

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 1099/Del/2017 : Asstt. Year : 2009-10

Vatika Hospitality Pvt. Ltd., (Now known as Vatika Hotels Pvt. Ltd.), 621-A, Devika Towers 6, Nehru Place, New Delhi-110019	Vs	Deputy Commissioner of Income Tax, Circle-26(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AABCI2522B		

Assessee by : Sh. C. S. Aggarwal, Sr. Adv.

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 04.01.2021

Date of Pronouncement: 12.01.2021

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A)-23, New Delhi dated 29.12.2016.

2. Following grounds have been raised by the assessee:

"1. That the learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in sustaining the following disallowances/additions made by the learned Assessing Officer, while framing the assessment of the assessee company:

(i) Rs. 10,000/- out of the disallowance made of commission and brokerage expenses of Rs.32,90,698/-. The aforesaid disallowance has been sustained by overlooking the provisions of section 194G of the Income Tax Act were inapplicable. There was no obligation to deduct tax at source in respect of payment made of Rs. 10,000/-. The aforesaid

amount of commission did not exceed to Rs.10,000/- and hence no disallowance was warranted in law.

(ii) Rs. 42,340/- out of the claim of expenditure under the head "advertisement and publicity expenses". The disallowance sustained is on an incorrect application of statutory provisions as there was no obligation to deduct tax at source in respect of an expenditure incurred under the head "advertisement and publicity".

(iii) Rs. 59,000/-, out of the addition made under the head unverifiable sundry creditors. The aforesaid addition has been sustained by overlooking that under the provision of section 41(1) of the Act, the amount outstanding to the credit of M/s Infotech Services as no benefit since has been obtained by the assessed nor the said sum was remitted or there was any cessation in respect thereof, any addition made was warranted in law.

(iv) That likewise the addition made and sustained of Rs. 12,85,348/- out of Rs. 3,05,80,226/- was wholly unjustified. The Commissioner of Income Tax (Appeals) has overlooked that the provisions of section 41(1) of the Income Tax Act could not have been invoked in the absence of any material to support that any liability has ceased or that the assessee has obtained any benefit or the amount had been remitted by the creditor."

3. Ground No. 1(i) -Not pressed by the assessee

4. Ground No. 1(ii) relates to the claim of expenditure of Rs.42,340/- on account of "Advertisement & Publicity expenses". This amount has been disallowed by the AO and confirmed by the Id. CIT (A) on the grounds that no TDS has been deducted on this amounts. On hearing the arguments of both the parties, we find that the amount of Rs.42,340/- consists of an amount of Rs.17,340/- paid on account of advertisement and since the amount is less than Rs.20,000/-, the provisions of Section 194C of the Income Tax Act, 1961 are not attracted. Further, out of Rs.42,340/- an

amount of Rs.25,000/- has been paid on account of car expenses and Section 194C does not impose a liability on the payer to deduct TDS as there is no contract between the assessee and recipient. Hence, the disallowance made by the AO is hereby directed to be deleted.

5. Ground No. 1(iii) relates to the addition of Rs.59,000/- made under the head "unverifiable sundry creditors". The Id. CIT (A) and the AO held that the payment of Rs.59,000/- which is due to be paid to an entity namely, M/s Infotech Services is "no more a liability" owing to non-furnishing of details. We find from the record before us at page no. 102 of paper book, the confirmation and the copy of account filed by the assessee with regard to M/s Infotech Services. Since, it cannot be said that the liability has ceased, the addition made by the revenue is hereby deleted.

6. Ground No. 1(iv) relates to addition on account of Rs.12,85,348/- u/s 41(1) of the Income Tax Act, 1961. We find from the record that the Id. CIT (A) has confirmed the addition owing to the non-filing of the confirmations and evidences before the Id. CIT (A). The amounts are as under:

1. M/s Genesys Telecommunication Laboratories of Rs.5,43,348/-
2. M/s Torex Software Pvt. Ltd. of Rs.2,20,000/-
3. M/s Nokia India Ltd. of Rs.5,22,000/-

7. We find from the record that these receipts are in the nature of security deposit and also have been paid subsequently to all the three parties mentioned above. Hence, considering the entire factum and since the payment have already been made, no addition u/s 41(1) is called for.

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

Order Pronounced in the Open Court on 12/01/2021.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 12/01/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR