

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 1586/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax,  
Circle-6, Pune.

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Sahaan Infrastructure India Pvt. Ltd.  
1-2, Runwal Sarita, Plot No.4,  
S. No.258/1/3, Balaji Park,  
Baner, Pune-411 007.  
PAN: AAMCS2254B

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vinod Gupta

Revenue by : Shri Milind Chahure

सुनवाई की तारीख / Date of Hearing : 01.10.2019

घोषणा की तारीख / Date of Pronouncement : 03.10.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the Revenue emanates from the order of the  
Ld. CIT(Appeals)-4, Pune dated 01.03.2017 for the assessment year 2012-13  
as per the grounds of appeal on record.

2. The crux of the grievance of the Revenue in this appeal is with regard to deletion of the disallowance of Rs.1,18,84,418/- u/s.40(a)(ia) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for failure to make TDS u/s.194J read with Explanation 2 to clause (vii) of Sub-section (i) of Section 9 of the Act. This disallowance was deleted by the Ld. CIT(Appeals) which forms the bedrock of Revenue's appeal before us.

3. The brief facts in this case are that the assessee company is engaged in the business of owning and maintaining Race horses. The assessee company had filed its e-return of income declaring total loss at Rs.(-)1,62,58,690/-. During the assessment proceedings, the assessee was requested to furnish relevant details with respect to major expenses debited to the Profit & Loss account. On perusal of the same, it was observed that on certain expenses, no TDS was deducted. The details of the said expenses are as under:

<i>Expenses</i>	<i>Amount in Rs.</i>
<i>Live Stock lease Rent</i>	<i>35,68,186/-</i>
<i>Live Stock Expenses</i>	<i>1,18,84,418/-</i>
<b>Total</b>	<b>1,54,52,604/-</b>

The Assessing Officer requested the assessee to furnish explanation with respect to the claim of above expenses made on account of Live Stock Expenses and Live Stock Lease Rent. Further, the assessee was also requested to explain as to why said expenses should not be disallowed due to failure to comply with TDS provisions. The Assessing Officer was not satisfied with submissions of the assessee and the entire amount of Rs.1,54,52,604/-

was disallowed by the Assessing Officer and added to the total income of the assessee.

4. That before the Ld.CIT(Appeals), the assessee filed detailed written submissions which is there on record. The Ld.CIT(Appeals) after considering the submissions of the assessee, facts of the case and the assessment order held as follows:

*“5.3 **Decision** : I have perused the assessment order and the submission made by the appellant as above carefully. It is seen that the AO had disallowed the Live Stock Expenses of Rs.1,18,84,418/- & Live Stock lease Rent of Rs.35,68,186/- totaling to Rs.1,54,52,604/- on the ground that the appellant did not deduct TDS on the same and as the same was also disallowed in A.Y.2011-12.*

*5.3.1 The appellant on the other hand, submit that the AO without understanding the nature of expenses had applied the provisions of Section 40(a)(ia) of the Act for disallowing the expenses claimed by the appellant under proviso to section 48(4) of the Act. The appellant contended that section 40(a)(ia) of the Act was applicable only in case of expenses falling u/s.30 to 38 of the Act and claimed as business expenses under the head ‘Profits & Gains of Business or Profession’. The nature of expenses falling under the head ‘Income from Other Sources; in the case of the appellant. Reference was also made to the amendment of section 58(1A) w.e.f. 1<sup>st</sup> April, 2008, effective from A.Y.2018-19 wherein the provisions of section 40(a)(ia) would be applied for computing the income chargeable under the head ‘Income From Other sources’. In regard to expenses incurred on Live Stock Lease Rent, the appellant contended that such disallowance was completely beyond purview of section 194I of the Act. It was contended that the payment made as laid down in section 194I could never include the ‘Live Stock’. The Appellant also cited a number of decisions in support of its contention. The appellant therefore submitted that the addition was unlawful and unwarranted.*

*5.3.2 I find merit in the contention of the appellant. It is seen that the AO without appreciating the nature of expenses and claim of the appellant had invoked the provisions of section 40(a)(ia) for the expenses covered u/s.58(1A) of the Act. This is a patent mistake committed by the AO while disallowing the aforesaid expenses. It appears that the AO has led by the findings for AY.2011-12 in the assessment and followed the same mechanically without examining the very claim of the appellant and also the nature of such expenses. It is not the case of the AO that the expenses were not genuine. In view of the facts of the case itself without going to further nitty-gritty of the various decisions cited by the appellant, I hold that the AO was not justified in making the addition of Rs.1,54,52,604/- and the Same deserves to be deleted. The same is therefore deleted. Ground nos.1, 2 & 3 raised by the appellant are accordingly allowed.”*

5. We have perused the case records and analyzed the facts and circumstances in this case. On perusal of the assessment order, it is pertinent to note that the Assessing Officer has passed his decision mainly on the findings for assessment year 2011-12 and followed the same mechanically without examining the very claim of the assessee and the nature of such expenses. The applicability of section 40(a)(ia) of the Act are in a case of expenses falling u/s.30 to 38 of the Act and claimed as business expenses under the head 'Profit & Gains of Business or profession'. The nature of expenses is falling under the head 'Income from Other sources' in the case of assessee. Reference was also made to the amendment of section 58(1A) w.e.f. 1<sup>st</sup> April, 2008, effective from A.Y.2018-19 wherein the provisions of section 40(a)(ia) would be applied for computing the income chargeable under the head 'Income From Other sources', however, the relevant assessment year under consideration is A.Y.2012-13. Regarding expenses incurred on Live Stock Lease Rent, the assessee contended that such disallowance was completely beyond purview of Section 194I of the Act. The assessee has cited a numbers of decisions in support of its contention. The Ld. CIT(Appeals) has analyzed the entire factual matrix and legal aspects on the issue and has recorded a finding that ultimately nowhere in the assessment order, the Assessing Officer stated that the expenses were not genuine.

6. In view of the above facts and circumstances, we do not find any infirmity with the findings of the Ld.CIT(Appeals) and therefore, the same does not call for any interference. Hence, relief provided to the assessee by the Ld. CIT(Appeals) is hereby sustained. Accordingly, grounds raised by the Revenue are dismissed.

7. In the result, **appeal of the Revenue is dismissed.**

Order pronounced on 03<sup>rd</sup> day of October, 2019.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 03<sup>rd</sup> October, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	01.10.2019	Sr.PS/PS
2	Draft placed before author	03.10.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		