2025:DHC:4356-DB

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

% *Date of Decision: 22.05.2025*

\+ **W.P.(C) 3759/2025 with CM APPL. 17495/2025**

SWIFTRANS INTERNATIONAL PVT. LTD. .....Petitioner

Through: Mr. Sankalp Malik, Mr. Sanjay Malik, Ms. Vartika Malik and Mr. Shikhar Sharma, Advocates.

versus

INCOME TAX OFFICER WARD 77 4, DELHI & ORS. .....Respondents

Through: Mr. Indruj Singh Rai, SSC, Mr. Sanjeev Menon, JSC, Mr. Rahul Singh, JSC with Mr. Gaurav Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The petitioner has filed the present petition under Article 226 of the Constitution of India impugning an order dated 13.02.2025 as corrected in terms of the corrigendum dated 20.02.2025 [**impugned order**] passed under Section 260(1A) read with Section 201(1) and 201(1A) of the Income Tax Act 1961 [**Act**] in respect of assessment year [**AY**] 2016-17. The petitioner also impugns a demand notice dated 13.02.2025 [**impugned notice**].

2. It is the petitioner's case that the impugned order is barred by limitation as it has been passed beyond the period prescribed under Section 201(3) of the Act. However, the Revenue counters the said contention and states that the said order has been passed pursuant to liberty granted by this court in terms of an order dated 21.03.2024 passed by this court in ***W.P.(C) 1615/2024*** **captioned** ***Swiftrans International Pvt. Ltd. v. Income Tax Officer Ward 77 4 New Delhi & Ors.*** read with the judgement in ***Puri Constructions Private Limited v. Additional Commissioner of Income Tax and Ors. and Other Connected Matters: (2024) 462 ITR 326***.

3. The limited question to be addressed is whether the time prescribed for issuing the impugned order under Section 260(1A)/201(1)/201(1A) of the Act had expired and if so, whether the period of limitation as stipulated in Section 201(3) of the Act is inapplicable, in view of the orders passed by this Court in *Swiftrans International Pvt. Ltd. v. Income Tax Officer Ward 77 4 New Delhi & Ors. (supra)* and *Puri Constructions Private Limited v. Additional Commissioner of Income Tax and Ors.* (*supra*).

PREFATORY FACTS

4. The petitioner is a company engaged in the business of real estate development and had made certain payments (or booked a liability) on account of the external development charges [**EDC**] payable to Haryana Urban Development Authority [**HUDA**] during the financial year [**FY**] 2015-16 relevant to AY 2016-17. The petitioner had paid EDC without deducting any tax at source [**TDS**] *inter alia* on the assumption that no TDS was required to be deducted on account of the payments of EDC. The

petitioner had reasoned that it was liable to pay EDC made pursuant to condition imposed by the Director Town & Country Planning, State of Haryana and not pursuant to any contract. Additionally, the petitioner assumed that although the payments of EDC were made to HUDA, the same were, essentially, the payments made to the State Government for external development of the area where the petitioner's real estate projects were located. Thus, no TDS was required to be deducted from such payments.

5. The Assessing Officer [**AO**] issued various show cause notices under Section 201(1)/201(1A) of the Act calling upon the petitioner to show cause why it should not be treated as an assessee-in-default on account of not deducting TDS under Section 194-I of the Act in respect of EDC paid to HUDA. The petitioner responded to the said notices disputing that it is liable to deduct any TDS on EDC paid to HUDA. However, the AO did not accept the petitioner's contention and passed an order dated 16.03.2023 in respect of AY 2016-17 holding the petitioner to be an 'assessee-in-default'.

6. Thereafter, on 31.10.2023, the AO issued an order imposing penalty under Section 271C of the Act. However, in the meanwhile, in ***M/s DLF Panchkula Homes Pvt. Ltd. v. ACIT bearing W.P.(C) 56540/2022 and Other Connected Matters: Neutral Citation 2023:DHC:2401-DB***, this Court had set aside similar notices issued under Section 201(1)/201(1A) of the Act, *inter alia*, on the ground that payments of EDC could not be construed as payment of 'rent' and therefore, Section 194-I of the Act is inapplicable for such payments.

7. This Court also rejected the AO's contention that the AO had merely

mentioned a wrong Section on the said notices/orders in view of the finding that the show cause notices as well as the orders issued thereafter had elaborate reasons as to the nature of EDC to support the view that it was payment in the nature of lease rent. The said reasoning was central to the subject matter of the controversy and had AO's conclusion that the nature of payment of EDC was, essentially, lease rents. Thus, this was not a case of merely mentioning an incorrect Section, but was founded on an erroneous decision that the payments of EDC charges were akin to payment of lease rent.

8. It is material to note that the Revenue preferred a Special Leave Petition [**SLP**] against the decision in ***DLF Panchkula Homes Pvt. Ltd. v. ACIT bearing W.P.(C) 56540/2022*** (*supra*) [**SLP (C) Diary Number 2630/2024**], which was dismissed by an order dated 23.02.2024.

