IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1813/Mum./2022
(Assessment Year : 2016–17)

M/s. Macrotech Developers Ltd.
(Successor to Palava Dwellers Pvt. Ltd.)
412, Floor–4, 17G, Vardhaman Chamber
Cawasji Patel Road, Horniman Circle
Fort, Mumbai 400 001 PAN – AAACL1490J ……. Appellant

v/s

Income Tax Officer
(international transaction)
Ward–3(2)(2), Mumbai .....Respondent

Assessee by : Shri Niraj Sheth
Revenue by : Shri Lovish Kumar

Date of Hearing – 06/10/2022	Date of Order – 11/10/2022

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 20/05/2022, passed under section 250 of the Income Tax Act, 1961 ('*the Act*') by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ['*learned CIT(A)*'], for the assessment year 2016–17.

2. In this appeal, the assessee has raised following grounds:

"*The following grounds of Appeal are without prejudice to each other: -*

1) On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals)-National Faceless Appeal Centre [CIT(A) NFAC] erred in passing order under section 250 of the income tax act, 1961, treating the appeal as withdrawn as per section 4(2) of the Direct Tax Vivad se Vishwas Act, 2020.

2) On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC failed to appreciate the fact that the appellant has not opted for Vivad se Vishwas Scheme in respect of order dated 30.03.2021 passed under section 201(1) and 201(1A) r.w.s 195 of the Income Tax Act, 1961 by International Taxation-3(2)(2), Mumbai.

3) On the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in not providing opportunity of being heard to the appellant.

4) Without prejudice to above, on the facts and circumstances of the case and in law, the learned CIT(A)-NFAC erred in not adjudicating the following ground of appeals:

i. On the facts and circumstances of the case and in law, the order issued u/s 201(1) / 201(1A) is bad in law, ultra virus and non-est. The learned Income Tax Officer [hereinafter referred to as Assessing Officer (AO)] erred in issuing notices in case of M/s Pallava Dwellers Pvt. Ltd. an entity which is not into existence due to merger into the appellant vide National Company Law Tribunal (NCLT) order dated 09.01.2018 with effect from 01.04.2016

ii. On the facts and circumstances of the case and in law, the learned AO erred in passing second order u/s 201(1) / 201(1A) without appreciating the facts that order u/s 201(1) /201(1A) was passed in case of M/s Pallava Dwellers Pvt Ltd on 27.02.2018 in respect of A.Y. 2016-17 and only one assessment order can be passed for a given year against the assessee.

iii. On the facts and circumstances of the case and in law, the learned Income Tax Officer [hereinafter referred to as Assessing Officer (AO)] erred in mechanically passing the order without appreciating the facts of type of remittance to the foreign vendor.

iv. On the facts and circumstances of the case and in law, the learned AO erred in treating the remittance of Rs.1,69,86,116, made to non resident towards Design Consultancy services as 'Fees for Technical Services' and treat the assessee company as "Assessee in Default" for non-deduction of tax.

v. On the facts and circumstances of the case and in law, the learned assessing officer erred in proposing initiation of penalty proceeding u/s 271C.

3. The brief facts of the case are: The assessee is an Indian company and is engaged in the business of construction and development of real estate properties at Palava City, Dombivali. During the course of assessment

proceedings, it was observed that the assessee had appointed non-resident vendor in Singapore for providing consultancy services for its real estate development projects. The assessee made foreign remittances to such non-resident/foreign vendors in respect of designing fees. During the course of assessment proceedings, the assessee was asked to show cause as to why aforesaid transaction is not liable for tax deduction at source and as to why assessee should not be deemed to be an assessee in default for not deducting tax at source while making such payments. In reply, assessee by placing reliance upon India Singapore Double Taxation Avoidance Agreement (*'DTAA'*) submitted that services rendered by the foreign vendors are not in the nature of 'make available' as they had not imparted any training to the employees of the assessee or had not passed on any technical knowledge, skill, experience or processes, which enables the employees of the assessee company to perform services in future independently. Accordingly, assessee submitted that the payment made by the assessee to foreign vendors do not constitute payment for fees for technical services and therefore no taxes are deductible from same under section 195 of the Act. The Assessing Officer vide order dated 30/03/2021, passed under section 201(1) and 201(1A) read with section 195 of the Act did not agree with the submissions of the assessee and held that payments made by the assessee to the foreign vendors fall under the category of '*fees for technical services*' as defined in section 9(1)(vii) of the Act. Accordingly, on account of failure to deduct tax at source, assessee was deemed to be an assessee in default within the meaning of section 201(1) of the Act and assessee was directed to pay amount of Rs. 16,98,611, being

taxed not deducted at source and interest of Rs. 10,19,166, under section 201(1A) of the Act.

4. Against the aforesaid order, assessee filed appeal before the learned CIT(A). Vide impugned order dated 20/05/2022, learned CIT(A) dismissed the appeal filed by the assessee on the basis that assessee has opted for resolution of this dispute under Direct Tax Vivad Se Vishwas Act, 2020 (‘*VSV Act*’). Being aggrieved, assessee is in appeal before us.

5. During the course of hearing, learned Authorised Representative (‘*learned AR*’) submitted that assessee had made remittance both to resident and non-resident vendors, during the year under consideration. In respect of transaction with resident vendor, wherein assessee was deemed to be an assessee in default and interest under section 201(1A) of the Act was levied, assessee sought resolution of the dispute under VSV scheme. However, in respect of transaction with non-resident vendor, no application was filed under VSV scheme. The learned AR further submitted that by referring to proceedings under VSV scheme in respect of transactions with resident vendor, learned CIT(A) dismissed the appeal filed by the assessee, which was, in fact, in respect of transaction with non-resident vendor. In this regard, the learned AR placed on record the relevant forms under VSV scheme in respect of transaction with resident vendor.

6. On the other hand, learned Departmental Representative submitted that whether assessee had opted for VSV scheme in respect of transaction with resident vendor or non-resident vendor needs to be examined.

7. We have considered the submissions of both sides and perused the material available on record. From the impugned order passed by the learned CIT(A), it is evident that the appeal filed by the assessee was dismissed on the basis of VSV scheme opted by the assessee. During the course of hearing before us it has been submitted that the VSV scheme was opted by the assessee in respect of transaction with resident vendor, however, the issue in dispute in the present appeal is in respect of transaction with non-resident vendor. Since, the aforesaid aspect needs verification, we deem it appropriate to restore the assessee's appeal before the learned CIT(A) for *de novo* adjudication. We further direct that no order shall be passed without affording opportunity of hearing to both the sides. We also direct that if, upon verification, it is found that the VSV scheme was opted by the assessee in respect of transaction not in dispute in the present proceedings, then the grounds raised by the assessee be decided on merits. We order accordingly. As a result, grounds raised by the assessee are allowed for statistical purpose.

8. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 11/10/2022

Sd/-	**Sd/-**
PRAMOD KUMAR	**SANDEEP SINGH KARHAIL**
VICE PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, DATED: 11/10/2022

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Mumbai City concerned;

(5) The DR, ITAT, Mumbai;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai