Assaying the provisions of section 194IA of the Income-tax Act

Introductory Remarks

1. In this article the provisions of section 194IA of the Income-tax Act (the Act) dealing with tax deduction in respect of transfer of immovable property (other than agricultural land) have been analyzed starting with concept of tax deduction followed by emergence of section 194IA of the Act and then by a few case laws explaining the applicability of provisions of section 194IA of the Act to the facts of such cases which arose before such judicial authorities. While covering case laws the author has also expressed his well-considered views wherever he felt that it (expressing his views) was required. This article is concluded with the author summing up his views, as understood by him, on the applicability of the provisions of section 194IA of the Act.

Concept of Tax Deduction

2. The ITAT Mumbai Tribunal in the case of *Industrial Development Bank of India* v. *ITO* [2007] 107 ITD 45 (Mumbai)/[2006] 10 SOT 497 (Mumbai) succinctly explained the concept of tax deduction in the following words-

"Section 190 of the Act makes it clear that the scheme of tax deduction at source is one of the methods of recovering the tax due from a person and it is notwithstanding the fact that the tax liability may only arise in a later assessment year. The tax liability is obviously in the hands of the person who earns the income, and tax deduction at source mechanism provides for method to recover tax such liability. Therefore, this tax deduction at source liability is a sort of sub stitutionary liability. Section 191 further makes this position clear when it lays down that in a situation TDS mechanism is not provided for a particular type of income or when the taxes have not been deducted at source in accordance with the provisions of Chapter XVII, income-tax shall be payable by the assessee directly. This provision thus shows that tax deduction liability is a vicarious liability and the principal liability is of the person who is taxable in respect of such income. Section 202 lays down that tax deduction at source provisions are without any prejudice to any other mode of recovery from the assessee, which again points out to the tax deduction liability being vicarious liability in nature."

Emergence of section 194IA of the Act

3. To keep a check on the extensive use of black money in immovable property transactions the legislature introduced a law, where the purchaser of a property has to deduct tax at source i.e. TDS on property while paying the seller for his property.

The purpose for which the provisions of section 194IA of the Act were inserted by the Finance Act 2013, was explained vide Circular No.3/2014 dated 24th January,2014 in the following words-

Finance Act, 2013 - Circular No. 3/2014, Dated 24-1-2014

Para 39. Tax Deduction at Source (TDS) on transfer of certain immovable properties (other than agricultural land)

39.1 There is a statutory requirement under section 139A of the Income-tax Act read with rule 114B of the Income-tax Rules, 1962 to quote Permanent Account Number (PAN) in documents pertaining to purchase or sale of immovable property for value of Rs.5 lakh or more. However, the information furnished to the Income-tax Department in Annual Information Returns by the Registrar or Sub- Registrar indicate that a majority of the purchasers or sellers of immovable properties, valued at Rs.30 lakh or more, during the financial year 2011-12 did not quote or quoted invalid PAN in the documents relating to transfer of immovable property.

39.2 Under the provisions of the Income-tax Act, prior to its amendment by the Act, tax is required to be deducted at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc. On transfer of immovable property by a non-resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a resident except in the case of compulsory acquisition of certain immovable properties.

39.3 In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, a new section 194-IA has been inserted in the Income-tax Act to provide that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property (other than agricultural land) to a resident transferor, shall deduct tax, at the rate of 1 per cent of such sum.

39.4 In order to reduce the compliance burden on the small taxpayers, ***it has also been provided 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 lakh rupees.***

39.5 Further, in view of the provisions of section 203A every person deducting tax under this newly inserted section 194-IA would be required to obtain Tax Deduction and Collection Account Number (TAN). In order to reduce the compliance burden on the deductor deducting tax under this section, it is provided that the provisions of section 203A

shall not apply to a person required to deduct tax in accordance with the provisions of section 194-IA.

39.6 Applicability: - This amendment takes effect from 1st June, 2013.

It is to be noted that the Finance (No. 2) Act, 2019, w.e.f. 1-9-2019 inserted Explanation(aa) as under to take proper care of peripheral payments to be made to the seller by the Buyer at the time of purchase of the property-

"consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

Section 194IA of the Act, as on date, reads as under-

4. Payment on transfer of certain immovable property other than agricultural land.

194-IA. (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.

(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;

(*aa* "consideration for transfer of any immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property;

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

Case laws dealing with section 194IA of the Act

5.1 The facts in the case which arose before the ITAT Bangalore Bench in *Prestige Estates Projects Ltd* v. *Asstt. CIT* [2021] 125 taxmann.com 127 [Bang. -Trib.] were that the assessee engaged in the business of real estate development entered into a joint development agreement [JDA] during the assessment year 2014-15 in terms of which a specified sum had to be paid by the assessee to the landowners as "interest free refundable security deposit". The Assessing Officer, on noticing, that the assessee had not deducted tax under section 194IA of the Act on security deposit issued a notice show-causing, as to why proceedings under section 201(1) and (1A) of the Act should not be initiated in respect of payments of the refundable security deposits made under the development agreement, as in his opinion, it (the security deposit) constituted consideration. It was contended on behalf of the assessee that the amounts paid to the landowners were in the nature of refundable security deposit and could not be characterized as consideration for transfer of immovable property attracting the provisions of section 194-IA of the Act. The Assessing Officer, however brushing aside the arguments raised on behalf of the assessee, held that that the security deposit constituted consideration for the transfer of immovable property under section 194-IA of the Act and the assessee having failed to deduct tax under section 194-IA of the Act, determined the assessee as the assessee-in- default in terms of section 201(1) and (1A) of the Act.

The appeal filed by the assessee before the Commissioner of Income-tax (Appeals) did not yield any positive result for the assessee.

The assessee filed second appeal before the Tribunal.

The Tribunal, through a detailed and well-reasoned order, allowed the appeal of the assessee. Before doing so the Tribunal referred to various clauses of the JDA and noted that the legal possession of the property continued to remain with the land owner with specific mention that the assessee was only permitted by the land owners to enter upon the scheduled property to develop the scheduled property by constructing a residential apartment building according to the terms mentioned therein. The Tribunal referred to the provisions of section 53A of the Transfer of Property Act,1882 as also the provisions of section 2 (47)(v) and (vi) of the Act and observed that "handing over of possession of property is only one of the conditions under section 53A of Transfer of Property Act but it is not sole and isolated condition and it is necessary to go into whether or not the transferee was 'willing to perform' its obligation under these consent terms. It is only actual performance of transferee's obligations which can give rise to situation envisaged in section 53A of Transfer of Property Act."

The Tribunal also noted that after obtaining consent from the land owners, the assessee was to take appropriate steps to obtain no objection certificate and other permissions required for undertaking the project within 12 months from the date of the agreement. Nothing was brought on record to show that the assessee got approval of the sanctioned plan vis-à-vis any construction started during the previous year relevant to the assessment year under consideration. In such a case, it could not be said that there was a transfer of immovable property during the relevant assessment year.

The Tribunal went on to observe that "even if it was advance payment against the sale consideration, it was not linked to the transfer of immovable property as enumerated in section 194-IA of the Act, since the condition laid down in section 2(47)(v) of the Act was not satisfied within the meaning of section 53A of the Transfer of Property Act, 1882."

The Tribunal referred to number of precedents on this issue which held that tax deduction provisions envisaged in section 194IA of the Income-tax Act are not applicable in the case of payment of "security deposit " given by the developer(s) to the owner(s)

The Tribunal thus held that "the assessee could not be held to be an assessee-in-default in terms of section 201(1) and (1A) of the Act".

A query by the author-

It has been recorded by the Tribunal at para 5.2 as under-

"Further it was submitted by the ld. DR that the refundable security deposit of Rs.21.85 Crores paid to the land owners is actually not refundable and the same is to be adjusted with the sale proceeds of the constructed area. So, the nomenclature given by the assessee to such amount as refundable security deposit should not take away the essence of the transaction and it is nothing but advance sale consideration paid by the assessee to the land owners for transfer of immovable property."

In the considered opinion of the author, this point does not seem to have been properly taken note of by the Tribunal and therefore does not seem to have been properly addressed by the Tribunal.

The question to be answered is-

Certainly, a tri-partite agreement will have to be entered in such cases between the developer, owner and proposed buyer of the property as the three parties to this agreement at the time of sale of constructed flats. In such a situation if the sale takes place and the sale value is less than the refundable security deposit, then the entire sale consideration would be adjusted against refundable security deposit. Will this not defeat the provisions of

section 194IA of the Act? Who would deduct TDS? Strictly speaking the buyer has to deduct tax so that provisions of section 194IA are not defeated. The buyer of the property should not expose himself to be treated as assessee-in-default by not deducting TDS and remitting it to the Government on time, as after all for him 99% plus 1% is 100% and/or 100% plus 0% is also 100% (representing total sale consideration) but in the case of non-deduction he will be exposed to interest and penal provisions for no fault of his. Ignorance of law cannot be taken as an excuse by such buyer.

It is interesting to note that Chapter XX-A of the Act dealing with "Acquisition of Immovable Properties in certain cases of transfer to counteract evasion of tax" consisted of sections 269A to 269S which have become extinct with effect from 30th September,1986 and section 269A dealing with definitions defined "apparent consideration" in a detailed way. Why should not the legislature think of defining the term "consideration" to take care of situations as envisaged above?

However, it is expected (rather requested) that adequate care should be bestowed by the legislature before defining the term "consideration" so as to avoid complications which exist even after insertion of section 45(5A) of the Act to take care of "specified agreement" by shifting the capital gains to the previous year in which certificate of completion is obtained. The uncertainty referred to here is the year in which an NRI has to apply for a certificate under section 197 of the Act when cash consideration is involved -i.e., received as soon as JDA in the form of a "specified agreement" is entered into- but liability would arise for a later previous as per the provisions of section 45(5A) of the Act.

Explanation (ii) to section 45(5A) of the Act defines a "specified agreement" to mean a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

This issue-relating section 45(5A) of the Act- was covered by the author in an article entitled "Uncertainty looms large over interpretation of provisions of section 45(5A) of the Income-tax Act."-[2018] 89 taxmann.com 247(Article) to which reference may be made by the readers of this article in this regard.

So, it is submitted, with respect, that professional bodies should be consulted by the legislature before defining the phrase "consideration" through insertion in the Finance Act.

5.2 The ITAT Mumbai Bench in the case of Corner view *Construction & Developers (P.) Ltd* v. *Asstt. CIT* [2019] 109 taxmann.com 68 (Mum - Trib.) held that where the assessee purchased 96 flats and made payments towards the same after deducting tax at source under

section 194IA of the Act, since assessee itself had filed separate TDS statements under section 200(3) of the Act in Form 26QB in respect of TDS deducted pertaining to every individual transaction relating to purchase of each flat, the Assessing Officer was justified in levying fee under section 234E of the Act on account of delay in filing statements in respect of each flat, while processing such statements under section 200A of the Act.

5.3.1 The ITAT Delhi Bench in the case of *Vinod Soni* v. *ITO* [2019] 101 taxmann.com 190 (Delhi - Trib.) held that where the assessee purchased an immovable property along with three other members of his family for Rs. 1.50 crores, in view of fact that share of each co-owner came to Rs. 37.50 lakhs which was under threshold limit prescribed by section 194-IA of the Act, the assessee was not required to deduct tax at source while making payment in question.

5.3.2 The additional ground raised by the assessee and admitted by the Tribunal in the case decided by the ITAT Ahmedabad in the case of *Bhikhabhai Hirabhai Pate*l v. *Deputy CIT* in ITA No.1680/Ahd/2018 -Assessment Year 2014-15-Date of order 31st January,2020 was as under-

"The deduction of TDS at 1% u/s. 194IA (1) of the Act is not applicable in respect of transfer of immovable property of less than Rs. 50 Lakhs by any person being transferee. Section 194IA (2) of the Act is applicable only with reference to the amount related to each transferee and not with reference to the amount as per sale deed. In the instant case, there are 8 transferee's and in case of 4 transferee's consideration is below Rs. 50 Lakhs, whereby, provisions of section 194IA(1) of the Act is not applicable. Accordingly, late fees under section. 234E of the Act is not applicable in case of these 4 transferees."

Following the order of the ITAT Delhi Bench in the case of Vinod Soni (supra) the ITAT Ahmedabad in this case allowed the appeal of the assessee after making the following observations at para 11 of its order-

"11. The co-ordinate bench has thus held that the obligation under section 194IA of the Act is fastened on the transferee qua each transferor and where the consideration paid to any transferor is less than Rs.50 Lakhs, the provisions of Section 194IA of the Act would not apply. In parity with the view already expressed on the issue, in the absence of any default under section 194IA of the Act, consequential late filing fees under section 234E of the Act to the extent of Rs.1,35,000/- out of total late fee of Rs.4,39,301/- is directed to be deleted."

5.3.3 The ITAT Jodhpur Bench in the case of *Oxcia Enterprises (P.) Ltd.* v. *Deputy CIT* [2019] 109 taxmann.com 19 (Jodhpur - Trib.) held that where the assessee purchased an immovable property from Power of Attorney holder of two joint owners of said property for consideration of Rs. 60.12 lakhs, in view of the fact that the share of each co-owner

came to Rs. 30.06 lakhs which was under threshold limit prescribed under section 194-IA of the Act, the assessee was not required to deduct tax at source while making payment for the said purchase.

5.3.4 The facts obtaining in the case of *Smt. Sandhya Gugalia* v. *Deputy CIT* decided by the ITAT Jaipur Bench in ITA No.77 & 78/JP/2018- Assessment Year 2014-15- Date of order 8th June,2018 were that the assessee purchased a jointly owned residential property for a sum of Rs.75 lakhs from 2 individuals by making payment of Rs.37.50 lakhs to each one of them subject to deduction of tax at 1% and remitted a sum of Rs.37,500/- for each of the sellers thus totalling to Rs.75,000/- and argued at the time of assessment that the amounts were remitted by her by mistake and merely because the amount was remitted by mistake any delay occurred on such remittance would not expose her to levy of interest and late payment fee under section 234E of the Act. Her contention was based on the fact that as payment made to each of the sellers was less than the threshold limit of Rs.50 lakhs, the provisions of section 194IA of the Act were not applicable and when provisions of section 194IA of the Act were not applicable the question of levy interest and fee under section 234E of the Act for late payment of tax did not arise. The assessee' scontention was not accepted either by the Assessing Officer who levied interest and consequential fee or the Commissioner of Income-tax (Appeals) who confirmed the orders of the Assessing Officer.

The assessee carried the matter on appeal to the Tribunal and argued on the same lines as stated in the previous stanza.

The Tribunal was pleased with the argument(s) put forth on behalf of the assessee and allowed the appeal preferred by the assessee after holding as under at para.9 of its order-

". . . . . In the instant case, even though the total consideration for the immovable property has been agreed at Rs 75,00,000, the assessee is responsible for paying consideration of Rs 37,50,000 each individually. In fact, the assessee has actually paid Rs 37,50,000 individually to these two individuals as demonstrated by its filings in Form 27Q which has been accepted by the Revenue authorities and subsequently processed and intimation issued under section 200A of the Act. In light of the same, in our view, the provisions of section 194-IA are not applicable in the instant case. Given that the provisions of section 194-IA are not attracted, there is no basis for levy of interest and late fee under section 234E of the Act and the demand so raised is hereby directed to be deleted."

With regard to TDS wrongly deposited by the assessee, the Tribunal held that "However, we make it clear that TDS already deposited shall not be refunded to the assessee as the transferor would be entitled to claim credit of the same in their respective return of income."

Author's views

At this point, it is submitted with respect, that the ITAT Benches have ignored the basic principle that liability to TDS is always referable to the property as a whole and therefore what should be subjected to tax is immovable property as a whole which is the subject matter of transfer and not the shares therein individually.

The decision of the Supreme Court in the case of *Appropriate Authority* v. *Smt. Varshaben Bharatbhai Shah* [2001] 115 Taxman 483 wherein, while interpreting the then provisions of section 269UC read with section 269 UD of the Act which dealt with " restrictions on transfer of immovable property" and " Order by Appropriate Authority for purchase by Central Government of Immovable Property", it was held that the question what is the property which is the subject matter of the proposed transfer "has to be seen in a real light with due regard to the object of the Chapter and not in an artificial or technical manner" was neither brought to the notice of the Learned Members adoring the Bench nor the Learned Members considered such a decision of the Supreme Court while deciding the respective cases. All that was transferred, their Lordships of the Supreme Court said, was the immovable property and the consideration for such transfer was Rs. 47 lakhs. Their Lordships added that even if the agreement of transfer had been so drawn as to show the transfer of equal shares in the property, looking at the matter realistically, it was the immovable property which was the subject matter of transfer and not the shares therein individually.

The Supreme Court finally held as under in para.9 of its order-

"We are, therefore, of the opinion that the High Court was in error in concluding that what had been sold by the second and third respondents to the first respondent was their equal share in the said immovable property, that the apparent consideration was, therefore, less than Rs. 25 lakhs and that, therefore, the provisions of Chapter XX-C would not apply."

The section 269 UC(1) of the Act [relevant for our purposes],at the relevant time, read as under-

269UC. RESTRICTIONS ON TRANSFER OF IMMOVABLE PROPERTY

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in force, no transfer of any immovable property in such area and of such value exceeding **five lakh rupees**, as may be prescribed, shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as the transferor) and the person to whom it is proposed to be transferred (hereinafter referred to as the transferee) in accordance with the provisions of sub-section (2) at least four months before the intended date of transfer.

Rule 48K of the Income-tax Rules,1962 fixed up the value of property depending upon the region and the value fixed up for the Ahmedabad region was **Rs.25 lakhs** and in the case decided by the Supreme Court in *Smt. Varshaben Bharatbhai Shah* v. *Appropriate Authority* [1996] 86 Taxman 195 (Gujarat) (supra) the property was situated in Ahmedabad.

5.4 The Bombay High Court in the case of *Pushkar Prabhat Chandra Jain* v. *Union of India* [2019] 103 taxmann.com 106 (Bom.) on a writ petition filed by the assessee held that "if payer, after deducting tax, fails to deposit it in Government revenue, measures can always be initiated against such payers once the seller of property suffers TDS at hands of the payer purchaser; the seller could not again be asked to pay the same again."

The High Court referred to its earlier decision in the case of *Yashpal Sahni* v. *Rekha Hajarnavis, Asstt. CIT* [2007] 165 Taxman 144 wherein it was very clearly held at para.20 that "From the language of section 205 of the Act, it is clear that once the tax is deducted at source, the same cannot be levied once again on the assessee who has suffered the deduction. Once it is established that the tax has been deducted at source from the salary of the employee, the bar under section 205 of the Act comes into operation and it is immaterial as to whether the tax deducted at source has been paid to the Central Government or not, because elaborate provisions are made under the Act for recovery of tax deducted at source from the person who has deducted such tax."

Section 205 of the Act reads as under-

"Where tax is deductible at the source under the foregoing provisions of the Chapter, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income."

5.5 The Kerala High Court in the case of *M.C. Thomas* v. *State of Kerala* [2014] 49 taxmann.com 109 (Kerala), on a writ petition filed by the assessee, held that "where the assessee transferred its land to Government at agreed/negotiated price exceeding Rs. 50 lakhs, tax was liable to be deducted on sale consideration under section 194-IA of the Act."

The High Court, also, held that the provisions of section 194LA of the Act warranting tax deduction at 10% on compensation was not applicable in this case as there was no land acquisition.

5.6 In the case which arose before the ITAT Indore Bench in *Jitendra Sharma & another* v. *Joint CIT& another (International Taxation)* [2021] 124 taxmann.com 359 (Indore - Trib.),the Tribunal held that "where the assessee had proved beyond doubt that in a bona fide belief he had deposited tax at rate of 1 per cent under section 194-IA of the Act on

gross sale consideration considering seller as resident Indian and later on before conclusion of proceedings before the Assessing Officer, he had deposited correct amount of tax at rate of 20.6 per cent and applicable interest, he had a reasonable cause for the said failure and was duly eligible to get benefit of provisions of section 273B of the Act."

Section 273B of the Act provides that "no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."

The phrase "said provisions" means provisions of sections referred to in section 273B of the Act.

5.7 The facts of the case in *Shakti Builders & Developers* v. *ITO* (TDS) decided by the Single Member Bench of ITAT Delhi in ITA Nos.3920 and 3921/Del/2018-Assessment Years 2015-16 and 2016-17-Date of order 20th June,2019-[2019] 56 CCH 0165 Del. Trib were that during assessment proceeding, the Assessing Officer noted that the assessee had purchased three plots during the financial year 2015-16 which were registered and accordingly, made an advance payment and as all the plots bore the same address and were purchased by the assessee from the same person, the Assessing Officer held that the assessee was liable to deduct TDS @1% from such payment as per provisions of section 194IA of the Act since combined value of properties exceeded Rs. 50 lakhs. The Commissioner of Income-tax (Appeals), on first appeal by the assessee, dismissed the appeal of the assessee by concurring with the view of the Assessing Officer. The Commissioner of Income-tax (Appeals) observed that the word used in section 194IA of the Act was "a property" and, therefore, any number of registries would not save the deductor from his liability to deduct TDS.

On appeal to the Tribunal, it observed that as per provisions of section 194IA(2) of the Act, there was no question of deduction under sub-section (1) of section 194IA of the Act where the consideration for transfer of an immovable property was less than Rs. 50 lakhs and that the assessee had purchased three properties on three different dates, although, they bore the same khasra number and seller was the same which indicated that assessee had purchased land on piece meal basis. Based on these facts the Tribunal held as the value mentioned in each sale deed was less than Rs. 50 lakhs the provisions of section. 194IA of the Act would not be applicable to the assessee merely because, the seller was the same and khasra number of three properties purchased by the assessee was the same and therefore the assessee could not be treated as an assessee-in- default. same could not be a ground to treat assessee as an assessee in default.

Views of the author

If every assessee were to adopt this procedure, the provisions of section 194IA of the Act would get defeated. In the considered opinion of the author the stand of the Assessing Officer as affirmed by the Commissioner of Income-tax (Appeals) by holding that "the word used in section 194IA of the Act was "a property" and, therefore, any number of registries would not save the deductor from his liability to deduct TDS" is the correct view.

5.8 The Karnataka High Court in the case of *Shubhankar Estates (P.) Ltd.* v. *Senior Sub-Registrar* [2016] 66 taxmann.com 279 (Karnataka) held that "where payment for purchase of immovable property was made before introduction of section 194IA of the Act mandating TDS on such payment, sale certificate presented for registration after introduction of section 194iA of the Act was required to be registered without proof of TDS."

This case has been digested to stress that for any payment made by the assessee before the introduction of any section or amendment to any section imposing any tax deduction, the amended provisions would not be applicable to such pre-amendment payments.

5.9 The National Company Law Appellate Tribunal, New Delhi in the matter of *Om Prakash Agrawal-Liquidator-S.Kumars Nationwide Limited* v. *Chief CIT(TDS) and UPL Limited Company* Appeal (AT) (Insolvency) No. 624 of 2020 vide judgment dated 8th February,2021 held as under (vide para.21 of its judgment)

"As per Section 194 IA of the IT Act 1% TDS is recovered on priority to other creditors of the transferor, which is partial capital gain tax, whereas, Section 53(1)(e) of the Code in waterfall mechanism provides that the Government dues comes fifth in order of priority. Thus, in regard to recovery of the Government dues (Including Income Tax) from the Company in Liquidation under the Code, there is inconsistency between Section 194IA of the IT Act and Section 53(1) (e) of the Code therefore, by virtue of Section 238 of the Code, Section 53 (1) (e) of the Code shall have overriding effect on the provisions of the Section 194 IA of the IT Act. Otherwise also Section 53 starts with a non-obstante clause, whereas Section 194IA of the IT Act, does not start with a non-obstante clause, and it would necessarily be Company Appeal (AT) (Insolvency) No. 624 of 2020 subject to overriding effect of the Code and therefore, there was no requirement to amend the Section 194 IA of the IT Act.".

The National Company Law Appellate Tribunal after observing at para. 25 of its judgment that "We are of the view that the Liquidator of a Company in liquidation under the Code is not required to file Income Tax Return, then there is no question of claiming refund of TDS deducted under Section 194 IA of the IT Act" directed the Commissioner of Income-tax (TDS) to refund the amount of TDS to the appellant- Om Prakash Agrawal-Liquidator-S.Kumars Nationwide Limited

Concluding Remarks

6. The Supreme Court in the case of *Union of India* v. *Exide Industries* [2020] 116 taxmann.com 378 (SC) while upholding the validity of clause (f) of section 43B of the Act made the following observations at para.24 of its judgment-

"The objects and reasons behind the enactment of a statute signify the intention of the legislature behind the enactment of a statutory provision. Indubitably, the purpose or underlying aim of a law can be discerned when interpreted in the light of stated objects and reasons. Inasmuch as, the settled canon of interpretation is to deduce the true intent of the legislature, as the will of the people is constitutionally bestowed in the legislature. It is true that an express objects and reasons would be useful in understanding the import of an enacted provision as and when the Court is called upon to interpret the same."

The Supreme Court went on to observe as under at para.24 of its judgment-

This Court, in *State of Tamil Nadu* v. *K. Shyam Sunder* [2011] 8 SCC 737, laid emphasis upon the usefulness of objects and reasons in the process of interpretation and observed thus:

"66. The Statement of Objects and Reasons appended to the Bill is not admissible as an aid to the construction of the Act to be passed, but it can be used for limited purpose of ascertaining the conditions which prevailed at that time which necessitated the making of the law, and the extent and urgency of the evil, which it sought to remedy. The Statement of Objects and Reasons may be relevant to find out what is the objective of any given statute passed by the legislature. It may provide for the reasons which induced the legislature to enact the statute. "For the purpose of deciphering the object and purport of the Act, ... the court can look to the Statement of Objects and Reasons thereof." (vide *Kavalappara Kottarathil Kochuni* v. *States of Madras and Kerala* [AIR 1960 SC 1080] and *Tata Power Co. Ltd.* v. *Reliance Energy Ltd*. [(2009) 16 SCC 659], SCC p. 686, para 79)
67. In A. Manjula Bhashini [2009] 8 SCC 431 this Court held as under: (SCC p. 459, para 40)
"40. The proposition which can be culled out from the aforementioned judgments is that although the Statement of Objects and Reasons contained in the Bill leading to enactment of the particular Act cannot be made the sole basis for construing the provisions contained therein, the same can be referred to for understanding the background, the antecedent state of affairs and the mischief sought to be remedied by the statute. The Statement of Objects and Reasons can also be looked into as an external aid for appreciating the true intent of the legislature and/or the object sought to be achieved by enactment of the particular Act or for judging reasonableness of the classification made by such Act."
68. Thus, in view of the above, the Statement of Objects and Reasons of any enactment spells out the core reason for which the enactment is brought and it can be looked into for appreciating the true intent of the legislature or to find out the object sought to be achieved

by enactment of the particular Act or even for judging the reasonableness of the classifications made by such Act.""

If reference is made to Circular No. 3/2014, Dated 24th January,2014(supra) para 39.4 explains that the provisions of section 194IA of the Act are not applicable "where the total amount of consideration for the transfer of an immovable property is less than Rs.50 lakhs" (the relevant portions highlighted in para 3 of this article).

So, in the light of the above it is submitted, with respect, that TDS provisions as per section 194-IA of the Act TDS are applicable in respect of each transferee if the value of the property transferred is more than the threshold limit of Rs.50 lakhs even though the share of each transferor of such property is less than Rs.50 lakhs. In this regard an article written by the author under the title "Threshold limit for section 194-IA TDS applicable in respect of each transferee" [2019] 102 taxmann.com 22 (Article) may be referred to.

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