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

Reserved on: 16.01.2017
Decided on: 16.02.2017

\+ **W.P.(C) 8085/2014, C.M. APPL.18876/2014**

RAJESH PROJECTS (INDIA) PVT. LTD. ..... Petitioner

Through : Sh. Prakash Kumar and Ms. Rashmi Singh, Advocates.

Versus

COMMISSIONER OF INCOME TAX (TDS)-II AND ORS.

..... Respondents

Through : Sh. P. Roychaudhuri, Sr. Standing Counsel.

\+ **W.P.(C) 7682/2015**

AJAY ENTERPRISES PVT. LTD. ..... Petitioner

Through : Sh. Harish Malhotra, Sr. Advocate with Ms. Vidhi Goel and Ms. Shagun Parashar, Advocates.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX (TDS) AND ORS.

..... Respondents

Through : Sh. Jasmeet Singh and Sh. Nitesh Shrivastava, Advocates.

Sh. P. Roychaudhuri, Sr. Standing Counsel.

\+ **W.P.(C) 10896/2015**

IITL-NIMBUS, THE HYDE PARK, NOIDA ..... Petitioner

Through : Sh. Neil Chatterjee, Advocate, for Sh. Debesh Panda, Advocate.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through : Sh. Jasmeet Singh and Sh. Nitesh Shrivastava, Advocates.

Sh. P. Roychaudhuri, Sr. Standing Counsel.

Ms. Suparna Srivastava, Advocate, for UOI.

\+ **W.P.(C) 565/2016, C.M. APPL.2355/2016**

EXOTICA HOUSING PRIVATE LIMITED ..... Petitioner

Through : Sh. Ashwani Malhotra, Sr. Advocate with Sh. Rajnish Singh, Advocate.

Versus

COMMISSIONER OF INCOME TAX APPEALS AND ORS. ..... Respondents

Through : Sh. Jasmeet Singh and Sh. Nitesh Shrivastava, Advocates.

Sh. P. Roychaudhuri, Sr. Standing Counsel.

\+ **W.P.(C) 1214/2016, C.M. APPL.5347/2016**

GULSHAN HOMES & INFRASTRUCTURE PVT. LTD. ..... Petitioner

Through : Sh. Ashwani Malhotra, Sr. Advocate with Sh. Rajnish Singh, Advocate.

Versus

COMMISSIONER OF INCOME TAX (APPEALS)(41) AND ORS. ..... Respondents

Through : Sh. Jasmeet Singh and Sh. Nitesh Shrivastava, Advocates.

Sh. Dileep Shivpuri, Sr. Standing Counsel with Sh. Sanjay Kumar, Jr. Standing Counsel and Sh. Vikrant. A. Maheshwari, Advocate, for Revenue.

\+ **W.P.(C) 1546/2016, C.M. APPL.6659/2016**

UNITED BANK OF INDIA ..... Petitioner

Through : Ms. Arti Singh, Advocate.

Versus

INCOME TAX OFFICER AND ORS. ..... Respondents

Through : Sh. P. Roychaudhuri, Sr. Standing Counsel.

\+ **W.P.(C) 2649/2016, C.M. APPL.11225/2016**

CIVICTECH DEVELOPERS PVT. LTD. ..... Petitioner

Through : Sh. Ashwani Malhotra, Sr. Advocate with Sh. Rajnish Singh, Advocate.

Versus

COMMISSIONER OF INCOME TAX-APPEALS (41) AND ORS.

..... Respondents

Through : Sh. Jasmeet Singh and Sh. Nitesh Shrivastava, Advocates.

Sh. Dileep Shivpuri, Sr. Standing Counsel with Sh. Sanjay Kumar, Jr. Standing Counsel and Sh. Vikrant. A. Maheshwari, Advocate, for Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

%

1. This common judgment will dispose of a batch of writ petitions. They were heard together as they involve identical questions of fact and law as to the correct interpretation of Section 194-I of the Income Tax Act [hereafter "the Act"].

2. The petitioners are engaged in developing, constructing and selling residential units, plots and flats. Each of them entered into a long-term 90 years lease with the Greater Noida Industrial Development Authority (GNOIDA) [hereafter referred to as "the authority" or "the lessor"], as the case may be, i.e. one of the respondents in all these writ proceedings, for development and sale of land in various housing colonies. In terms of the lease deed entered into with the lessor, the petitioner paid upfront consideration and the balance was payable in terms of annual installments according to the terms and conditions of the lease deed. Along with the lease premium, each lease deed contained stipulation that interest payments would also be made to the lessor/authority. These stipulations are part of the lease deed [Clause 1 of the lease in W.P.(C) 1214/2016; W.P.(C) 2649/2016 as

well as W.P.(C) 8085/2014; W.P.(C) 7682/2015 and W.P.(C) 565/2016]. In all these cases, the assessee/petitioners received notice from the income tax authorities, alleging that they were assessed in default inasmuch as they had failed to deduct income tax from the interest component paid to the lessor/authority. The Revenue was *prima facie* of the opinion that these interest amounts resulted in income in the hands of the authority which is facially taxable and that the failure of the assessees, in deducting amounts mandated under Section 194-I is without legal foundation.

3. The petitioners were served with notices by the income tax authorities under Sections 201 /201 (lA) of the Income Tax Act, 1961 for the F.Y. 2010-11 to 2012-13 for non-deduction and non-payment of TDS required to be deducted from the payments of lease rent/interest/other payments for acquisition of a plot of land on 90 years lease from NOIDA for the periods mentioned. The petitioners, who justified non-deduction of TDS for payments made as lease rental and interest to GNOIDA, duly replied to these notices. Furthermore, all details of deductions and deposit of TDS were also given. In regard to the query of the Assessing Officer ("AO") pertaining to the non-deduction and non-payment of tax at source on account of lease rent /charges paid to Noida Authority the petitioner explained its case on merits. The Petitioner submitted that:

(i) They had been allotted, on lease basis, lands for development for 90 years by the Noida Authority;

(ii) Noida Development Authority has directed the assessee company not to deduct TDS from the lease rent as it has been constituted as an authority underSection 3 of the Uttar Pradesh Industrial Development Act, 1976.

(iii) Noida Development Authority is a notified institution under section 194A(3) (iii) (f) of the Act by the Central Board of Direct Taxes. Therefore, provisions of Section 194-I of the Act are inapplicable to NoidaAuthority.

4. The income tax authorities ignored the explanations provided and issued notices of demand under Section 156 of the Income Tax Act treating the petitioner company as assessee-in-default for non-deduction and deposit of TDS in respect of the payments made to NOIDA Authority and has also levied the interest thereon. The demand for various periods was quantified. The assessee/petitioners preferred appeals to the Commissioner (Appeals) in some cases. Later, the AO issued further notice of demands for other periods under Section 221(1), which were duly replied to. In these circumstances, they have approached this court for appropriate relief, contending that the GNOIDA's position on this issue is that amounts payable to it cannot be subjected to tax deduction, since it is a "local authority".

5. The Petitioners submit that the demands made in pursuance of the passing of the assessment order under Sections 201/201 (A) of the Act is arbitrary and fictitious. It is not the case of the income tax authorities that the Petitioners made a short payment of tax and / or not deposited the same in the government treasury after deducting the amount. On the contrary, the Petitioners made the full payment to the payee and cannot be forced to again make the payment. The income tax authorities have all the rights and powers to charge and recover the tax if any due from the NOIDA authorities as the payments were made under the instructions of NOIDA Authority, which is a public authority. Non-compliance with the directions of the said Authority would have been visited by penal interest and even cancellation of the petitioners' lease deeds. If the stand of the income tax authorities is correct,

they should have initiated assessment proceedings against the lessors as they would have shown the income in their return of income or the same must have been assessed in their hands by the income tax office. However, the repeat issue of notices and raising of demands causing serious concern, threat to the business, operations and existence of the Petitioner companies.

6. The GNOIDA's position is that Circular No. 699 dated 30.01.1995 covers the position and that income tax is not to be deducted from a "local authority". The relevant extracts of the circular are extracted below:

> *"SECTION 194-I- RENT*
>
> *1149. 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*
>
> *1. Queries have been raised as to whether the requirement of deduction of income-tax at source under section 194-I of the Income-tax Act applies in case of payments by way of rent to the 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.*
>
> *2. Under the provisions of section 196 of the Income-tax Act, no tax is required to be deducted at source from any sums payable to the Government.*
>
> *3. The matter with regard to the statutory authorities and the local authorities referred to above/ has been examined in the Board. Section 190 of the Income-tax Act provides for deduction of income-tax at source as one of the modes of collection of income-tax in respect of an*

income/notwithstanding that the regular assessment in respect of such income is to be made in a later assessment year. The 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 under section 10 (20A). Similarly the income of a local authority which is chargeable under the head 'Income from house property/ or 'Income from other sources; is exempt from income-tax under section 10(20). There is no other condition specified in these two clauses of section 10, which is necessary to be satisfied in order to avail of the income-tax exemption.

In view of the aforestated, 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 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."

7. The GNOIDA further argues that in the explanation to Section 10(20) of the Income Tax Act, 1961, a "Municipality as referred to in clause (e) of Article 243P of the Constitution" falls under the ambit of a "local authority". Reliance is placed on Article 243P clause (e) of the Constitution of India, which states that *"Municipality means an institution of self government constituted under Article 243Q".* Further reliance is placed on Section 3 of the Uttar Pradesh Industrial Development Act, 1976 (hereinafter to as "the UPIDA") under which GNOIDA is constituted. It is submitted that the Government of Uttar Pradesh by Notification No. 4157 HIjXVIII-11 dated

17.04.1976 notified the GNOIDA as the authority constituted under Section 3 of the UPIDA. The GNOIDA points out that the statement of objects of the UPIDA states:-

> *'an act to provide for the constitution of an Authority for the development of certain areas in the State into industrial and urban township and for matter connected therewith.'*

This clarifies that GNOIDA was constituted for the purpose of planning, development or improvement of cities, towns and villages. In this regard, it is further submitted that the Noida Industrial Development Authority has been declared as an "Industrial Township" with effect from 24th December, 2001 by the Governor of Uttar Pradesh in exercise of the powers under the proviso to clause (1) of Article 243Q of the Constitution of India.

8. GNOIDA therefore argues that, it is evident and apparent that the Noida Industrial Development Authority falls squarely under the meaning of a 'Municipality' and this is a 'local authority' under Section 10(20) of Income Tax Act 1961, read with Article 243P and Article 243Q of the Constitution of India. It is also urged that GNOIDA discharges its statutory sovereign function, as an arm of the State Government through its officers. It is empowered under section 6 of the Act to carry out all the municipal functions. It is respectfully submitted that in terms of section 6 of the said Act, one of the functions of answering to the Respondent is to allocate and transfer by way of lease, plots of land for industrial, commercial or residential purposes. It is further submitted that the lease rent levied by GNOIDA is in the nature of local taxes, and not out of proceeds arising from any business or trade. In this regard, it is relevant to note that firstly, it works as a local authority of the area, and secondly since there is no separate

municipality in operation in the area and all the functions of municipality are performed by the authority. It is submitted that the lease rent is levied in terms of provisions of the Act.

9. The income tax authorities argue that they are following the mandate of law. Since Section 194-I is decisive and forthright that all amounts constituting rent and other payments towards the use of the land and property are to be subjected to tax deduction, there can be no exception save what is provided by law. The Revenue contrasts this provision with section 194A which contains exceptions. The Revenue also disputes that GNOIDA performs any sovereign functions and reiterates that the amounts paid by the petitioners are rent, no more, no less and therefore, subjected to tax deduction. The Revenue also relies on the judgment of the Allahabad High Court in *New Okhla Industrial Development Authority v. Chief Commissioner of Income Tax, Meerut Camp & Ors.*, decided on 28.02.2011 (in Writ- Tax No. 1338 of 2005) which states how NOIDA is not a local authority and is therefore not exempt from TDS provisions of the Act.

10. Section 194-I reads as follows:

> *"Rent.*
>
> *194-I. 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 –*
>
> *(a) two per cent for the use of any machinery of 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:
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 one hundred and eighty thousand rupees :
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 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.

Explanation - For the purposes of this section, -
(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, 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."

11. The Revenue argues that in view of the general tenor of the above provision, all payments made by way of rents are subject to TDS. The first kind of payment, which this court has to deal with are lease amounts. Do they qualify the description "rent" in view of the explanation to section 194-I i.e *"any payment by whatever name called"*? The second is whether the interest amounts paid towards overdue lease amounts are also liable to TDS. As to both GNOIDA asserts that since it is a municipality, it stands covered by Section 10 (20A) of the Income Tax Act and amounts payable to it are exempt from the description of *"income"*. It follows up this with the submission that GNOIDA is constituted under the UPIDA and was declared an industrial township under a notification issued for the purpose in 1976; that establishes that it is a municipality and that amounts collected are towards services by way of "sovereign" functions.

