

IN THE INCOME TAX APPELLATE TRIBUNAL "C(SMC)"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.276/Kol/2022
Assessment Year: 2011-12

Asha Real Estates and Developers Pvt. Ltd.....Appellant
163, Rabindra Sarani, 2nd Floor,
Room No.210, Kolkata-700007.
[PAN: AAECA4266F]

vs.

DCIT, Circle-9(1), Kolkata.....Respondent

Appearances by:

Smt Preeti Lalwani, FCA, appeared on behalf of the appellant.

Shri Robin Chaudhary, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 28, 2022

Date of pronouncing the order : June 28, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 25.03.2022 of the National Faceless Appeal Centre (NFAC) [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in upholding the DCIT's assessment on a total income of Rs 37,03,780/- against the Income of Rs 13,017,18/- (Rs 9,06,444/- as reflected in the Assessment Order and Rs.3,95,274/- accepted by the Appellant itself.)

2. That on the facts and in the circumstances of the case, the learned CIT (A) erred in upholding the addition of Rs.24,02,058/- on account of disallowance u/s 40(a)(ia) of the Income Tax Act

3. That on the facts and in the circumstances of the case, the learned CIT(A) failed to appreciate that the addition of Rs.23,52,059/- has already been added back to the income of the next financial year 2011-12 by the Appellant itself and tax has been duly paid thereon

4 That on the facts and in the circumstances of the case, the learned CIT(A) erred in ignoring the written explanation of the appellant that labour charges booked in the name of Sri Puran Kumar Roy amounting to Rs.23,52,059/- was disputed and which the appellant did not accept and terminated its business dealings with the contractor and suo moto reversed it in the immediately following financial year 2011-12

5 That on the facts and in the circumstances of the case, the learned CIT(A) ignored the fact that as a result of the said addition, the same amount is being taxed

twice in two consecutive financial years, viz. F.Y 2010-11 and F.Y 2011-12 thereby violating the fundamental principle that the same income should not be taxed twice unless expressly provided in the Statute.

6. That on the facts and in the circumstances of the case, the learned CIT(A) failed to realize that there has been no/negligible revenue loss on part of the Income Tax Department as a result of the appellant's actions.

7 That on the facts and in the circumstances of the case, the learned CIT(A) erred in ignoring the appellant's ground relating to incorrect calculation done by the learned DCIT of the amount refundable to the appellant. In the Computation Sheet the DCIT had taken the tax paid by the appellant as Rs.18,68,745/- as against actual tax paid by the appellant Rs.29,91,680 (Advance Tax Rs.5,50,000/- and Regular Assessment Tax Rs.24.41,680/-).

8 That on the facts and in the circumstances of the case, the learned CIT(A) erred in disregarding the fact that the appellant had duly deducted tax on Rs. 50,000 paid to Shri Puran Kumar Roy and deposited the same before the due date of filing return u/s 139(1).

9. That the appellant craves leave to add, alter and/or amend the grounds of appeal at the time of hearing.”

2. Ground No.1 – Ground No.1 is general in nature. The assessee has raised all the issues collectively in this ground, whereas the assessee in subsequent grounds has contested each of the grounds separately. Therefore, no separate adjudication is required in respect of Ground No.1. Our separate adjudication given on each of the subsequent grounds will cover the adjudication on Ground No.1.

3. Ground No.2 – Vide Ground No.2, the assessee has agitated the action of the Assessing Officer on account of disallowance of Rs.24,02,058/- u/s 40(a)(ia) of the Act for non-deduction of Tax at source (TDS).

At the outset, Smt. Preeti Lalwani, the ld. counsel for the assessee has brought our attention to the paper-book page 5 to submit that out of the total amount of Rs.24,02,058/-, an amount of Rs.23,52,059/- has already been reversed/added back by the assessee in the subsequent assessment year 2012-13. The ld. counsel, in this respect, has explained that there was ongoing dispute with the party in whose account the amount was credited in the books of accounts of the assessee. Since the payment was not made, hence TDS was not deducted. She has further submitted that since the entry has been reversed and the amount has been added back in the subsequent assessment year, therefore, no prejudice has been caused to the Revenue. Regarding balance amount of

Rs.50,000/-, it has been explained that the said amount was duly paid after deduction of tax at source and deposit of the same to the Government account.

The Id. DR, on the other hand, has submitted that there was failure of the assessee to deduct TDS in the year under consideration, so the disallowance has been rightly made by the Assessing Officer.

We have heard the rival contentions and gone through the records. In view of the submissions of the Id. counsel for the assessee that the amount has been added back in the subsequent year and further the explanation given that the amount was not paid during the year but only a book entry was made, however, since there was a dispute, hence, the TDS was not deducted and subsequently, the entry was reversed. Further, it has been claimed that the TDS was duly deducted on the remaining amount of Rs.50,000/- and the same was duly paid to the Government account. We are of the view that the facts need to be verified by the Assessing Officer. If the contention of the assessee is found correct then no disallowance to be made by the Assessing Officer on this issue.

4. Ground Nos.3 to 8 – Vide Ground Nos.3 to 8, the assessee has disputed the computation of amount of tax refund. As per the assessee, the self-assessment tax was paid at Rs.24,41,680/- as against Rs.18,68,745/- calculated by the Assessing Officer. This issue is also restored to the file of the Assessing Officer for verification of the fact and to issue refund to the assessee if found so due as per the contention of the assessee.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 28th June, 2022.

Sd/-
[Girish Agrawal]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 28.06.2022.

RS

Copy of the order forwarded to:

1. Asha Real Estates and Developers Pvt. Ltd
2. DCIT, Circle-9(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches