

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

BEFORE SHRI N.K.SAINI, VICE PRESIDENT AND
SHRI A. T. VARKEY, JUDICIAL MEMBER

ITA No.291/Jodh/2018
(ASSESSMENT YEAR-2016-17)

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| M/s. Oxcia Enterprises Private Limited, C/o Kalani & Co.,Chartered Accountants, 5 th floor, “The Mile Stone” Gandhi Nagar Turn, Tonk Road, Jaipur-15. PAN: AAGCM5419E | Vs | Deputy Commissioner of Income-tax, Circle-TDS,Udaipur. |
| (Appellant) | | (Respondent) |

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| Appellant By | Sh. Sunil porwat,CA |
| Respondent By | Sh. P. K. Singhi, DR |
| Date of hearing | 06.05.2019 |
| Date of Pronouncement | 06.05.2019 |

ORDER

PER A. T. Varkey, J.M.

This is an appeal preferred by the assessee against the order of Ld. Commissioner of Income Tax (Appeals-1, Udaipur dated 09.04.2018 for AY 2016-17 on the following grounds of appeal.

“1. The Ld.CIT(A) has erred on facts and in law in upholding the order of Deputy CIT Range-TDS raising demand of Rs.14,30,856/- u/s. 201(1)/201(1A) on account of non deduction of tax at source in the name of transferee by not accepting the claim of assessee that tax is deducted at source in the name of Power of Attorney holder who executed the sale deed by providing his PAN and also received the payment.

2. The Ld.CIT(A) has erred on facts and in law in not appreciating the fact that on same transaction tax at source cannot be deducted twice and, therefore, the demand raised u/s. 201(1)/201(1A) is bad in law.

3. The Ld. CIT(A) has erred on facts and in law in not appreciating the claim of assessee that in case tax is to be deducted in hands of owner of property, then sale consideration being less than Rs.50 lacs in the hand of each owner, there is no liability to deduct tax at source u/s. 194IA of the Act.”

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in confirming the action of the DCIT, Range TDS raising demand of Rs.14,30,856/- u/s.201(1)/201(1A) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) on account of non-deduction of tax at source.

3. Brief facts of the case are that the assessee company purchased residential property for a consideration of Rs.60,12,000/- on 28.05.2015. The property purchased was owned by Shri Anant Ram Kumawat and Smt. Seema Kumawat (hereinafter referred to as the “Joint Owners). The sale was executed on behalf of the Joint Owners by Shri Vijay Kumawat who held Power of Attorney of the Joint Owners of the property to act on their behalf in relation to the property which was sold to the assessee. Though the assessee company deducted TDS @ 1% of the sale consideration by quoting the PAN of Shri Vijay Kumawat, who was not the actual owner of the property and the owners of the property are Shri Anant Ram Kumawat and Smt. Seema Kumawat. According to him, TDS should have been deducted in the name of the actual owners and not in the name of the Power of Attorney holder. AO also found fault with the assessee not mentioning the PAN details of the joint owners so AO was of the view that the provisions of sec. 206AA of the Act were applicable and tax was deductible at source @ 20% of the purchase consideration of Rs.60,12,000/- and, therefore, the AO after hearing the assessee concluded that TDS was deductible at 20% of Rs.60,12,000/- and accordingly created a demand of Rs.12,02,400/- u/s. 201(1) and interest u/s.201(1A) of the Act of Rs.2,28,456/- totaling Rs.14,30,856/-. Aggrieved, the assessee preferred an appeal before the Ld.

CIT(A), who was pleased to confirm the action of the AO(TDS). Aggrieved, the assessee is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the admitted facts are that the assessee has purchased the property as per sale deed dated 28.05.2015 from Shri Vijay Kumawat, a Power of Attorney holder (POA) of the Joint Owners of the property Shri Anant Ram Kumawat and Smt. Seema Kumawat. In the sale deed only the PAN of the attorney holder Shri Vijay Kumawat has been mentioned. 1% TDS has been deducted on the sale consideration and deposited in the Government treasury with interest. The sale consideration have been given by cheque, details of which have already been given in the impugned order. The total sale consideration is Rs.60,12,000/-. We note that Shri Vijay Kumawat by virtue of having the Power of Attorney to transfer the land/immovable property has transferred it on behalf of the Joint Owners Shri Anant Ram Kumawat and Smt. Seema Kumawat. We note that the Ld. AR of the assessee brought to the notice of the Ld. CIT(A) that Shri Vijay Kumawat (POA) is the son of Shri Anant Ram Kumawat (owner) and brother of Smt. Seema Kumawat (owner) and the said Shri Vijay Kumawat (POA) has given his PAN details and the entire sale consideration has been received through banking channel of Shri Vijay Kumawat's account. Though in the eyes of law Shri Vijay Kumawat (POA) as no title to the property in question he has been authorized by the Co-owners of the immovable property in question to transfer the jointly held immovable property and, therefore, in law Shri Vijay Kumawat (POA) is an agent acting under a Power of Attorney the authority which is defined and limited by the statutory laws of Power of Attorney Act. The extent of the power of transfer depends upon the interest of the transferor or the limitation upon his authority given by the donor Shri Vijay Kumawat, is only the Power of Attorney holder of the co-owners of the jointly held immovable property and cannot be termed as the transferor of the immovable property because Shri Vijay Kumawat only has the

