

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 779/Mum/2019
(निर्धारण वर्ष / Assessment Years 2013-14)

Dadiba kali Pundole Esplanade House 2 nd Floor, 29 Hazarimal Somani Marg Fort, Mumbai-400 001 (अपीलार्थी / Appellant)	बनाम/ Vs.	The Asst. Commissioner of Income Tax, Ward 17(1) (प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AADPP0451H		

अपीलार्थी की ओर से/ Appellant by	:	Shri Mehligoluala, AR's
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Kavita P Kaushik, DR

सुनवाई की तारीख / Date of hearing:	26.08.2020
घोषणा की तारीख / Date of pronouncement:	08.10.2020

आदेश / ORDER

राजेश कुमार, लेखा सदस्य के द्वारा /

PER RAJESH KUMAR, AM:

This appeal by the assessee directed against respective order of learned CIT(A) pertaining to Assessment Years 2013-14.

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

"1. The learned CIT(A) erred in confirming the disallowance of Rs. 4,68,543/- under section 40(a)(ia) on the ground that no TDS was effected on payments to Royal Yacht Club.

2. The learned CIT(A) erred in misinterpreting Circular No. 5 dated 30th July 2012.

3. The learned CIT(A) erred in holding that the accommodation was taken on regular basis.

4. Both the lower authorities erred in holding that the payment constitutes "rent" within the meaning of section 1941.

5. Having regard to facts and circumstances of the case, the Appellant submits the above disallowance of Rs. 4,68,543/- be deleted."

3. The only effective issue raised by the assessee is against the confirmation of addition of ₹468543/- by CIT(A) as made by the Assessing Officer under section 40(a)(ia) of the Act on account of non-deduction of TDS on rent paid to Royal Yacht Club.

4. The facts in brief are that the assessee filed its return of income on 30.09.2013 declaring his total income of ₹3,51,35,100/-, which were processed under section 143(1) of the Act. Thereafter, the case of the assessee was selected under scrutiny and statutory notices were issued and served upon assessee. During the course of assessment



proceedings, the Assessing Officer noticed that the assessee has paid ₹4,68,543/- towards rent of hotel accommodation to Royal Bombay Yacht Club on which no TDS was deducted. Accordingly, a show cause was given to the assessee as to why the same should not be disallowed under section 40(a)(ia) of the Act for non-deduction of Tax Deducted at Source. The assessee replied the show cause vide letter dated 12.02.2016. The assessee submitted that the said charges were paid to Club as accommodation charges for stay of non-resident consultants who used to work at the time of auctions. Pertinent to mention that the assessee is engaged in the business of auctioning fine and decorative arts, promoting, publishing, documenting, executing and selling arts. The assessee submitted that the payment made to the club was not a rent as no specific room has been hired in the hotel with a fixed tariff. The assessee booked a club I room as and when required and these charges were paid for the said accommodation on different dates. The assessee also submitted that no single payment was made in excess of ₹1,80,000/- at any point of time. The assessee also referred to Circular No.5 dated 30.07.2020 issued by CBDT, wherein it has clarified the provisions relating to tax deduction at source regarding changes introduced through Finance Act, 1995. The assessee also submitted that in the said Circular the Board clarified that the TDS is applicable on the payments made by persons other than individual and HUF for hotel accommodation taken on regular basis which will be in the nature of rent would subject to TDS under section 194-I of the Act. The assessee submitted that assessee has not taken any residential accommodation on regular

basis and only booked the rooms as and when the Consultants visited India for promoting, publishing, documenting, exhibiting and selling of arts. Therefore, the booking was of casual / occasional nature and not regular one. Besides the available of rooms are allotted to the consultant by the said club. Therefore, provision of section 194(I) of the Act are not applicable to assessee. The learned AR also made alternative submission that these charges were paid by the consultant to the club and thereafter reimbursed by the assessee and thus, there no allowable can be made as the TDS is not applicable on the reimbursement of charges. The learned AR also referred to the decision of Co-ordinate Bench in the case of Red Chillies Entertainment Pvt. Ltd. vs. ACIT in ITA No.6655/Mum/2014 for Assessment Year 2005-06 vide order dated 28.02.2017, wherein identical issue has been decided in favour of the assessee.

5. We have heard the rival submissions and gone through the facts and circumstances of the case. Undisputedly facts are that the assessee has paid accommodation charges to the above club to the tune of ₹4,68,543/- on which no TDS was deducted and deposited as per the provisions of section 194I of the Act. The AO disallowed and added the same under section 40(a)(ia) of the Act for non deduction of TDS The learned CIT(A) confirmed the addition by holding that the assessee has paid accommodation charges for the hotel accommodation which is on regular basis from the club without deduction of TDS at source by observing and holding as under:-

"6. I have gone through the appellant's submission and also the Assessing Officer's order. I find that the appellant's case is attracted by the provisions of section 194I. The appellant has been booking the same place in this case Royal Bombay Yacht club and for longer periods. Since the same place is booked throughout the year it comes under the ambit of section 194I as the accommodation is taken on regular basis. The appellant has submitted the bill copy. I have perused the same. All the bills show the same narration, only dates are changed. For instance in all bills employee's name is Uday, Chamber charges (3 ad 4 floor) and name Dean Robin (R-136). So this shows that the booking is done on the same place. Hence in the light of the above discussion I find the Assessing Officer has rightly made disallowance under section 4(a)(i)(a) and so ground of appeal raised by the appellant is dismissed."

6. After taking into account the facts of the case in the light of the circular and the decision as cited above, we note that the accommodation was booked by the assessee in the club not on a regular basis but on casually and occasionally as and when the foreign consultants visit the assessee in connection with assessee's

business. We are quite convinced with the arguments of the learned Counsel that this accommodation is occasional/ casual as no specific accommodation is earmarked and the same is made available to the assessee on the availability basis. In our opinion, the case is squarely covered by the decision of co-ordinate Bench in the case of Red Chillies Entertainment Pvt. Ltd. (supra) and the operative part of the order is reproduced as under: -

"30. Grounds 4 to 10: These grounds deal with the issue of non-deduction of tax at source on the hotel expenses incurred by the assessee. It was held by the AO that assessee should have deducted tax at source u/s 194I for 'rent' of hotel expenses incurred during shooting done at various locations. Ld. CIT(A) agreed with the contention of the assessee partly and held that bills for the hotel expenses also include expenses on account of food on which TDS should not be made and, therefore, he reduced the amount of food expenses from the bills of hotels and also in those cases where the expenses on hotel stay did not exceed aggregate amount of Rs.1,20,000/- as prescribed u/s 194I. Therefore, he provided relief to the assessee. However, for all those hotels, where the stay expenses after deduction of the food expenses was more than Rs.1,20,000, it was held by him that

TDS was required to be deducted u/s 194I on the whole of such amount.

31. During the course of hearing before us, Ld. Counsel of the assessee relied upon the CBDT circular No.5 of 2002 dated 30-07-2002 wherein it was clarified that where earmarked rooms are let out for specified rate and specified period, only then, they will be construed to be accommodation made available on regular basis whereas the facts of the assessee's case are that there was no prior contract with the hotels. The rooms were hired on as and when available basis, corresponding to the date of shooting. There was no contract for any specific rates or period and thus TDS was not required to be made u/s 194I.

32. We have gone through the orders passed by the lower authorities and facts brought before us on the basis of bills of hotels and other evidences. It is noted that nothing has been brought before us to show that assessee had entered into any prior contract with the hotels for any specific room or rooms for any specific rates or rooms for any specific period. The rooms were hired on as and when available basis at the regular tariff rates subject to the discounts as agreed at the time of



booking of rooms. Under these circumstances, the assessee deserves to be given the benefit of the circular issued by the Board providing that under these circumstances, TDS will not be required to be made u/s 194I. Therefore, it is held that no TDS was required to be made in this case. As a result, these grounds are allowed and this appeal is partly allowed."

7. Moreover, the Circular has very clearly mentioned that the provision of section 194(I) are applicable where the accommodation is taken on regular basis, which means that a specific accommodation is earmarked to be let out for the specific period but in the present case the facts are different. Accordingly, we are inclined to set aside the order of CIT(A) as well as Assessing Officer by deleting the disallowance.

8. In the Result, the appeal of assessee is allowed.

Order pronounced in the open court on 08.10.2020.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

Sd/-

(राजेश कुमार/ RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 08.10.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**