

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2663/Del/2016
Assessment Year : 2012-13

Venus Dwellers Pvt. Ltd.,
43/1, Rajpur Road,
Civil Lines,
Delhi.

Vs. ITO,
Ward-26(2),
New Delhi.

PAN: AACCV1374P

(Appellant)

(Respondent)

Assessee by	:	Shri Rajiv Saxena & Shri Shyam Sunder, Advocates
Revenue by	:	Shri Surender Pal, Sr. DR
Date of Hearing	:	13.02.2019
Date of Pronouncement:		15.02.2019

ORDER

PER R.K. PANDA, AM:

This appeal by the assessee is directed against the order dated 08th March, 2016 of the CIT(A)-9, New Delhi, relating to assessment year 2012-13.

2. The grounds raised by the assessee are as under:-

1. "The Ld. CIT(A)-9 has erred in confirming the disallowance of expenses of Rs. 4,86,634/- u/s 40 (a) (ia) of the act, therefore, the same is liable to be deleted because of the followings :

(i) The Ld. CIT (A) has erred in ignoring the submission of the assessee that amount of Rs. 4,86,634/- include the service tax which is not subjected to provision of TDS, therefore, the disallowances made in this regard liable to be deleted.

- (ii) The Ld. CIT (A) has erred in ignoring the submission of the assessee that the various payments were made on account of Common area maintenance charges, lease rent, ground rent etc to different parties were below the threshold limit provided in section 194C and 194I., therefore, the confirmation of disallowances is illegal.
- (iii) The Ld. CIT (A) has ignored the second proviso of Section 40(a) (ia) of Income Tax Act, 1961 and not consider the fact that the amount on which assessee has not deduct the TDS has already shown by the relevant parties as their income in their returns.
- (iv) The Ld. CIT (A) has ignored the fact that provisions of Section 40(a) (ia) of the Act are applicable only in respect of the amount payable at the end of year not on amount paid during the year as observed by the various Tribunals and High Courts.

2. The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.”

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of acquisition of land for development and construction of buildings, interior decorators and real estate agents. It filed its return of income on 15th September, 2012 declaring total loss of Rs.56,07,107/-. The Assessing Officer, during the course of assessment proceedings, observed that the assessee has debited an amount of Rs.4,86,633/-75 towards repair and maintenance expenses. From the various details furnished by the assessee, the Assessing Officer observed that the assessee has not deducted TDS from the payments so made. He, therefore, invoked the provisions of section 40 (a)(ia) and disallowed an amount of Rs.4,86,634/-. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The ld. counsel for the assessee, at the outset, filed the following chart stating that all the recipients are income-tax payees and had declared the income in their return of income and, therefore, in view of the second proviso to section 40(a)(ia) and the first proviso to section 201(1) of the IT Act, the assessee cannot be treated as an assessee in default and no addition u/s 40(a)(ia) can be made if it cannot be substantiated that the payees have declared such income in their return of income:-

“BEFORE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH- “F”, NEW DELHI

In the matters of:

M/s. Venus Dwellers Pvt. Ltd. ITANo. 2663/D/2016 (Assessee)
Assessment Year: 2012-13

Summary Chart

Sr. No.	Name of the company to whom payment made	PAN No.	Nature of payment	Amount	Relevant pages
1	Colliers International Services Pvt. Ltd. Property address: Shop No.19C, Plot No. 07, TDI Entre, Distt Centre, Sarita Vihar	AADCC6435H	One time lease, common area maintenance charges	1,37,820/-	1 - 10
2	Star Facilities Management Ltd. Property address: AG 67, Greater Noida Ansal Plaza	AALCS2854C	One time lease, common area maintenance	76,423/-	13 -23
3	DLF Utilities Ltd. Property address: DTC 302, 10 th Floor, Gateway Tower, DLF Cyber City Gurgaon	AAACN3199A	One time lease, common area maintenance	(2,76,269) 269882	24 -36
	Total payment sought			(4,90,512)	
	Total payment made			4,86,634/-“	

6. He accordingly submitted that he has no objection if the matter is restored to the file of the Assessing Officer with a direction to give an opportunity to the assessee to substantiate that the payees have declared such income in their return of income.

7. The Id. DR, on the other hand, while relying on the order of the CIT(A) fairly submitted that he has no objection if the matter is restored to the file of the Assessing Officer for verification.

8. After hearing both the sides, we find the Assessing Officer made addition of Rs.4,86,634/- by invoking the provisions of section 40(a)(ia) on the ground that the assessee has not deducted tax from payment to the three parties to whom payments have been made towards repair and maintenance and for which provision of section 194C are attracted. We find the Id. CIT(A) upheld the action of the Assessing Officer. It is the submission of the Id. counsel for the assessee that since the payees offered to tax such income in their return of income, therefore, in view of the second proviso to section 40(a)(ia) and first proviso to section 201(1) of the IT Act, the assessee cannot be treated as an assessee in default and, therefore, no addition is called for if the payees have declared such income in their return of income. We, therefore, deem it appropriate to restore the issue to the file of the Assessing Officer with a direction to give an opportunity to the assessee to substantiate with evidence to the satisfaction of the Assessing Officer that payees have offered such income to tax in their respective return of income and if the assessee so substantiates, in view of the second proviso to section 40(a)(ia) and first proviso to section 201(1) of the IT Act, delete the disallowance so made. Needless to say, the Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We

hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 15.02.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 15th February, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi