**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9551 OF 2025**

Pune Municipal Corporation .. Petitioner

**Versus**

Assistant Commissioner of Income Tax,
TDS Circle, Pune and Ors. .. Respondents

***Mr.Percy J. Pardiwalla, Senior Counsel*** *a/w Mr.Sanket S. Bora a/w Mr.Deepak Sharma a/w Ms.Vidhi Punmiya a/w Mr.Amiya R. Das a/w Ms.Archana Shetty a/w Ms.Unnatii Thakkar i/b M/s.SPCM Legal, Advocate for the Petitioner.*

***Mr.A.K.Saxena, Advocate*** *for Respondent Nos.1 and 2*

**CORAM: B. P. COLABAWALLA &**
**FIRDOSH P. POONIWALLA, JJ.**

**DATE: JULY 28, 2025**

**P. C.**

**1.** The above Writ Petition is filed to quash and set aside the impugned Order passed under Sections 201 and 201 (1A) of the Income Tax Act 1961 and the impugned Demand Notice issued pursuant thereto under Section 156. The impugned Orders and the Demand Notice are both dated 25th March 2025. Along with the impugned Order and the Demand Notice, a Penalty Notice under Section 274 read with Section 271C dated 16th April 2025 is also impugned in the present Writ Petition.

**2.** By the impugned Order, the Petitioner has been held as an Assessee in default for not deducting TDS under Section 194C, at the time of issuing Transferrable Development Rights (TDR) to the developer as per the instructions of the Slum Rehabilitation Authority, and which was implementing a Slum Scheme on a particular plot of land. The other reason for holding the Petitioner as an Assessee in default is because the Petitioner has not deducted TDS under section 194LA for issuing TDR in lieu of compensation for lands acquired for public purposes from the original owners as contemplated under section 126 of the MRTP Act, 1966.

**3.** According to the Petitioner, Section 194C deals with the deduction of tax for payment made to contractors. Section 194C stipulates that any person responsible for paying any sum to any contractor for carrying out any work in pursuance of a contract between the contractor and a specified person, shall, at the time of credit of such sum to the account of the contractor, or at the time of payment thereof in cash or by issue of a cheque or draft or any other mode, deduct an amount equal to the percentage mentioned in the said section. According to the Petitioner, the words "*or by any other mode*" appearing in Section 194C would have to be read *ejusdem generis* to the words "*payment thereof in cash or by issue of a cheque or draft*". In other words, Section 194C does not contemplate deduction of TDS when payment is made by issuing TDR Certificates, was the submission. According to the Petitioner, even Section 194LA, and which relates to deduction of TDS for payment of compensation on acquisition of immovable property, uses the same terminology. It was the Petitioner's submission that when payment is made in kind (and not by way of a monetary amount) certain sections of the Income Tax Act make a specific provision for deduction of TDS in relation thereto. One such section is Section 194B and other is Section 194R. Section 194B deals with winnings from lottery or crossword puzzles. The Petitioner submitted that Section 194B stipulates that where any person is responsible for payment to any other person any income from winning a lottery, or a crossword puzzle, or a card game, or other game of any sort, or from gambling or betting of any form or nature whatsoever, being the amount (*in respect of a single transaction*) exceeding ten thousand rupees shall, at the time of payment thereof, deduct income tax thereon at the rates in force. However, the proviso to Section 194B stipulates that in a case where winnings are wholly in kind or partly in cash and partly in kind, but the part in cash is not sufficient to meet the liability of deduction of tax in respect of the whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings. According to the Petitioner, this provision is conspicuously absent in Sections 194C and 194LA. It is in these circumstances that the Petitioner contends that it could never have been declared as an Assessee in default for not deducting TDS at the time of issuance of TDR either under Section 194C or under Section 194LA, as the case may be.

**4.** After hearing the learned Counsel for the parties, we find that arguable questions are raised. We, therefore, issue **Rule**.

**5.** As far as interim relief is concerned, at least, *prima facie*, we find substance in the argument canvassed by the Petitioner that the words "*or by any other mode*" appearing in Section 194C would have to be read *ejusdem generis* to the words "*payment thereof in cash or by issue of a cheque or draft*". Similarly, in Section 194LA, the words "*or by any other mode*" would have to be read *ejusdem generis* to the words "*payment of such sum in cash or by issue of a cheque or draft*".

**6.** At least, *prima facie*, we are of the view that Section 194C and Section 194LA would not apply when TDR Certificates are issued in lieu of compensation. As mentioned earlier, we find support for this reasoning by referring to Section 194B as well as Section 194R, which in fact contemplate as to what is to be done when payment is to be made entirely in kind or partly in cash and partly in kind. Those provisions are conspicuously absent in Section 194C as well as Section 194LA of the Income Tax Act.

**7.** In these circumstances, we find that the Petitioner has made out a strong *prima facie* case for grant of interim relief. We accordingly order that pending the hearing and final disposal of the above Petition, implementation and operation of the impugned Order dated 25th March 2025 passed under Sections 201 and 201(1A) of the Income Tax Act,1961 is hereby stayed. Consequently, even the Demand Notice dated 25th March 2025 and the Penalty Notice under Section 274 r/w Section 271C (dated 16th April 2025) are hereby stayed.

**8.** Mr.Saxena, the learned counsel appearing on behalf of the Income Tax Department waives service on behalf of Respondent Nos.1 and 2 and also seeks time to file a reply to the above Writ Petition.

**9.** We, accordingly, direct that the reply on behalf of Respondent Nos.1 and 2 shall be filed on or before 25th August 2025. The Petitioner to take steps to serve Respondent No.3.

**10.** This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[FIRDOSH P. POONIWALLA, J.]** **[B. P. COLABAWALLA, J.]**



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