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

\# **CNR No. DLHC010652372025**

\+ ITA 384/2025

COMMISSIONER OF INCOME TAX (TDS)-2, DELHI

.....Appellant

Through: Mr. Anurag Ojha, Senior Standing Counsel with Mr. V.K. Saksena and Ms. Hemlata Rawat, Junior Standing Counsels.

versus

M/S SIKKA INFRASTRUCTURE PVT. LTD. .....Respondent

Through: Mr. Siddarth Malhotra, Advocate.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 04.08.2026

1. By way of the present appeal, which is filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as *'the Act of 1961'*), the Department has challenged the order dated 28.03.2025 passed by the Income Tax Appellate Tribunal, Delhi Bench, 'G', New Delhi (hereinafter referred to as *'ITAT'*) for the Assessment Year 2012-13 (hereinafter referred to *'AY'*) in ITA No. 2495/Del/2022.

2. Mr. Anurag Ojha, learned Senior Standing Counsel for the Department submitted that the Tribunal has dismissed the appeal filed by the Commissioner of Income Tax against the order dated 25.07.2022, passed by the Commissioner of Income Tax (Appeals), while relying upon the judgment

of this Court in the case of **Rajesh Projects (India) Pvt. Ltd. and Ors v. Commissioner of Income Tax (TDS)-II and Ors.,** decided on 16.02.2017 reported in **[2017] 392 ITR 483** as well as **Mahagun (India) (P.) Ltd. vs. ACIT [2024] 209 ITD 236 (Delhi) (Trib.)** decided by the ITAT, Delhi Bench E on 04.09.2024**.**

3. Mr. Ojha, learned Senior Standing Counsel for the Department submitted that the judgment in the case of Rajesh Projects *(supra)* was passed in peculiar facts and since the present assessee was not before this Court and thus, what has been held by this Court in its judgment dated 16.02.2017, passed in the case of Rajesh Projects *(supra)* cannot decide respondent's fate.

4. He further invited Court's attention towards paragraph No. 20(2) of the judgment and submitted that it cannot be presumed that the respondent/ assessee was also insisted by the Greater Noida Industrial Development Authority (hereinafter referred to as *'GNOIDA'*) not to deduct tax from the payment being made to it.

5. Learned counsel for the respondent, on the other hand, invited Court's attention towards paragraph No. 21 of the aforesaid judgment and pointed out that the High Court in unambiguous terms, had directed the Revenue to provide opportunity of hearing not only to the petitioner but also to all those who were likely to be affected by such judgment.

6. He submitted that no opportunity of hearing was accorded to the respondent/assessee, who was also made to believe by the GNOIDA that, it being a Government authority, no tax is required to be deducted.

7. Heard learned counsel for the parties.

8. A perusal of the judgment passed in the case of Rajesh Projects *(supra)*, makes it abundantly clear that this Court had clearly held that GNOIDA does

not fall within the ambit of expression ‘Government’ and thus, one percent tax is required to be deducted from the annual lease rent being paid to it. But while holding so, this Court had observed that since it was at the insistence of the authority that the concerned assessee could not and did not deduct tax, it was held that no adverse action shall be taken against the assessees because of the non-deduction of tax.

9. The period in question is indisputably covered by the judgment inasmuch as the impugned Assessment Order relates to AY 2012-13, whereas the case of Rajesh Projects *(supra)* related to Financial Years (FY) 2010-11 to 2012-13 (AY 2011-12 to 2013-14). True it is that the respondent/assessee was not a part of the batch of petitioners in whose cases above referred order was passed by this Court on 16.02.2017. But in para 21 of the judgment, the High Court directed the AO to hear all the similarly situated assessees. Since the respondent was not heard, it could not lead evidence that it was also insisted by GNOIDA that no tax be deducted.

10. We are not much convinced with the arguments of Mr. Ojha, learned Senior Standing Counsel, respondent/assessee has failed to prove that it was also persuaded by the GNOIDA not to deduct tax from the payment being made to it.

11. It cannot be believed that the authority would ask Rajesh Projects *(supra)* and other petitioners (who had filed the writ petitions) not to deduct tax from the payment being made to it, while not saying so to the respondent/ assessee. A stand of an authority would naturally be similar *qua* all the similarly situated persons dealing with it.

12. Had it not been so, nothing prevented the respondent/assessee from making deduction of applicable tax from the payments being made to the

authority.

13. In any event, what is under challenge is the respondent's responsibility or liability to deduct tax at source, and that too from GNOIDA. The assessment year in question is 2012-13, assessment of such authority (if any) must have been finalised by now. We are, therefore, not inclined to interfere with the order passed by the Tribunal and authorities below.

14. The present appeal, therefore, fails.

DINESH MEHTA, J.

RAJNEESH KUMAR GUPTA, J.

AUGUST 4, 2026/*nd*