

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

&

SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 239/Kol/2022

Assessment Year: 2006-07

Warner Multimedia Limited C/o B.C. Purohit & Co. 2, G.C. Avenue 2 nd Floor, Room No. 5 Commerce House Kolkata - 700013 PAN : AABCC0225H	Vs	Income Tax Officer, Ward-8(2), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Miraj D. Shah, Advocate
Revenue by :	Shri Vijay Kumar, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 29/09/2022

घोषणा की तारीख/Date of Pronouncement : 31/10/2022

आदेश/ORDER

PER SHRI MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "ld. CIT(A)") dt. 12/03/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2006-07.

2. The assessee has raised the following grounds of appeal:-

"1. For that the ld. CIT(A), NFAC has erred in law as well as on facts of the case by dismissing the appeal filed by the appellant and confirmed the addition of Rs.2,85,500/- on the ground of non-submission of details regarding payment of the above mentioned amount to different professionals which is not correct as no fixation notice either by offline mode or by online mode was received by the appellant and thereby depriving the appellant of being heard.

2. For that the observations and contentions of the Ld. CIT(A), NFAC while passing order u/s. 250 of the I.T. Act, 1961 by not giving your appellant the chance of being heard on the grounds which are not correct.

3. For that the appellant craves leave to adduce, modify and or alter the grounds at or before hearing."

3. At the outset, the Id. Counsel for the assessee referring to the decision of the Co-ordinate Bench at Rajkot in the case of *Punabhai G. Pardava vs. ITO in ITA No. 219/RJT/2018, order dt. 08/06/2022*, stated that in this decision, the amendment brought in by the Finance Act (No. 2) 2014 effective from 01/04/2015 made in the provisions of Section 40(a)(ia) of the Act have been held to be clarificatory in nature and, therefore, applicable retrospectively as it removes hardships caused to the assessee. Therefore, in place of 100% disallowance of expenditure, the disallowance u/s 40(a)(ia) of the Act was limited to the extent of 30% of such expenditure. It was further submitted that decision of the Tribunal in the case of *Punabhai G. Pardava (supra)* may please be applied on the disallowance made in the case of the assessee u/s 40(a)(ia) of the Act @ Rs.2,85,500/-.

4. Per contra the Id. D/R vehemently argued supporting the order of the lower authorities.

5. We have heard rival submissions and perused the record placed before us. The assessee is a Limited Company and assessment for the Assessment Year 2006-07 was completed u/s 143(3) of the Act on 26/12/2008 assessing the loss at Rs.4,78,634/-. The assessee got part relief by the Id. CIT(A) but then the assessee approached the Tribunal which vide its order dt. 28/02/2019 in ITA No. 564/Kol/2018, remanded the matter back to the file of the Assessing Officer for *de-novo* adjudication of the issue of disallowance u/s 40(a)(ia) of the Act amounting to Rs.2,85,500/-. Thereafter the Id. Assessing Officer completed the assessment u/s 143(3) r.w.s. 254 of the Act on 25/07/2019 and again made the disallowance u/s 40(a)(ia) of the Act for non-deduction of tax at source on the professional charges paid to three persons, namely, Shiv Prasad Swami - Rs.2,00,000/-, Upadhyay & Upadhyay - Rs.42,500/- & Sunil Bhattacharya-Rs.43,000/-. Again the assessee challenged the issue before the Id. CIT(A) but the appeal was dismissed *ex-parte*.

5. Before us, the Id. Counsel for the assessee has referred to the decision of the Co-ordinate Bench at Rajkot in the case of *Punabhai G. Pardava (supra)*, wherein also similar issue came for adjudication and the Tribunal relying on various decision including the decision of ITAT Ahmedabad Bench in the case of *Amruta Quarry Works vs. ITO in IT Appeal 1481 (Ahd.) of 2013, dated 19.7.2016* and decision of the Mumbai Bench of the Tribunal in the case of *Neena Kual vs. Asstt. CIT [IT Appeal No. 1386 (Mum) of 2017, dated 21.05.2019]* held that the amendment brought in by Finance Act No. 2 of 2014 restricting the disallowance u/s 40(a)(ia) of the Act to the tune of 30% of the expenses was made effective from 01/04/2015. But thereafter, clause 14.3. of the explanatory memorandum to Finance Bill 14 was said to be brought to effect to remove hardships faced by the assessee and thus, the said amendment was held to be clarificatory in nature and applicable retrospectively. Since the Id. D/R failed to bring any binding decision in its favour and the decision relied upon by the assessee is squarely applicable on the issue involved in the instant appeal, we are inclined to hold that 100% disallowance of Rs.2,85,500/- made u/s 40(a)(ia) of the Act be restricted to 30% i.e., Rs.85,650/-. Thus the assessee gets relief of Rs.1,99,850/-. Ground Nos. 1 & 2 raised by the assessee are partly allowed.

6. Ground No. 3 is general in nature.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 31st October, 2022 at Kolkata.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 31/10/2022

**Sd/-*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata