IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.5963/Mum./2013
(Assessment Year : 2010–11)

M/s. Sahana Dwellers Pvt. Ltd.
402, Sagar Avenue, 54, S.V. Road
Andheri (W), Mumbai 400 058
PAN – AAJCS8839F ……. Appellant

v/s

Income Tax Officer
Ward–8(3)(1), Aayakar Bhawan
101,M.K. Road, Mumbai 400 020 ……. Respondent

Assessee by : Shri Uttamchand Bothra
Revenue by : Shri Premanand J.

Date of Hearing – 17.02.2016	Date of Order – 24.02.2016

O R D E R

PER SAKTIJIT DEY, J.M.

Aforesaid appeal of the assessee is directed against the order dated 9th July 2013, passed by the learned Commissioner (Appeals)–18, Mumbai, for the assessment year 2010–11.

2. Grounds no.1 to 3 raised by the assessee are against addition of ₹ 51,84,000 under section 40(a)(ia) of the Income Tax Act, 1961 (for

short *"the Act"*) for non–deduction of tax at source under section 194I of the Act.

3. Briefly stated the facts are, the assessee a company is engaged in the business as a builder / developer of real estate. As stated by the assessee, it is also engaged in carrying out SRA Projects (Slum rehabilitation), wherein it has to provide for free of cost flats to hut dwellers. For the assessment year under consideration, assessee filed its return of income on 30th September 2010, declaring loss of ₹ 2,46,555. In the course of assessment proceedings, the Assessing Officer found that assessee had debited to the Profit & Loss account an amount of ₹ 1,06,16,000 on account of compensation payment out of which on an amount of ₹ 51,84,000, assessee has not deducted any tax at source. On further verification, it was found by the Assessing Officer that the aforesaid amount of ₹ 51,84,000 was paid to 21 tenants on account of compensation. As the payment made to each individual was more than ₹ 1,20,000, the Assessing Officer called upon the assessee to explain why the payments made should not be disallowed under section 40(a)(ia). On account of non–deduction of tax at source. Objecting to the proposed disallowance, the assessee submitted that as the payment made is not rent, it will not come within the provisions of section 194I. The Assessing Officer, however,

rejected such explanation of the assessee and referring to certain clauses of the letter dated 15th January 2007, issued by Brihan Mumbai Mahanagar Palika held that the compensation paid by the assessee to the tenants is actually rent, hence, provisions of section 194I are applicable. Accordingly, invoking the provisions of section 40(a)(ia) of the Act, the Assessing Officer disallowed amount of ₹ 51,84,000, alleging non–deduction of tax at source by the assessee. Being aggrieved of such disallowance, assessee preferred appeal before the learned Commissioner (Appeals) who also sustained the disallowance made by the Assessing Officer by endorsing the reasoning of the Assessing Officer.

4. Learned A.R. submitted before us, the land / property in question where the tenants were staying belonged to municipal corporation and the 100 odd inhabitants of the said building were actually the tenants of the municipal corporation. Learned counsel submitted, since the subject property where the tenants were staying was dilapidated and become dangerous to the life and property of inhabitant, a decision was taken by the authorities concerned to demolish the said building and build a new building under SRA project. As per the terms of development agreement between the assessee, who was entrusted to construct the building under the SRA Project, and the society

constituted by the inhabitant of the building during the construction period, the assessee was required to provide alternative accommodation to the tenants as they have to vacate the building for the purpose of construction. However, as the assessee was not able to provide alternative accommodation to the tenants, he agreed to pay compensation to the tenants which got revised from time to time for enabling them to meet the expenditure to be incurred by them towards rent payable. Learned counsel referring to different clauses of development agreement submitted as there is no tenancy agreement between the assessee and the inhabitants of the property the payments made cannot be termed is *"Rent"* as per section 194I of the Act, hence, disallowance of expenditure under section 40(a)(ia) alleging non–deduction of tax at source is not valid. Learned counsel submitted, assessee is a developer who has been entrusted the work of constructing the building for the dwellers of old dilapidated building under the SRA Project. Therefore, the payments made by the assessee under the terms of the agreement being purely in the nature of compensation cannot be treated as rent as provided under section 194I of the Act. Learned counsel also relied upon the decision of the Tribunal, Mumbai Bench, in Jitendra Kumar Madan v/s ITO, [2012] 32 CCH 59 (Mum.) to impress upon the fact that similar compensation paid for alternative accommodation was treated as income from other

sources at the hands of the recipients indicating thereby that the nature of such income is not rent.

5. Learned Departmental Representative, on the other hand, supporting the orders of the Departmental Authorities submitted, the assessee as per the terms of agreement was to provide alternative accommodation to the tenant. However, instead of providing such alternative accommodation, the assessee has made payments to the tenants towards rent to be paid by them for the alternative accommodation. Therefore, the payment made by the assessee being in the nature of rent will come within the purview of section 194I and the assessee having not deducted tax at source, disallowance under section 40(a)(ia) is justified. Learned Departmental Representative further submitted, for a particular payment to qualify as rent it is not necessary that the deductor should be the owner of the property.

6. We have considered the submissions of the parties and perused the material available on record. Undisputedly, the property in question where the tenants were staying earlier was owned by the Brihan Mumbai Mahanagar Palika and the tenants were paying rent to the Municipal Corporation. It is also a fact on record that the subject building having become old and in a dilapidated condition the authorities concerned decided to demolish the said building and

construct a new building in its place under the SRA Project and the construction of the new building was entrusted to the assessee. It is also a fact that since the entire building had to be demolished for the purpose of constructing the new building, the tenants had to vacate the said premise and alternative accommodation was required to be provided to them. On a perusal of the agreement entered into between the assessee and the society formed by the tenants, it is relevant to note that since the assessee was not able to provide alternative accommodation to the tenants, it was provided under the agreement that assessee would pay them compensation towards expenditure to be incurred by them on account of rent payable by them for alternative accommodation and in accordance with such terms assessee initially paid compensation of ₹ 5,000 per month to each tenant which was subsequently revised from time–to–time as the assessee could not construct the building within the stipulated time period for various reasons. From the aforesaid facts, it is very clear that the concerned persons to whom the assessee had made the payment are neither tenants of the assessee nor the assessee has in reality paid rent on behalf of them. Only because the assessee was not able to provide alternative accommodation to these tenants the assessee had to pay compensation for enabling the tenants to meet the expenditure to be incurred by them towards rent payable whether

they are actually paying rent or not. This is for the simple reason that tenants were displaced from the property where they were staying for construction of new building. On a perusal of section 194I of the Act, it is seen that under clause (i) rent has been defined as under:–

> *"Explanation.—For the purposes of this section,—*
>
> *(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,—*
>
> *(a) land; or*
>
> *(b) building (including factory building); or*
>
> *(c) land appurtenant to a building (including factory building); or*
>
> *(d) machinery; or*
>
> *(e) plant; or*
>
> *(f) equipment; or*
>
> *(g) furniture; or*
>
> *(h) fittings,*
>
> *whether or not any or all of the above are owned by the payee;"*

7. On a plain reading of the aforesaid definition of rent, it becomes clear that the payment made by the assessee does not come within the purview of rent as prescribed in the said provision as the assessee is not making such payment for use of any land, building, etc. On the contrary, if the facts involved are considered as a whole the payment made by the assessee is nothing else but in the nature of compensation. The Tribunal in case of Jitendra Kumar Madan (supra)

while considering the nature of payment received for alternative accommodation by the recipients held such payments at their hand as income from other sources instead of income from house property. That being the case, the payment made by the assessee also being in the nature of compensation for alternative accommodation cannot be treated as rent. Moreover, such compensation cannot be treated as rent for the simple reason that not only the assessee is not using any land and building but it may also be a fact that persons to whom such payments have been made may not be incurring any expenditure on account of rent. In any case of the matter, payments made by assessee under no circumstances can be construed to be coming within the meaning of *"Rent"* as provided under section 194I. Thus, after considering the totality of the facts and circumstances of the case, we are of the considered opinion that compensation paid by the assessee to the tenants towards alternative accommodation not being in the nature of rent as defined in section 194I, there is no requirement for deduction of tax under the said provisions. Therefore, the disallowance made under section 40(a)(ia) of the Act cannot be sustained. Consequently, we delete the addition made on that account. Grounds raised by the assessee are allowed.

8. In the result, appeal stands allowed.

Order pronounced in the open Court on 24.02.2016

Sd/-	**Sd/-**
RAMIT KOCHAR	**SAKTIJIT DEY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 24.02.2016

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Mumbai City concerned;

(5) The DR, ITAT, Mumbai;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

(Dy./Asstt. Registrar)
ITAT, Mumbai