9. Notwithstanding that the decisions of this Court in *DLF Panchkula Homes Pvt. Ltd. v. ACIT (supra)*, the AO passed an order dated 31.10.2023 under Section 271C of the Act for AY 2016-17 imposing penalty for non-deduction of TDS under Section 194-I of the Act, on the payment of EDC.

10. The petitioner, being aggrieved by the said order, filed a writ petition [being W.P.(C) 1615/2024 captioned *Swiftrans International Pvt. Ltd. v. Income Tax Officer Ward 77 4 New Delhi & Ors*] in this Court impugning the order dated 16.03.2023 passed under Section 201(1)/201(1A) of the Act and an order dated 31.10.2023 passed under Section 271C of the Act. This Court allowed the said petition by an order dated 21.03.2024.

11. Thereafter, the AO issued a notice dated 25.06.2024 calling upon the

petitioner to explain why it should not be treated as an assessee-in-default for failure to deduct TDS under Section 194C of the Act in respect of the payments made during FY 2015-16 relevant to AY 2016-17. The petitioner responded to the said notice, *inter alia*, contending that the same was beyond the period of limitation as prescribed and not in accordance with law. However, the petitioner's contention was rejected in terms of the impugned order. According to the Revenue, the limitation as prescribed under Section 201(3) of the Act was not applicable by virtue of Section 153(6)(i) of the Act as the impugned order was passed to give effect to the order dated 21.03.2024 passed by this Court in *W.P.(C) 1615/2023* captioned *Swiftrans International Pvt. Ltd. v. Income Tax Officer Ward 77 4 New Delhi & Ors.*

REASONS AND CONCLUSION

12. At the outset, it is relevant to refer to Section 201(3) of the Act, which reads as under:

> "**201. Consequences of failure to deduct or pay**.—
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> *** *** ***
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> (3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given or two years from the end of the financial year in which the correction statement is delivered under the first proviso to sub-section (3) of section 200, whichever is later."

13. Thus, in terms of sub-section (3) of Section 201 of the Act, no order

under Section 201(1) of the Act could be passed deeming an assessee to be in default after expiry of seven years from the end of the financial year in which the payment is made or credit is given. In the present case, the payments of EDC in respect of which the impugned order is passed were made in FY 2015-16. The period of seven years from the end of the said financial year expired on 31.03.2023. Thus, the impugned order was clearly beyond the period of limitation stipulated under Section 201(3) of the Act. However, the Revenue claims that passing the impugned order was not proscribed by virtue of Section 153(6)(i) of the Act. The said Clause is set out below:

> "**153. Time limit for completion of assessment, reassessment and recomputation**.
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> *** *** ***
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> (6) Nothing contained in sub-sections (1), (1A) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3), (5) and (5A), be completed—
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> (i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Chief Commissioner or Chief Commissioner of Principal Commissioner or Commissioner, as the case may be; or.."

14. The only question to be considered is whether Section 201(3) of the

Act would be inapplicable on account of the order being passed to give effect to "any finding or direction" as referred to in Section 153(6)(i) of the Act.

15. According to the Revenue, the order dated 21.03.2024 passed by this Court in W.P.(C) 1615/2024 is to be construed as finding or a direction to issue the impugned order. We consider it apposite to refer to the operative part of the said decision, which reads as under:

> "4. In view of the aforesaid, while we set aside the impugned orders dated 16 March 2023 and 31 October 2023, we leave it open to the respondents to proceed further in accordance with law and the observations as rendered in *Puri Constructions Private Limited*."

16. This Court had allowed the writ petition [W.P.(C) 1615/2024] and had set aside the orders passed under Section 201(1) and 201(1A) of the Act as well as an order imposing penalty under Section 271C of the Act, which was premised on the allegation that the petitioner had failed to deduct TDS under Section 194-I of the Act in respect of payments of EDC to HUDA. However, the Court had also clarified that respondents were not precluded to proceed further in accordance with law as well as the observations made by this Court in ***Puri Constructions Private Limited v. Additional Commissioner of Income Tax and Ors.: 2024 SCC OnLine Del 939***. It is clear from the above that the liberty granted to the Revenue to proceed further was qualified by the expression "in accordance with law".

17. In ***Puri Constructions Private Limited v. Additional Commissioner of Income Tax and Ors.*** (*supra*), this Court had held that the payers were

liable to deduct TDS under Section 194C of the Act in respect of payment of EDC to HUDA. Thus, it was open for the Revenue to initiate proceedings against the petitioner for not deducting TDS under Section 194C of the Act. However, this Court had also qualified that the said proceedings were required to be "in accordance with law".

18. Nothing stated in the order dated 21.03.2024 could be construed as absolving the AO from the rigors of Section 201(3) of the Act. The provisions of Section 153(6)(i) of the Act would have little application as nothing stated in the order dated 21.03.2024 could be construed as a finding or direction to issue the impugned order.

19. In view of the above, the impugned order as well as the impugned notice are set aside. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 22, 2025
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