12. Section 10 (20A) reads as follows:

> *"10. Incomes not included in total income in computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included:*
>
> *(1) agricultural income;*
>
> ********* ******* *****
>
> *(20) the income of a local authority which is chargeable under the head "Income from house property" "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area.*

Explanation:- for the purposes of this clause the expression "local authority" means-

(i) Panchayat as referred to in clause (d) of Article 234P of the Constitution, or
ii) Municipality as referred to in clause (e) of Article 234P of the Constitution, or
iii) Municipal Committee and District Board, legally entitled to or entrusted by the Government with, the control or management of a Municipal or local fund; or
(iv) Cantonment Board as defined in Section 3 of the Cantonments Act, 1924 (2 of 1924)"

A municipality under Article 243P *"means an institution of self government constituted under Article 243Q*". Article 243Q it provides as follows:

*"**243Q.** (1) There shall be constituted in every State,—*

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, "a transitional area", "a smaller urban area" or "a larger urban area" means such area as the

> *Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."*

13. In the present case, the Governor of Uttar Pradesh notified the respondent GNOIDA as an industrial township by notification dated 24.12.2001. The notification pertinently stated as follows:

> *"In exercise of the powers under the proviso to clause (l) of Article 243-Q of the Constitution of India, the Governor, having regard to the size of the Greater New Okhla Industrial Development Area, which has been declared as an industrial development area by Government notification No. 7436 Bha.U.IXVIII-II-107Bha/85, dated January 28, 1991 and the municipal services being provided by the Greater New Okhla Industrial Development Authority in that area, is pleased to specify the said Greater New Okhla Industrial Development Area to be an "Industrial township" with effect from the date of publication of this notification in the official Gazette."*

This notification supports the Revenue's contention that the GNOIDA is not a municipality and therefore, did not fall within the description of a municipality under Section 10 (20) to exempt it from the provisions of Section 194-I.

14. GNOIDA had relied on some decisions to say that though the Governor characterized it as an industrial township, it nevertheless continued to undertake municipal functions and any rates, tariffs and collections by it were due to the sovereign power of the state, thus entitling it to exemption from income tax. The GNOIDA's arguments are unpersuasive. It had relied on *Sri Ramtanu Co-operative Housing Society v State of Maharastra* 1970

(3) SCC 323. That judgment considered the competence of the state to enact a law for industrial development, and set up a corporation in that regard, with powers to acquire, hold and dispose of land statutorily. Repelling the argument that the enactment was void, the court ruled that the legislation fell within the State list and was not the subject matter of the entry in the Union list, relating to "Corporations". It was observed that the state had delegated its sovereign powers to acquire land, through the Land Acquisition Act and other statutory enactments. That judgment cannot be an authority to hold that *all industrial development corporations* or industrial townships are municipalities. Much depends on the context of each case.

15. Article 243P clearly states that municipalities are units of self-governance; they are defined under Article 243Q. As to what is meant by self governance is not left to the imagination; Article 243R postulates that

> *"**243R. Composition of Municipalities***
>
> *(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as ward.*
>
> *(2) The Legislature of a State may, by law, provide*
>
> *(a) for the representation in a Municipality of*
> *(i) persons having special knowledge or experience in Municipal administration;*
> *(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;*
> *(iii) the members of the Council of States and the members of the Legislative Council of the State registered electors within*

> *tile Municipal area;*
> *(iv) the Chairpersons of the Committees constituted under clause (5) of article 243S: Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;*
> *(b) the manner of election of the Chairperson of a Municipality."*

Thus, the prerequisite for characterization of a unit or body as a municipality is that it should be self-governing and its members *"shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area"* and for such purpose (i.e. election) *"each Municipal area shall be divided into territorial constituencies to be known as ward."* In the case of GNOIDA, this essential characteristic is absent. Section 3, which constitutes it, lists 6 officials and specifies the ranks and departments (of the UP Government) who are to man the body; 5 are to be nominated by the State Government. Therefore, the possibility of a reasonable argument that GNOIDA is a municipality, notwithstanding its constitution as an industrial township, is ruled out.

16. As to the other submissions of GNOIDA that its collections – towards lease deed are by way of tax and other payments are extractions by use of sovereign power, are equally untenable. Article 243P specifies that municipalities – as defined by Article 243Q are to be treated as such. The proviso to Article 243Q carves out an exception that certain units which provide municipal services and are industrial townships may be declared as such. Now this is recognition of the fact that industrial townships *per se* need not be statutory bodies; they can be private entities as well. Jamshedpur in Bihar with a population of a million plus, is maintained by the Jamshedpur

Utilities and Services Company Ltd, a private entity. It provides all the essential municipal services; yet the city has no "official" or statutory municipal corporation. Therefore, whenever the nature and characteristics of the services provided by an entity or corporation- irrespective of statutory grant by the state (or lack of profit motive, or even that it has attributes or trappings of state or its power), are such that it is essentially or mainly an industrial township, and its governing structure is not "self-governing", the power under Article 243Q is exercised. GNOIDA cannot obviously challenge that exercise of power. It follows, therefore, that it is not a municipality. Therefore, its contentions that it is a municipality and entitled to the benefit of Section 10 (20) are without merit.

17. That brings the court to the next question, which is as to the nature of the payments made towards lease. Do they constitute rent so as to attract Section 194-I? The court is of opinion that clearly these payments are not "rent". That they are annual payments cannot be doubted. Yet, part of the payment is clearly capital in nature. Clause 1 of the lease deeds entered into in each of the cases, clearly points to the fact that a small percentage of the agreed amounts were paid as part of the lease premium and were towards acquisition of the asset; they fell, consequently in the capital stream and were not "rents". The balance of such premium payments were spread over a period of 8 to 10 years, in specified annual or bi-annual installments. Here, distinction between a single payment made at the time of the settlement of the demised property and recurring payments made during the period of its enjoyment by the lessee is to be made. This distinction is clearly recognized in Section 105 of the Transfer of Property Act, which defines both premium and rent. Such payments were held to constitute capital and not "rent" or

advance rent, in *Durga Das Khanna v CIT* 1969 (72) ITR 796 as well as other decisions, such as *Assam Bengal Cement Co. Ltd. v Commissioner of Income Tax, West Bengal* [1955] 27 ITR 34 (SC) and *Madras Industrial Investment Corporation Ltd. vs. CIT* (1997) 225 ITR 802 (SC). However, in respect of amounts clearly reserved as rent (generally 1% of the total consideration, payable annually) the payments are clearly rent and not capital. In respect of such amounts too, the petitioners were liable to deduct TDS from the payments made to GNOIDA. This view is also reinforced by the Income Tax Circular No. 35/2016 dated 13 October, 2016 issued by the Central Board of Direct Taxes (CBDT) which clarified that *"lump sum lease payments or one time lease charges, which are not adjustable against long term lease hold charges, which are not adjustable against periodic rent, paid or paid or payable for acquisition of long term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of Section 194-I of the Act."*

18. As far as interest on overdue payments or other such amounts are concerned, however, they cannot be called "capital" payments. In the present case, the court holds that since the GNOIDA insisted that its payments not be subjected to TDS, it should ensure that the appropriate amounts are credited, or credit to the extent applicable, is given to the Petitioner/ lessees. A direction to that effect is given to the second respondent, GNOIDA to ensure compliance; the Revenue is consequently directed not to pursue coercive and penal proceedings against the petitioners under Section 201/221 of the Income Tax Act.

19. So far as the other issue, pertaining to TDS in respect of interest

payments received by GNOIDA is concerned, the provision in question is Section 194A of the Income Tax Act. It reads as follows:

> *"194A. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, 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 issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:*
> .....
> *(3) The provisions of sub-section (1) shall not apply--*
> *(i) ...*
> *(iii) to such income credited or paid to--*
> *(a) to (e) .....*
> *(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;*
> *(iv) ...."*

The question here is whether GNOIDA is an institution of the kind covered by Section 194A (3) (f). GNOIDA relies on the notification issued by the Central Government, on 22.10.1970, which specifies that *"Any Corporation established by a Central, State or Provincial Act"* would be entitled to exemption. Section 3 (i) of the UPIDA states that *"The State Government may, by notification, constitute for the purpose of this Act, an Authority to be called (Name of the area), industrial development authority, for any industrial development area."* The UP Government established various industrial development authorities with the name of the area, such as, GNOIDA Authority, and others in connection with different cities. The notification and the provision (Section 194A (3)) had been interpreted by the

Income Tax Appellate Tribunal in the context of payments made by a Bank to the Ghaziabad Development Authority. In the said judgment *(Canara Bank v Department of Income Tax*, ITA No.1359/Del/2014 decided on 07.08.2015) the ITAT held as follows:

> *"11. Adverting to the facts of the instant case, we find that the assessee is a statutory corporation established by means of the UP Industrial Area Development Act, 1976. It has been noticed above from the preamble of this Act that it has been made for development of certain areas in the State into industrial and urban township. Instead of enacting area-wise Industrial Area Development Acts, the UP Government enacted a common UP Industrial Area Development Act, 1976 to cover Authorities under different areas with its distinct name. But, for the creation of various area-wise authorities such as NOIDA and Ghaziabad Authorities, there is no other purpose of the UP Industrial Area Development Act, 1976. In other words, we can also say that this Act is nothing but a culmination of several area-wise Industrial Area Development Acts. Since NOIDA has been notified under the UP Industrial Area Development Act, we are of the considered opinion that the expression 'any corporation established by a State Act' shall include New Okhla Industrial Development Authority in the given circumstances.*
>
> *12. We find that identical issue involving payment of interest by some banks to Ghaziabad Development Authority without tax withholding came up for consideration before the Delhi Bench of the Tribunal in the case of Chief/Senior Manager, Oriental Bank of Commerce v ITO. Vide its order dated 15.7.2011 in ITA No.2228/Del/2011, the Tribunal has held that the payment of interest by Oriental Bank of Commerce to Ghaziabad Development Authority is covered within the provisions of section 194A (3) (iii) (f) and, hence, there is no obligation for deduction of tax at source. Consequently, the order passed u/s 201(1) was set aside. Similar view has been taken by the Amritsar Bench of the Tribunal in the case of ITO (TDS) vs. Branch Manager Jammu & Kashmir Bank Ltd. Vide its order dated 24.4.2012 in ITA No.206 to 210/Asr/2011, the Tribunal*

has held that payment of interest by the bank to Jammu Development Authority (Jammu) is exempt u/s 194A(3)(iii)(f) and, hence, there can be no liability u/s 201(1) and 201(1A) on the bank and resultantly, the bank cannot be treated as an assessee in default u/s 201(1) and 201(1A). Likewise view has been taken by the Amritsar Bench of the Tribunal in ITO vs. the Branch Manager, Jammu, Jammu & Kashmir Bank Ltd., by its order dated 2.7.2012, a copy of which has also been placed on record. All these precedents support the proposition that the payment of interest by banks to the State Industrial Development Authorities does not require any deduction of tax at source in terms of section 194A (3) (iii) (f) and, hence, the failure to deduct tax at source on such interest cannot lead to the banks being treated as assessee in default. No material has been placed on record to demonstrate that all/any of the above orders have either been reversed or modified in any manner by the Hon'ble High Courts. Further, the ld. DR failed to point out any contrary decision. In view of the legal position discussed supra and these precedents, we are of the considered opinion that the ld. CIT(A) was justified in reversing the order passed by the Addl. CIT (TDS), Ghaziabad declaring the assessee liable u/s 201(1) and 201(1A) of the Act. We, therefore, uphold the impugned order."

This court affirms and upholds the reasoning of the ITAT. GNOIDA is one such institution established by a state act. As pointed out by the ITAT, the UPIDA is an enabling enactment, which facilitates the setting up of development authorities like GNOIDA. Consequently, payments made by banks towards interest accruing on deposits, etc. are not deductible.

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.

21. In view of the above conclusions, it is hereby directed that wherever amounts have been paid by the petitioners, towards TDS as a result of the coercive process used by the Revenue, the GNOIDA shall make appropriate orders to credit/reimburse such payments. In case payments are made through deposit, over and above the rental amounts paid to the GNOIDA, without TDS, the income tax authorities shall not pursue any coercive proceedings; GNOIDA shall duly reimburse the petitioners for such amounts. Any amounts deposited in the court or with the Revenue, shall, to the extent of TDS liability only be appropriated for such purpose. It is

clarified that GNOIDA shall ensure that reimbursement is made to compensate the petitioners' excess payments; the income tax authorities shall not pursue any coercive methods for recovery of the amounts, or penalty, once the basic liability (with interest, to be paid by GNOIDA) is satisfied. The impugned orders are quashed; the Revenue shall make consequential orders, to give effect to this judgment, after duly hearing the petitioners and those likely to be affected, within 12 weeks from today.

22. The writ petitions are allowed in the above terms. No costs.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

FEBRUARY 16, 2017