

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 2088 /H/2017 and CO No. 19/Hyd/2019 Assessment Year: 2011-12		
Dy. Commissioner of Income-tax, Circle - 16(2), Hyderabad.	Vs.	Madhava Hitech Engineers Pvt. Ltd., Hyderabad. PAN - AABCM 3921A
(Appellant)		(Respondent/ Cross Objector)
Revenue by:		Shri T. Sunil Goutam
Assessee by:		Shri S. Rama Rao
Date of hearing:		05/04/2022
Date of pronouncement:		07/04/2022

**ORDER**

**PER L.P. SAHU, A.M.:**

This appeal of the Revenue is directed against the CIT(A) - 4, Hyderabad's order dated 04/02/2017 passed u/s 143(3) rws 147 of the Income-tax Act, 1961 (in short 'the Act') for the AY 2011-12. The assessee also filed C.O.

2. Briefly the facts of the case are that the assessee company engaged in the business of executing civil works of the Government Departments, filed its return of income for AY 2011-12 on 20/03/2012 admitting Nil taxable income and current year loss of Rs. 1,43,61,497/-, which was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued. The AO completed the assessment by disallowing an amount of Rs. 5,59,82,129/- u/s 40a(ia) of the Act, by observing as under:

2.1 During the course of assessment proceedings, he observed that the assessee had claimed an amount of Rs. 6,28,12,232/- towards contract payments (Mathura, Pathankot, Hyderabad) in the P&L Account. However, it was noticed that the TDS was not made in the said payments. Accordingly, he opined that the said expenditure falls within the scope of section 40a(ia) of the Act and shall attract disallowance. He, therefore, asked the assessee to furnish the objections if any. The assessee filed the following details:

Particulars	Amount debited to P&L (Rs.)	Amount on which deducted (Rs.)	TDS made (Rs.)	Date deposit as per challans	Remarks & Challans submitted for (Rs.)
Sub-contracts to two companies	45218652	45218652	904373	14.12.11	985767
Sub-contract work Contract & Machinery hire charges	17594580	10264287	93643	14.12.11/ 10.01.12	102071 (50561+18202+ 33308)
Totals	62813232	55482939	998016		1087838

2.2 After examining the details, the AO observed that the assessee had remitted the tax deducted at source after the due date prescribed u/s 139(1) of the Act and hence, the expenditure claimed towards sub-contract payments on which TDS was remitted after the due date of filing of return of Rs. 5,54,82,939/- was disallowed u/s 40a(ia) of the Act.

2.3 Further, the AO stated that tax had been deducted on an amount of Rs. 1,02,64,287/- out of the amount of Rs. 1,75,94,580/-, though the assessee had furnished the break up for the entire amount of Rs. 1,75,94,580/-. Therefore, the short deduction of tax amount of Rs. 4,99,190/- was also disallowed by the AO.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and submitted that during the FY, the appellant has executed the works amounting to Rs. 18,73,58,278/-, out of which Rs. 6,28,13,232/- had been given to sub-contractor. Due to lack of financial viability to clear statutory payments, appellant had remitted the tax deducted at source after the due date prescribed u/s 139(1), but, before filing of return on 20/03/2012.

4. After considering the submissions of the assessee, the CIT(A) observed that the AO had made an addition of Rs.

5,59,82,129/- as the TDS was not deposited before filing the return u/s 139(1) of the Act, but, the appellant had already paid the amounts on 14/12/2011 and on 10/01/2012 well before the filing of the return and, therefore, deleted the addition made by the AO.

5. Aggrieved by the order of CIT(A), the revenue filed an appeal before the ITAT and the assessee also filed C.O. before the ITAT.

6. First we adjudicate the CO No. 19/Hyd/2019 filed by the Assessee.

7. We notice at the outset that assessee's instant CO suffers from 248 days delay in filing before the ITAT. In this connection, the assessee has filed a petition for condonation of delay along with an affidavit, wherein, it was affirmed that due to incurring huge losses and due to suspension of work by the Government, the company closed down its business activities with effect from FY 2013-14, caused the impugned delay in filing the C.O. belatedly. We rely on Case law Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold

that assessee's impugned delay in filing this CO is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Case is now taken up for adjudication on merits.

8. The assessee has raised the following cross objections in its CO:

*"1) The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that the respondent i.e. the sub contractor filed the returns of income and paid taxes and that, therefore, the Respondent cannot be considered as a person in default and consequently, the provisions of Sec. 40(a)(ia) are not applicable.*

*2) The learned Commissioner of Income-tax (Appeals) ought to have considered the fact that the Assessing Officer did not treat the respondent as a person in default either for the purpose of Sec.201(1) or 201 (IA) and that, therefore, the provisions of Sec.40(a)(ia) have no application.*

*3) The learned Commissioner of Income-tax (Appeals) ought to have considered the fact that the respondent filed the returns of income and was not treated as a person in default and that, therefore, the provisions of Sec40(a)(i) have no application.*

*4) Any other ground or grounds that may be urged at the time of hearing.*

9. We have heard both the parties and perused the material on record as well as gone through the orders of revenue authorities. In view of the second proviso to section 40(a)(ia) read with proviso to section 201(1) of the

Income Tax Act no disallowance of expense u/s 40(a)(ia) can be made unless the assessee has been treated as assessee in default under S.201(1) of the Act for its failure to deduct tax at source from the payment made on account of interest. In simple words, if the amount paid by payer have been included by the payee in his return of income for relevant Asst. year, filed the return of income u/s 139 and has paid the tax due on the income declared in such return, to the extent the recipient (i.e. payee) from the assessee have so included the sum in his return of income and filed the same, no disallowance u/s.40(a)(ia) of the Act can be made by the AO in view of the second proviso to section 40(a)(ia) read with first proviso to section 201(1) of the Act. This has been provided in the second proviso to section 40(a)(ia) inserted in the statute by the Finance Act, 2012 with effect from 1.4.2013. Therefore, on furnishing of certificate in form 26A as prescribed under proviso to section 201(1) read with rule 31ACB of the I.T. Rules no disallowance u/s 40(a)(ia) can be made.

9.1 Before us, the contention of the ld. AR of the assessee is that the AO did not treat the assessee as a person in default either for the purpose of section 201(1) or 201(1A) and that therefore, the provisions of section 40(a)(ia) have no application. Further, he submitted that the subcontractor filed the returns of income and paid taxes and that the assessee cannot be considered as a person in

default and consequently, the provisions of section 40(a)(ia) are not applicable.

9.2 After considering the submissions of the Id. AR of the assessee, we remit the cross objections raised by the assessee to the file of the AO with a direction to verify that whether the sub-contractors filed their returns of income, if so the assessee cannot be considered as a person in default consequently, the provisions of section 40(a)(ia) are not applicable. Accordingly, the AO is directed to decide the matter in accordance with law after providing opportunity of being heard to the assessee in the matter.

10. In the result, the C.O. filed by the assessee is allowed for statistical purposes.

11. As regards the Revenue's appeal, since we have remitted the legal issue raised by the assessee in its C.O., the appeal of the revenue becomes academic in nature, hence, need no adjudication.

12. In the result, revenue's appeal is dismissed and the CO filed by the assessee is allowed for statistical purposes in above terms.

Pronounced in the open court on 7<sup>th</sup> April, 2022

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

**Sd/-**  
**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 7<sup>th</sup> April, 2022.

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*Copy to :*

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3	<i>CIT(A) - 4, Hyderabad.</i>
4	<i>The Pr. CIT - 4, Hyderabad</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>