/-

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

[H.S. SIDHU]
JUDICIAL MEMBER

Date:10/12/2018

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches