**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**
**and**
**SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No.396/DEL/2026**
**(Assessment Year: 2017-18)**

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| DLF Homes Panchkula Private Limited,<br>1-E, Naaz Cinema Complex,<br>Jhandewalan Extension,<br>New Delhi - 110 055. | vs. | DCIT, TDS Circle 72 (1),<br>Delhi. |
| **(PAN : AABCH8735M)** | | |
| (APPELLANT) | | (RESPONDENT) |

ASSESSEE BY : Shri R.S. Singhvi, CA
Shri Satyajeet Goyal, CA
REVENUE BY : Shri Sudeep Dabas, CIT DR

Date of Hearing : 06.07.2026
Date of Order : 03.09.2026

## ORDER

**PER S.RIFAUR RAHMAN,AM:**

1. The assessee has filed appeal against the order of the Learned Addl./JCIT (Appeals), Ranchi ["Ld. CIT(A)", for short]dated 25.11.2025 for the Assessment Year 2017-18 raising following grounds of appeal :-

> "1. That on the facts and circumstances of the case, the order passed by Ld. CIT(A) u/s 250 is bad in law and on facts and has been framed without proper appreciation of the statutory provisions and submissions made by the Appellant.
>
> 2.1 That on the facts and circumstances of the case, the Ld. CIT(A) has erred in upholding the order passed u/s 201/201(1A) holding the assessee as assessee in default' for non-deduction of TDS on External Development Charges (EDC) amounting to Rs.3,972,66,000/- paid to Director, Town & Country Planning, Haryana

(DTCP) in the name of Haryana Urban Development Authority (HUDA) even though same fell outside the provision of section 194C of the Act.

2.2 That the Ld. CIT(A) was not justified in upholding the demand ofRs.1,53,10,967/- consisting of tax of Rs.79,45,320 under section 201(1) and interest of Rs.73,65,64 7 u/s 201(1A) which is illegal and not devoid of merits.

2.3 That the EDC payment made to HUDA being on behalf of DTCP, which is a government organ, the Ld. CIT(A) has failed to appreciate that Section 196 bars deduction of tax from payments made to the Government.

2.4 That the Ld. CIT(A) erred in upholding the application of section 194C on payment of EDC without appreciating that there was no contractual relationship between the Appellant and HUDA.

3. That even otherwise, the HUDA being a taxable entity and having accounted for the EDC payment, the Ld. AO and CIT(A) erred in treating the Appellant as 'assessee-in-default' in total disregard of first proviso to section 201(1) of the Act.

4. That there being no case of any default in deducted of TDS, the demand u/s 201(1) and the levy of interest u/s 201(1A) is illegal and deserves to be deleted.

5. That on the facts and circumstances of the case, the order passed by the learned CIT(A) without granting proper and reasonable opportunity of hearing, is in violation of principles of natural justice and the same is thus illegal and bad in law.

6. That the orders passed by the lower authorities are not sustainable on facts and are bad in law.

7. That the authorities below are not justified in recovering the entire demand raised pursuant to order u/s 201(1)/201(1A) even though the appellant is not an 'assessee in default'."

2. Brief facts of the case are, the assessee is engaged in real estate development and holds licence from the Town and Country Planning Department, Haryana (DTCP), for development of a colony at Panchkula. A survey/verification in the TDS charge revealed that during FY 2016-17, the assessee paid External Development Charges (EDC) aggregating to Rs.39,72,66,000/- in the name of Haryana Urban Development Authority / Haryana Shahari Vikas Pradhikaran (HUDA / HSVP), on

directions of DTCP, without deduction of tax at source. The Assessing Officer initiated proceedings under section 201(1)/201(1A) of the Income-tax Act, 1961 (for short 'the Act') and issued show-cause notice dated 23.03.2024 proposing to treat the assessee as assessee-in-default on the footing that tax was deductible under section 194C on the aforesaid EDC payments. In response, the assessee filed detailed submissions contending that EDC is a statutory levy/fee linked to grant of licence by DTCP, there is no contractor-contractee relationship with HUDA, and accordingly no tax was required to be deducted at source, also placing reliance on section 196 and the plea that payment is effectively to the State Government/its instrumentality. The Assessing Officer rejected the assessee's stand by relying inter alia on CBDT Office Memorandum dated 23.12.2017 and the judgment of the Hon'ble Delhi High Court in the case of M/s Puri Construction Pvt. Ltd. v. Addl. CIT & Ors. (W.P. No. 9483/2019) to hold that EDC paid by real estate developers to HUDA is subject to TDS under section 194C. The Assessing Officer also held that HUDA/HSVP is a development authority and a taxable entity, not covered as "Government" under section 196 nor as a "local authority" under section 10(20), and therefore payments made to it are not exempt from TDS. On this basis, the Assessing Officer treated the assessee as assessee-in-default, computed TDS @ 2% under section 194C on the

EDC payments of Rs.39,72,66,000/- at Rs.79,45,320/- under section 201(1), and calculated interest under section 201(1A) at Rs.73,65,647/- up to March 2024, determining total demand of Rs.1,53,10,967/-.

3. Aggrieved with the above order, assessee preferred an appeal before the ld. CIT (A) and filed detailed submissions. Ld. CIT (A), after going through the detailed submissions, upheld the order of the AO and dismissed the appeal.

4. At the time of hearing, ld. AR of the assessee brought to our notice the relevant facts and relied on the decisions of ITAT, Delhi bench in the cases of M/s. M3M India Pvt. Ltd. Vs. JCIT in ITA Nos.5431 to 5434 & 5660/Del/2024 order dated 11.03.2026 and Deputy Gothwal Constructions (P.) Ltd. Vs. DCIT in ITA No.2862/Del/2025 order dated 17.12.2025.

5. On the other hand, ld. DR of the Revenue submitted that this issue is covered against the assessee by the decision of Hon'ble Delhi High Court in the case of M/s Puri Construction Pvt. Ltd. (supra) and the lower authorities have rightly appreciated the aforesaid order of the Hon'ble High Court. Accordingly, he pleaded that the appeal of the assessee may be dismissed.

6. Considered the rival submissions and material placed on record. On hearing both the sides, we find that the issue involved in the appeal is

holding the assessee as assessee-in-default for non deduction of TDS of payment of EDC charges to HUDA which as per the Revenue was liable to TDS @ 2% under Section 194C of the Act. This issue is covered by the decision of the coordinate Bench in the case of M/s. M3M India Pvt. Ltd. vs. JCIT (supra). The relevant findings of the same are reproduced below :-

> "10. We find that these aspects have been taken into consideration by ld. CIT(A) and para 5 to 6.6 in AY: 2018-19 has dealt as follows:
>
> > "5. The appellant submitted during the appellate proceedings that EDC is a statutory obligation levied by the State Government of Haryana in terms of section 3(3)(a)(ii) read with section 2(g) of the HDRUA Act, payment of which is an essential pre-condition for carrying out urban development work by any colonizer/ developer in the State, and same does not partake the character of payment under any contract, or involve any reciprocal obligation from the payee; accordingly, since payment of EDC is not covered within the provisions of section 194I of the Act, no tax is required to be withheld there from. Further, the DCP vide letter dated 19.06.2018 has clarified that HUDA (now known as Haryana ShahriVikasPradhikaran) is only an executing agency working for and on behalf of the State Government established for carrying out External Development Works for which funds are given to HSVP by the Government through DCP. DCP further clarified that the receipts on account of EDC is deposited in the consolidated fund of the State Government under 'Major Receipt Head-0217' and therefore, no TDS is required to be deducted from the EDC paid to HSVP on behalf of the State Government for carrying out External Development Works.
> >
> > 6.1 Upon consideration of facts of the case and perusal of material available on record, it is observed that the appellant was engaged in the business of real estate development during the year under consideration. For this purpose, the appellant had obtained necessary license from the DCP(Department of Town Planning and Country Planning, Govt of Haryana) after paying requisite license Fee. In addition to the license fee, as per terms of license, it had to pay External Development Charges for the infrastructural development to the Govt of Haryana.

6.2 As per section 3(3) of the Haryana Development and Regulation of Urban Areas Act, 1975,the amount of EDC is charged from developers on account of proportionate cost of infrastructure development such as water supply, sewerage/drainage, electricity supply etc. carried out by State Govt./local authority. The amount, period for the payment and manner of depositing EDC charges are regulated by the terms and condition laid in the license granted by the DCP. Accordingly, the appellant had made payments of Rs. 5,56,44,312/- on account of External Development Charges(EDC) to the DTCP upon which TDS was not deducted.

6.3 During the assessment proceedings, it was observed by the AO that the appellant had not deducted TDS on the payment of the EDC made to DCP under section 194C of the Act. Thus, the AO held the appellant as 'assessee in default within the meaning of sections 201(1)/201(1A) of the Act and raised demands accordingly. Therefore, in order to decide the grounds of appeal raised by the appellant, it is imperative to examine whether payments on account of EDC made by the appellant to DCP are subjected to the provisions of section 194C of the Act or not.

6.4 In this respect, it is observed that there was in existence an arrangement between Govt. of Haryana and HSVP (HUDA) for the execution of external development works and in pursuance of the said agreement, EDC payment were released to HUDA through DTCP by the government. Although the EDC payments were routed through DCP, those payments undoubtedly were to the account of HSVP (HUDA). Thus, EDC payments even if paid to the DTCP falls under the purview of provisions of section 194C of the Act. The reference is hereby drawn from CBDT memorandum F.No 370133/37/2017-TPL dated 23.12.2017 wherein it was clarified that TDS is deductible us 194 of the Act on payment of EDC to HSVP (earstwhile HUDA). The same is reproduced as under:

> "2. In this regard it is submitted that provisions of non-deduction of tax under section 196 of the Income Tax Act, 1961, is applicable to the government and to the other authorities as mentioned under the section. Accordingly, external Development Charges (EDC) if paid to the Government of Haryana would be exempt from TDS provisions. However, in the instant case, it appears that the developer has made the payment in the nature of External Development Charges (EDC) not to the Government but to HUDA (Haryana Urban Development Authority) which is a development authority of State Government of Haryana and is a taxable entity under the ITax Act, 1961. Hence, TDS provisions would be applicable on EDC payable by the developer to HUDA."

It is clearly evident from the CBDT circular that EDC charges would be exempted from the TDS provisions if paid to the government of Haryana. As per the directives of DCP all the EDC payments were directly being paid to HUDA till 31.03.2017. It is only thereafter that EDC was deposited with the DCP. Even if the appellant has made the EDC payments to DCP, it cannot be assumed that such payment was made to government of Haryana since such payments are placed in the hands and at the disposal of HSVP(HUDA).Further, reliance is hereby placed on the decision of Hon'ble Delhi High Court dated 13.02.2024 in the case of Puri Construction [2024] 159 taxmann.com 444(Delhi) wherein it was held that section 194C of the Act is applicable to EDC paid by Real Estate Developers Page 22 of 24 to HUDA. It was also held that though the EDC payments were made to DCP but the funds were ultimately released to HUDA for carrying out the EDC work and thus, TDS had to be deducted on EDC payments. The Hon'ble High Court also turned out the challenge to the clarification issued by CBDT dated 23.12.2017 which is reproduced as above. Thus, it is noted that the judicial pronouncements relied upon the appellant have been superseded by the aforementioned latest judgment of Hon'ble Delhi High Court, moreover, it is also pertinent to mention that in such judicial pronouncements, CBDT memorandum has not been challenged or been discussed by the respective judicial forums. Further, it is also seen that the ratio of Hon'ble Apex Court in the case of JIT (OSD) vs DLF Home Panchkula (P) Ltd. 161 Taxmann.com 237 (SC) (2024) relates to that it was not open for revenue to now contend whether EDC charges were payment made to a contractor under a contract or rent, hence this case law is not applicable for the issue under consideration in the instant appeal. 6.5 Keeping in view the above facts, discussion and respectfully following the ratio of decision pronounced by the Hon'ble High Court and CBDT memorandum, it is held that TDS u/s194C of the Act was to be deducted on EDC payments to DCP. Therefore, keeping in view the provisions of section 194C of the Act, the appellant was liable to deduct TDS on EDC payments u/s194C of the Act.

6.6 In respect of addition on account of deducting less TDS amounting to Rs.89,58,733/- u/s 201(1)/ 201(1A) of the Act and failing to deposit the TDS in Govt account within prescribed time limit, the appellant has not furnished any submission. Thus, the findings of the AO in this respect are not being interfered with. Furthermore, it is held that there is no merit in the grounds of appeal taken by the appellant. Accordingly, demands of Rs.5,56,44,312/- and Rs. 89,58,733/- raised by the AO u/s 201(1) and u/s 201(1A) of the Act are hereby confirmed. Hence, the grounds of appeal no. 1-9 are hereby dismissed."

11. Though ld. CIT(A) has not dealt with the issue as to how deposit directly in consolidated fund of State makes a difference, however, without

entering on the merits of the aforesaid contentions, we find that HUDA has been furnishing its return of income and would certainly have been offering the impugned receipts and its profit and loss account so that its income could be assessed. A Coordinate Bench in Deputy Gothwal Construction (P) Ltd. Vs. DCIT (2025) 181 taxmann.com 771 (Delhi Trib) has taken this aspect into consideration and in para 2.1 has observed as follow:

> "2.1 The Ld. AR has also preferred an alternative submission to the extent that HUDA has been furnishing its return of income and would certainly have been offering the impugned receipts in its profit & loss account so that its income could be assessed. If this be so then following several authorities, notably the case of Hindustan Coca Cola Beverage Pvt. Ltd. v. CIT [2007] 163 Taxman 355 (SC)/[2007] 293 ITR 226 (SC), the assessee could not be held to be in default for non-deduction of tax at source. The Ld. AR also relied on the case of GE India Technology Centre Pvt. Ltd. v. CIT [2010] 7 taxmann.com 18 (SC)/[2010] 193 Taxman 234 (SC)/[2010] 327 ITR 456 (SC). Lastly, the Ld. AR distinguished the case of Puri Construction Pvt. Ltd. v. Addl. CIT [2024] 159 taxmann.com 444 (Delhi)/[2024] 462 ITR 326 (Delhi)"

12. Thereafter the Coordinate bench in the case of Deputy Gothwal Construction Pvt. Ltd. (supra) has held as follows:

> "However, the alternative submission of the Ld.AR that HUDA would be filing its returns of income and would be showing the receipts on account of EDC thereon, has considerable persuasive value since it is not only the Hindustan Coca Cola case (supra) but also a subsequent amendment in section 201(1) where a proviso has been inserted w.e.f. 01.07.2012 where a person would not be in default in case the payee has (i) furnished his return of income u/s 139; (i) has taken into account such sum for computing income in such return of income; and (i) has paid the tax due on the income declared by him in such return of income. There is also a directive in this section that the person needs to furnish a certificate to this effect from an Accountant in such form as may be prescribed. Accordingly, we deem it fit to set aside the impugned order and remand this matter back to the file of Ld. AO for verifying whether the conditions mentioned in the first proviso to section 201(1) of the Act have been fulfilled or not. In case the said conditions have been fulfilled, then the assessee cannot be saddled with any liability u/s 201(1)/201(1A) of the Act."

13. We are of the considered view that assessee can certainly be benefitted with the ratio of Coordinate Bench findings in case of Deputy Gothwal Construction Pvt. Ltd. (supra). Accordingly, in regard to ITA No. 5432 to 5434 & 5660/Del/2024 for AYs: 2018-19 to 2021-22, we deem it fit to set aside the impugned orders and remand the matters back to the file of Ld. AO for verifying whether the conditions mentioned in the first proviso to section

> 201(1) of the Act have been fulfilled or not. In case the said conditions have been fulfilled, then the assessee cannot be saddled with any liability u/s 201(1)/201(1A) of the Act. In aforesaid terms the ITA No. 5432 to 5434 & 5660/Del/2024 for AYs: 2018-19 to 2021-22, stands allowed.

7. Respectfully following the aforesaid decision, we deem it fit to set aside the impugned order and remand the matter back to the file of AO for verifying whether the conditions mentioned in the first proviso to section 201(1) of the Act have been fulfilled or not. In case, the said conditions have been fulfilled, then the assessee cannot be saddled with any liability u/s 201(1)/201(1A) of the Act. Accordingly, the grounds raised by the assessee are allowed as indicated above.

8. In the result, the appeal filed by the assessee is allowed as indicated above.

**Order pronounced in the open court on this 3RD day of September, 2026.**

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| **SD/-** | **SD/-** |
| **(RAJ KUMAR CHAUHAN)** | **(S.RIFAUR RAHMAN)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

**Dated: 03.09.2026**
**TS**

Copy forwarded to:
1. Appellant
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4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI