आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री संजय अरोड़ा, लेखा सदस्य के समक्ष **एवं** श्री अमित शुक्ला, न्यायिक सदस्य ।
BEFORE SHRI SANJAY ARORA, AM AND SHRI AMIT SHUKLA, JM

आयकर अपील सं./I.T.A. No. 5808/Mum/2012
(**निर्धारण वर्ष /** Assessment Year: 2008-09)

Asst. CIT (TDS), Range 2(2), Room No. 703, 7th Floor, Smt. K. G. Mittal Ayurvedic Hospital Building, Charni Road, Mumbai-400 002	**बनाम**/ Vs.	Oil and Natural Gas Corporation Ltd. Ground Floor, NSE Building, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACO 1598 A		
(अपीलार्थी /**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Appellant by**	:	Shri Premanand J
प्रत्यर्थी की ओर से/**Respondent by**	:	Shri Naresh Jain & Shri Mahesh Saboo

सुनवाई की तारीख / **Date of Hearing**	:	20.11.2014
Date of Order	:	03.12.2014

आदेश / O R D E R

Per Sanjay Arora, A. M.:

This is an Appeal by the Revenue directed against the Order by the Commissioner of Income Tax (Appeals)-14, Mumbai ('CIT(A)' for short) dated 27.07.2012, allowing the assessee's appeal contesting its assessment u/s. 201(1) & 201(1A) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2008-09 vide order dated 30.03.2011.

2. The instant appeal, raising as many as twelve grounds, agitates a single issue, i.e., the exigibility to tax deduction at source (TDS) u/s.194-I of the Act, of the sum, described as lease premium and additional Floor Space Index (FSI) charges, paid by the assessee-company to Mumbai Metropolitan Regional Development Authority (MMRDA) toward leasehold land during the relevant year. And, consequently, the maintainability or otherwise in law of the order u/s. 201(1) and 201(1A) of the Act, since vacated by the first appellate authority.

3. We have heard the parties, and perused the material on record.

The Revenue's case is that the 'rent', as defined u/s.194-I of the Act, is very comprehensively defined to include any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for use (either separately or together) of any land, building, plant, machinery, etc. By legal fiction, therefore, the scope of the term 'rent' stands thus extended beyond its common meaning. The same would, accordingly, include not only the payments on revenue account, but on capital account as well; the same, i.e., revenue or capital, being immaterial as long as the sum paid is toward the use of any of the assets specified under the provision. Further, the restrictive clauses in the lease agreement under reference viz. (xxxi) to (xxxviii), toward non-excavation, non-erection, sanitary, alteration, repairs, inspection and miscellaneous work, etc. reveal it to be not a case of any capital asset but for the use of land over an extended period of time. Reliance stands placed on several decisions, as in the case of *CIT vs. Reebok India Co*. [2007] 291 ITR 455 (Del); *United Airlines vs. CIT* [2006] 287 ITR 281 (Del); *Krishna Oberoi vs. Union of India* [2002] 257 ITR 105 (AP); and *CIT vs. H.M.T. Ltd*. [1993] 203 ITR 820 (Kar).

The assessee's case, which found favour with the ld. CIT(A), is that the lease premium in the instant case was only toward acquisition of lease hold rights and additional FSI in the leased plots and, thus, not in the nature of rent. The restrictive clauses are only standard clauses, regulatory in nature, meant for the proper development of the area, and not to in any way control or curtail the rights acquired by the assessee-

leasee. Reliance stands placed on the binding decisions in the case of *Raja Bahadur Kamakshya Narain Singh of Ramgarh vs. CIT* [1943] 11 ITR 513 (PC); *Member for the Board of Agricultural Income Tax vs. Sindhurani Chaudhurani & Ors.* [1957] 32 ITR 169 (SC); *Maharaja Chintamani Saran Nath Sah Deo vs. CIT* [1961] 41 ITR 506 (SC); *CIT vs. Panbari Tea Co. Ltd.* [1965] 57 ITR 422 (SC); *R.K. Palshikar (HUF) vs. CIT* [1988] 172 ITR 311 (SC); *A.R. Krishnamurthy vs. CIT* [1989] 176 ITR 417 (SC); *CIT vs. Khimline Pumps Ltd.* [2002] 258 ITR 459 (Bom), besides by the Special Bench of the Tribunal in the case of *Jt. CIT vs. Mukund Ltd.* [2007] 106 ITD 231 (Mum) (SB). In all these cases, lease premium or salami was held as transfer of substantial interest in favour of the leasee, i.e., out of the entire bundle of rights that absolute ownership entails. There was, therefore, conferment of a right in the capital field for a price, adverting to section 105 of the Transfer of the Property Act. The decisions relied upon by the Assessing Officer (A.O.) were also distinguished by him.

Without doubt, it is the real nature of the arrangement or transaction, and not merely the words or phrases employed, even as cautioned by the apex court in *Panbari Tea Co. Ltd.* (supra), i.e., the substance of the transaction, that is relevant and paramount. To this extent, we are in agreement with the A.O. In the present case, as found by the ld. CIT(A), the amount charged by MMRDA as lease premium is equal to the rate prevailing as per the stamp duty ready reckoner for the acquisition of commercial premises. There is no provision in the lease agreement for termination of the lease at the instance of the lessee and, hence, for refund of lease premium under regular circumstances. Even the additional floor space index (FSI), given for additional space, is as per the ready reckoner rate only. The whole transaction is thus for grant of leasehold rights, and only a transfer of property; the lease premium being the consideration for the leasehold rights, which comprise a bundle of rights, including the right of possession, exploitation and its' long term enjoyment. The charges for FSI also partake the character of a capital asset in the form of Transferable Development Rights (TDRs), so that the owner (of land) had transferred the rights of development and exploitation of land, which are again capital in nature. The restrictive convents toward excavation seek to retain the right of the State to

any minerals from land. Excavation is permitted for the purpose of construction of the foundation of the building, or for executing any work in pursuance of the terms of lease. Similarly, restriction with regard to erection beyond building line was only in conformity with DC Rules, civil aviation rules, BMC and coastal regulations, etc., i.e., are regulatory, and do not define the character of the transaction *per se*. The same in fact would apply, i.e., be imposed by a local authority while granting permission for construction on free-hold land.

We are in complete agreement with the findings of the ld. CIT(A). The tribunal has in fact taken a consistent view for similar transactions with MMRD Ltd., CIDCO Ltd., and toward which the ld. Authorized Representative (AR) would before us rely on the decisions in the case of *ITO vs. Naman BKC CHS Ltd.* (in ITA Nos. 708 & 709/Mum/2012 dated 12.09.2013) and *TRO vs. Shelton Infrastructure Pvt. Ltd.* (in ITA No. 5678/Mum/2012 dated 19.05.2014). The decisions relied upon by the A.O. stand also distinguished by the tribunal, as in *ITO vs. Dhirendra Ramji Vora* (in ITA No.3179/Mum/2012 dated 09.04.2014) and *Naman BKC CHS Ltd.* (supra). We accordingly uphold the impugned order. We decide accordingly.

4. In the result, the Revenue's appeal is dismissed.
परिणामतः राजस्व की अपील खारिज की जाती है ।

Order pronounced in the open court on November 20, 2014 at the conclusion of the hearing itself.

Sd/-	Sd/-
(Amit Shukla)	(Sanjay Arora)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 03.12.2014

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**