power or authority to transfer the property in question and not the ownership enjoyed by the co-owners in the jointly held immovable property, so Shri Vijay Kumawat (POA) cannot be termed the transferor of the immovable property. Here in this case, the transfer of the immovable property is undisputed, the only issue is that the assessee being the buyer/transferee has not deducted the TDS @ 1% from the transferor of the property i.e. from the Joint Owners of the property, that too without collecting their PAN details. Though, we note that the TDS has been deducted in the hands of the power of Attorney holder Shri Vijay Kumawat who is the son/brother of the Joint Owners respectively. At this juncture, we find force in the ground no. 3 of the appeal of the assessee. We note that since the Joint Owners' consideration for the entire property is Rs.60,12,000/- individually they will get Rs. 30,06,000/- each which is below the taxable limit which section 194-IA prescribes. Section 194-IA of the Act is reproduced as under:

“(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 as income-tax thereon.

(2) 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.(emphasis given by us)

(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 situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(b) “immovable property” means any land (other than agricultural land) or any building or part of a building.”

5. So, even though the admitted position is that the assessee buyer/transferee has not deducted tax in the hands of the Joint Owners of the property, still we note that sub-section(2) of sec. 194-IA of the Act provides an exception from deducting tax of 1% of the sale consideration, when the sale consideration for the transfer of

an immovable property is less than Rs. 50 lacs. Therefore, in the instant case, we note that the total sale consideration is only Rs.60,12,000/- and the admitted fact as taken note by AO & Ld. CIT(A) is that Shri Anant Ram Kumawat and Smt. Seema Kumawat are the co-owners, and jointly owning the immovable property. So, the sale consideration has to be divided equally into two by virtue of sec. 46 of the Transfer of Property Act which prescribed that where immovable property is transferred for a consideration by persons having distinct interest therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally. So, in this case, since there is no contract to the contrary could be pointed out by the Ld. DR for Revenue, in this case consideration for each transferor comes to Rs.30,06,000/- each, which is below the prescribed limit of Rs.50 lacs given by the statute as aforesaid and, therefore, in the light of the same, we are of the opinion in the facts as discussed, supra, that the provisions of sec. 194-IA of the Act are not applicable in the instant case and, therefore, provisions of section 194-IA of the Act are not attracted. In any case, we note that when the department was knowing the PAN details of the Power of Attorney holder Shri Vijay Kumawat who was none other than the son and brother of the Joint Owners Shri Anant Ram Kumawat and Smt. Seema Kumawat respectively, the AO could have easily found out whether these co-owners have reflected the sale consideration as discussed above in their respective Return of Income, if he had made some enquiry or referred the case to the AO who has jurisdiction over the POA holder Shri Vijay Kumawat, (who had obtained the entire sale consideration in his bank account or as to whether POA has shown it as his capital gain or not). Then only picture would be clear and the apprehension of income/gain escaping from the hands of co-owners could have been easily addressed rather than finding fault with the assessee's omission of not doing due diligence to track down the PAN details of the co-owners of the immovable property and in any case the department is now also empowered to find out the reality of the facts discussed above if the statute permits and in accordance to law.

6. Therefore, in the light of the discussion above, we are of the considered opinion that in this case, sec. 194-IA of the Act is not applicable and we find force in the ground no. 3 of the assessee's appeal which is hereby allowed and addition is directed to be deleted and, therefore, ground nos. 1 and 2 has become academic in nature and do not require any adjudication. The appeal of assessee is allowed.

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

Order pronounced in the open court on 6th May, 2019

Sd/-
(N.K. SAINI)
Vice President

Sd/-
(A. T. Varkey)
Judicial Member

Dated : 06.05.2019

"J.D. Sr. PS."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, Jodhpur
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order
सहायकपंजीकार/ Assistant Registrar