

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 1794/HYD/2018**

Assessment Year: 2015-16

Dy.Commissioner of Income Tax, Circle-16(1), HYDERABAD	Vs	M/s.Neueon Towers Limited, <i>(formerly known as Sujana Towers Ltd)</i> HYDERABAD [PAN: AAKCS7820F]
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(Appellant)

(Respondent)

For Revenue : Shri R.Dipak, DR

For Assessee : Shri P.Murali Mohana Rao, AR

Date of Hearing : 22-04-2021

Date of Pronouncement : 31-05-2021

**ORDER**

**PER S.S.GODARA, J.M. :**

This Revenue's appeal for AY.2015-16 arises from the CIT(A)-4, Hyderabad's order dated 28-06-2018 passed in case No. 0137 / 2017-18 / ACIT, Cir.16(1)CIT(A)-4 / Hyd / 18-19, involving proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The Revenue has pleaded the following substantive grounds in the instant appeal:

*“1. The Ld.CIT(A) erred in directing the Assessing officer to verify and allow claim of the assessee, Which is beyond the mandate provided under section 251(1)a of the Income Tax Act.*

*2. The Ld. CIT(A) erred in directing the Assessing officer to verify and allow the claim of the assessee Without giving a finding on the merits of the disallowance made u/s40(a)(ia) by the Assessing Officer of Rs. 8,69,11,284/-.*

*3. The Ld.CIT(A) erred in directing the AO to verify and allow as per the Delhi High Court decision in the case of M/s. Ansal Land Mark Township 377 ITR 635(Delhi) (2015) ignoring the Hon'ble Apex Court decision in case of Palam Gas Service. vs Commissioner of Income Tax 394 ITR 300 (2017).*

*4. The Ld. CIT(A) erred in law by ignoring the fact that the assessee failed to satisfy the first proviso (inserted by the Finance Act,2012 w.e.f. 01-07-2012) to sec. 201(1)of the Income Tax Act.*

*5. Any other ground that may be, raised at the time of hearing”.*

3. Learned CIT-DR reiterated the Revenue's pleadings and vehemently argued that the CIT(A) no more possesses his jurisdiction to 'set aside' as per Section 251(1)(a) of the Act as the same was omitted vide Finance Act, 2001 w.e.f.01-06-2001. The assessee's case on the other hand is that the CIT(A) has directed the Assessing Officer to verify the assessee's case in light of Section 40(a)(ia) second proviso inserted in the Act vide Finance Act, 2012, w.e.f.01-04-2013 that the impugned statutory provision does not apply in case an assessee is not the assessee in default in light of Section 201(1) 1<sup>st</sup> proviso to the Act.

4. We have given our thoughtful consideration to rival submissions. We find force in Revenue's legal argument that the CIT(A)'s jurisdiction to set aside any issue stands omitted from the act in above terms. The fact also remains that we are dealing with section 40(a)(ia) disallowance on account of

assessee's failure to deduct TDS which requires further factual verification as to whether the concerned payees stand assessed to tax or not. We thus accept the Revenue's first and foremost substantive ground in principle but adopt the very course of action at the same time to restore this issue of application of Section 40(a)(ia) 2<sup>nd</sup> proviso back to the Assessing Officer for his afresh factual verification as per law. Ordered accordingly.

5. This Revenue's appeal is treated as partly allowed for statistical purposes in above terms.

*Order pronounced in the open court on 31<sup>st</sup> May, 2021*

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 31-05-2021

*Copy to :*

*1. Deputy Commissioner of Income Tax, Circle-16(1), Hyderabad.*

*2. M/s. Neueon Towers Limited (Formerly known as Sujana Towers Ltd), Survey No.321, Turkala Khanpur (V), Hatnur (M), Medak Dist.*

*3. CIT(Appeals)-4, Hyderabad.*

*4. Pr. CIT-4, Hyderabad.*

*5. D.R. ITAT, Hyderabad.*

*6. Guard File.*