



**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE**

**BEFORE S/SHRI C.M. GARG, JUDICIAL MEMBER AND
MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.168/Ind/2019
Assessment Year : 2013-14

DCIT- 4(1), Indore	Vs.	M/s. Prashant Sagar Builders and Developers Pvt Ltd., 7 th floor, Mahasagar Corporate, 10/4, Manorama Ganj, Indore
PAN/GIR No.AAECF 9435 B		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri P.K.Singh, Sr, DR

Date of Hearing : 29 /7/ 2021
Date of Pronouncement : 29 /9/2021

ORDER

Per Bench

This is an appeal filed by the Revenue against the order of the CIT(A)-II, Indore dated 14.11.2018 for the assessment year 2013-14.

2. The only effective ground taken by the revenue in this appeal is that the Id CIT(A) is not justified in deleting the disallowance of Rs.8,40,000/- u/s.40(a)(ia) of the Act for non-deduction of tax at source on payment of Rs.28,00,000/-.

3. None appeared on behalf of the respondent-assessee, when the matter was called for hearing. Hence, we proceed to decide the appeal of

the revenue exparte after hearing the Id D.R. and the materials available on record.

4. The facts of the case are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has made the payment under the following heads as under:

- i) Rs.1,00,000/- (*sis* Rs.2,00,000) to Rajendra Kumar Jain towards purchase of materials for Vastu Puja.
- ii) Rs.25,00,000/- to the land owner towards purchase of land against the agreement.
- iii) Rs.1,00,000/- for payment of materials for a bore well.

5. Since the assessee had not deducted TDS on the above amount, the Assessing Officer made disallowance @ 30% of Rs.28,00,000/- which comes to Rs,8,40,000/-.

6. On appeal, the Id CIT(A) observed that in respect of bastu puja, the assessee has made payment Rs.1,00,000/-, but the AO has taken Rs.2,00,000/-. He also deleted the disallowance made by the AO, inter alia, observing as under:

“3.2 During the course of appellate proceedings, the appellant has submitted that he had made the payment regarding the Vasstu Pooja of Rs.1,00,000 which was given by him through cheque. The appellant has also submitted the copy of the bank cheque. But the AO had taken the said purchasing amount of Rs.2,00,000/- instead of Rs.1,00,000. Further, the appellant has submitted the confirmation of account regarding the payment of Rs.25,00,000.

3.3 The appellant has also taken the plea that TDS provisions are not applicable on purchase of materials. Therefore, no TDS was required to be made by the appellant. Further, the appellant has submitted

that the bayana was given for the purchasing of agricultural land for development of the site/residential colony on this agricultural land. Hence, the provisions of TDS were not applicable on the stage of agreement for purchase of agricultural land. The appellant has also submitted all the relevant documents with regard to purchasing of the said materials.

3.4 The appellant has relied on the decision of Pune ITAT in the case of Eshan Minerals Pvt Ltd., vs DCIT (ITAT Pune). It is a settled law that the purchase of material does not attract TDS provision. TDS provisions are attracted where transaction involves an element of service. Hence, in view of the above facts and documents so submitted by the appellant, it is clear that the appellant was not required to deduct on the purchase of materials and on the payment of bayana so given by him to the owner of the land for purchasing of land. Thus, in light of the above fact, this ground of appeal is allowed,."

7. We have heard the submission of Id D.R. and perused the record of the case. In this case, it is not disputed that the assessee has made payment for purchase of materials for Vastu Pooja, development of agricultural land and digging a bore well. It is the contention of the assessee before the authorities below that the purchases of materials do not attract TDS provisions. It is clear that the manufacturers/suppliers were independent entities manufacturing the articles, therefore, for the purchase of materials, no TDS is deductible. We find that the Id CIT(A) has referred to the decision of ITAT Pune in the case of Eshan Minerals Pvt Ltd(supra), wherein, it is held that the purchase of material does not attract TDS provision. TDS provisions are attracted where transaction involves an element of service. In this case, the transaction does not involve an element of service. Id D.R. could not controvert the findings of the Id

CIT(A) Hence, we do not find any infirmity in the order of the Id CIT(A) to interfere, which is hereby upheld.

8. In the result, appeal of the revenue is dismissed.

Order pronounced u/s. 34(4) of I.T.Rules, 1963 on 29 /9/2021.

Sd/- (MANISH BORAD) ACCOUNTANT MEMBER	Sd/- (CHABNDRA MOHAN GARG) JUDICIAL MEMBER
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Indore ; Dated 29 /8/2021

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : DCIT- 4(1),
Indore
2. The Respondent. M/s. Prashant Sagar Builders
and Developers Pvt Ltd., 7th floor, Mahasagar
Corporate, 10/4, Manorama Ganj, Indore
3. The CIT(A)-II, Indore,
4. Pr.CIT- II, Indore
5. DR, ITAT, Indore
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack