

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

**EXECUTION APPLICATION NO. 731 OF 2023
IN
CC/1636/2018**

1. DINESH KUMAR LAKHANPAL
B 06 04, IREO SKYON, SECTOR-60 ULHAWAS,
GURUGRAM HARYANA
GURUGRAM
HARYANA

.....Appellants(s)

Versus

1. TATA HOUSING DEVELOPMENT COMPANY LIMITED
E BLOCK, VOLTAS PREMISES, T B KADAM MARG
CHINCHPOKLI, MUMBAI, MUMBAI CITY
MAHARASHTRA

MUMBAI

MAHARASHTRA

2. GURGAON INFRATECH PVT. LTD

12TH FLOOR TIMES TOWER KAMALA MILLS
COMPUND SENAPATI MARG LOWER PAREL WEST
MUMBAI

MUMBAI

MAHARASHTRA

3. ARDENT PROPERTIES PVT. LTD

BLOCK VOLTAS PREMISES T B KADAM MARG
CHINCHPOKLI NA MUMBAI MUMBAI CITY

MUMBAI

MAHARASHTRA

4. LANDSCAPE STRUCTURES PVT. LTD.

12TH FLOOR, TIMES TOWER KAMALA MILLS
COMPUND SENAPATI MARG LOWER PAREL WEST
MUMBAI

MUMBAI

MAHARASHTRA

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE APPELLANT : MR. SHUBHAM S. DAYMA, ADVOCATE

FOR THE RESPONDENT : MR.SAIFUR RAHMAN FARIDI, ADVOCATE
MS. TANYA GUPTA, ADVOCATE

Dated : 01 November 2023

ORDER

1. Heard counsel for both sides. Counsel for JD fairly concedes that deduction of TDS was not mandatory in accordance with the Income Tax Rules but same has been done in

accordance with the prevalent practice of the builder-Company. He further states that TDS of Rs.5,20,806/- has already been deducted before the date of last order and was deposited with the concerned authorities in two instalments i.e. Rs.5,18,956/- and Rs.1850/- on 06.07.2023 and 07.08.2023 i.e. before the date of last order. He states that decree holder may claim refund of the TDS in his return for which JD will render necessary assistance. However, counsel for DH states that claiming refund is cumbersome procedure involving longer time frame and possibility of income Tax department treating the entire interest payment as their income and subjecting their return to a detailed examination cannot be ruled out. He further states that there are provisions in the Income Tax Act / Rules, under which, if any party wrongly deducts the TDS, they can get the same refunded by following the laid down process and cites Section 200 (A) of Income Tax Act and related rules etc. and form 26 (b) etc. He has also relied upon following judgments of this Commission, in which it is held that if the interest on refund of principal amount is payable by way of compensation, it is not to be treated as income and hence not subject to TDS.

- a. **Sharad Tyagi and Ors. Vs. Merino Shelters Pvt. Ltd. & Ors.** - EA No. 68 of 2021 in CC No 1378 of 2015 decided on 04.11.2022.
- b. **G.D.A. vs. N.K.Gupta**, RP No. 2244 of 1999, decided on 18.09.2002
- c. **Rita Bakshi Vs. M3M India Limited and Ors.**- EA No. 122 of 2019 in CC No. 2123 of 2016, decided on 02.03.2022
- d. **Parsvnath Developers Ltd. Vs. Anuradha Uppal** - EA No. 56 of 2018 in FA No. 765 of 2017 decided on 13.01.2020
- e. **Puma Realtors Pvt. Ltd. and Ors. Vs. Abha Arora and Ors.** FA No. 531 of 2016 and other connected First Appeals decided on 11.10.2018

2. Counsel for JD on the other hand relied upon the judgment of this Commission in **Rita Bakshi Vs. M3M India Limited and Others** – EA No. 122 of 2019 in CC No. 2123 of 2016 decided on 02.03.2022, stating that in this case, although Commission found that TDS was not deductible, this having been deducted asked the DH to claim refund from the Income Tax Department.

3. After hearing both sides, we tend to agree with the contention of DH that claiming wrongly deducted TDS is a cumbersome procedure, putting the complainant / DH to lot of inconvenience and time delays. Hence, the JD having deducted it wrongly, should themselves take necessary steps available under the Income Tax Act / rules to get the refund of wrongly deducted TDS. JD is granted four months time to complete this process and get claim from Income Tax Department. If there is any delay beyond four months in getting the refund from the Income Tax Department by JD due to any reason, whatsoever, including that of delay on the part of the Income Tax Department, notwithstanding the JD submitting the claim with all requisite documents, JD shall refund the amount of Rs.5,20,806/- deducted towards TDS from its own resources within two weeks of end of four months from the date of today's order, failing which it will carry interest @ 9% p.a. till the date of actual payment.

4. It is clarified that if the refund from Income Tax Department is received early i.e. before the end of four months period, refund to DH shall take place within two weeks of the receipt of refund from Income Tax Department.
5. EA stands disposed off accordingly.

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DR. INDER JIT SINGH
PRESIDING MEMBER