

आयकर अपीलीय अधिकरण
मुंबई पीठ “ डी ”
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “ D”, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH , ACCOUNTANT MEMBER

आअसं. 75/मुं/2021 (नि.व. 2011-12)

आअसं. 76/मुं/2021 (नि.व. 2012-13)

ITA NO.75/MUM/2021(A.Y.2011-12)

ITA NO.76/MUM/2021(A.Y.2012-13)

The ACIT CC-1, Thane,
Room No.40, A-Wing, 6th Floor,
Ashar I.T.Park, Road No.16-Z,
Wagle Industrial Estate,
Thane (West) 400 604

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Renaissance Infrastructure,
501, Neelyog Square, Opp.Railway Station,
Ghatkopar (East), Mumbai 400 077
PAN:AAJFR-8593-C

..... प्रतिवादी/Respondent

C.O. NO.98 & 99/MUM/2022

(Arising out of ITA No.76& 75/Mum/2021,A.Y. 2012-13 & 2011-12)

M/s. Renaissance Infrastructure,
501, Neelyog Square, Opp.Railway Station,
Ghatkopar (East), Mumbai 400 077
PAN:AAJFR-8593-C

..... Cross Objector

बनाम Vs.

The ACIT CC-1, Thane,
Room No.40, A-Wing, 6th Floor,
Ashar I.T.Park, Road No.16-Z,
Wagle Industrial Estate,
Thane (West) 400 604

... Appellant in appeal

Assessee By : Shri Gautam Thacker
 Revenue by : Ms. Mahita Nair
 सुनवाई की तिथि/ Date of hearing : 27/10/2022
 घोषणा की तिथि/ Date of pronouncement : 31/10/2022

आदेश/ ORDER

PER BENCH:

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals), Pune-11 [in short 'the CIT(A)'] for the assessment years 2011-12 and 2012-13, respectively. Both the impugned orders are of even date i.e. 27/11/2020.

2. Since, identical grounds have been raised in both these appeals by the Revenue, these appeals are taken up together for adjudication and are decided by this common order.

3. The assessee has filed Cross Objections in the appeal by the Revenue assailing the findings of the CIT(A) on the jurisdictional issue.

ITA NO.75/MUM/2021 & C.O. 99/MUM/2022 (A.Y. 2012-13):

4. The Revenue in appeal has raised following grounds:

“ 1. Whether on the facts and the circumstances of the case, the Ld. CIT(A) was justified in holding that the second proviso to section 40(a)(ia) of the Income-tax Act, 1961 inserted w.e.f 01.04.2013 is retrospective in nature, when in fact said proviso has been inserted only w.e.f 01.04.2013 providing it to be prospective in nature ?

2. Whether on the facts and the circumstances of the case, the Ld, CIT(A) erred in holding that the second proviso to section 40(a)(ia) of the Income-tax Act, 1961 inserted w.e.f 01.04.2013 is retrospective effect despite the fact that the issue of retrospective nature of second proviso to section 40(a)(ia) of the act is admitted and pending before Hon'ble Supreme Court in the case of Cit Vs. Ansal landmark Township Pvt. Ltd.?

3. Whether on the facts and the circumstances of the case, the Ld. CIT(A) erred in overlooking the survivability of the issue involved in the instant appeal, in view of

pendency of the issue of retrospective nature of second proviso to section 40(a)(ia) of the Act that per se provides impetus to the survival of issue?”

5. Shri Gautam Thacker appearing on behalf of the assessee stated at the outset that M/s. Magus Consulting Pvt. Ltd. recipient of the amount has disclosed the income received from the assessee in its return of income filed under section 139 of the Income Tax Act, 1961 [in short ‘the Act’] and has paid due taxes thereon. Thus, the assessee cannot be held to be the assessee in default under the provisions of section 201(1) of the Act, consequently, no disallowance under section 40(a)(ia) of the Act can be made. The Id. Authorized Representative of the assessee vehemently supported the impugned order and prayed for dismissing the appeal of Revenue.

6. Per Contra, Ms. Mahita Nair representing the Department vehemently supported the assessment order. The Id. Departmental Representative submitted that the assessee has paid Rs.4,69,28,589/- for PMC services provided by M/s. Magus Consulting Pvt. Ltd. without deducting tax at source. The assessee was under obligation to deduct withholding tax under section 194J of the Act. Since, the assessee failed to comply with statutory provisions, the Assessing Officer rightly made disallowance under section. 40(a)(ia) of the Act.

7. Both sides heard, orders of authorities below examined. Undisputedly, the assessee failed to deduct tax at source on the payment made to M/s. Magus Consulting Pvt. Ltd. during the period relevant to assessment year under appeal. The aforesaid amount paid was in lieu of professional services, hence, was subject to TDS. During the First Appellate proceedings, the assessee has furnished documentary evidences to substantiate that M/s.

Magnus Consulting Pvt. Ltd. has offered the income received from assessee to tax in its return of income. This fact has not been disputed by the Revenue. The 2nd Proviso has been inserted to section 40(a)(ia) of the Act by the Finance Act, 2012 w.e.f. 01/04/2013. The said proviso grants benefit to the assessee where the assessee fails to deduct tax in accordance with the provisions of Chapter –XVII B, but is not deemed to be an assessee in default under 1st Proviso to sub-section (1) of section 201 of the Act, thus, for the purpose of section 40(a)(ia) it shall be deemed that the assessee has deducted and paid taxes on such sum. In such a case no disallowance under section 40(a)(ia) of the Act is to be made. The Hon'ble Delhi High Court in the case of CIT vs. Ansal Landmark Township Pvt. Ltd. reported as 377 ITR 635 has held 2nd Proviso to section 40 (a)(ia) of the Act applies retrospectively w.e.f. 01/04/2005. The CIT(A) has granted relief to the assessee following the aforesaid decision rendered by Hon'ble Delhi High Court. In the facts of the case and law expounded in the case of Ansal Landmark Township Pvt. Ltd. (supra), we find no infirmity in the impugned order, hence, the same is upheld and the appeal of Revenue is dismissed.

8. The Id. Authorized Representative of the assessee stated at Bar that he is not pressing jurisdictional issue raised in Cross Objections at this stage. In view of the statement made by Id. Authorized Representative of the assessee, the Cross Objections of the assessee are dismissed as not pressed.

ITA NO.76/MUM/2021 & C.O. NO.98/MUM/2022(A.Y.2012-13):

9. Both sides are unanimous in stating that the facts germane to the issue raised in assessment year 2012-13 are identical to the facts in assessment year

2011-12. Therefore, the submissions made for the appeal for assessment year 2011-12 would equally apply to the appeal for assessment year 2012-13.

10. Since, grounds raised by the Revenue and the facts germane to the issue for making disallowance under section 40(a)(ia) of the Act are identical (except for the amount) the findings given while adjudicating appeal of the Revenue for assessment year 2011-12 would mutatis mutandis apply to the assessment year 2012-13. For parity of reasons the appeal of the Revenue is dismissed.

11. The Id. Authorized Representative of the assessee stated at Bar that he is not pressing Cross Objections at this stage. In view of the statement made by Id. Authorized Representative of the assessee, the Cross Objections are dismissed as not pressed.

12. To sum up, the appeals by the Revenue and Cross Objections by the assessee are dismissed.

Order pronounced in the open court on Monday the 31st day of October, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 31/10/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai