

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2968/M/2022
Assessment Year: 2013-14**

Income Tax Officer- 11(1)(1), Room No.201, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Royal Fantasy Construction Pvt. Ltd., Upadhyay Compound, Pump House, Nr. Maruti Mandir, Jijamata Road, Andheri East, Mumbai – 400 093 PAN: AACR9796A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rahul Hakani, A.R.
Revenue by : Shri Saurabh Kumar Rai, D.R.

Date of Hearing : 11 . 01 . 2023
Date of Pronouncement : 23 . 01 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Income Tax Officer-11(1)(1), Mumbai (hereinafter referred to as ‘the Revenue) by filing the present appeal, sought to set aside the impugned order dated 21.09.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2013-14 on the grounds inter-alia that :-

“1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the addition of Rs.1,79,59,650/- of the disallowance u/s.40(a)(ia) of the Income Tax Act, 1961 made on account of non-deduction of tax at sources (TDS), without appreciating the nature transactions for which payments were made by the assessee?”

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the payment of Rs. 1,79,59,650/- under Temporary Alternative Accommodation Agreement does come under the definition of rent under section 1941 of the Income Tax Act, 1961 while the definition of Rent itself means, “.....Any other agreement or arrangement for the use of land or a building.

3. The appellant prays that the order of the CIT (A) of the above grounds be set aside and that the AO be restored.

4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : during the scrutiny proceedings the Assessing Officer (AO) flagged the issue that from the perusal of the details filed by the assessee it has come on record that an amount of Rs.1,78,59,650/- has been shown as compensation/rent paid during the year under consideration whereupon TDS provisions contained under section 40(a)(ia) of the Income Tax Act, 1961 (for short 'the Act') are attracted. Since the assessee has failed to deduct the TDS in 28 cases qua the total amount of Rs.1,78,59,650/- claimed to be work in progress (WIP) by the assessee to be carry forwarded to the subsequent years and computed the revised capital WIP on 31.03.2013 at Rs.17,20,12,610/- and WIP of Rs.78,59,650/- is disallowed to be carry forward to the subsequent assessment year and thereby framed the assessment under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the addition made by the AO under section 40(a)(ia) of the Act by allowing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. We have perused the impugned order passed by the Ld. CIT(A) who has duly thrashed the facts in the light of the law applicable thereto in deleting the addition by returning following findings:

“4.2 I have carefully examined the facts of the case, assessment order and reply by the appellant along with case laws and judicial pronouncement in support of its contention. From the assessment order it is seen that AO has made disallowances by invoking the provision of 40(a)(ia) of the IT Act for the violation of TDS provision u/s 194I of the IT Act. The AO has given his detail findings in this regard in the paragraph 4.3 of his assessment order which have been duly considered by the undersign. In nutshell it can be said that AO has held that the appellant has violated the TDS provision of section 194I and therefore disallowances u/s 40(a) (ia) of the IT Act.

4.3 The appellant has challenged the disallowances on account of violation of TDS and invocation of section 40(a)(ia) of the IT Act and has argued that AO has grossly erred in making such disallowances in the assessment order. The appellant has argued that AO has wrongly disallowed the addition made to work-in-progress paid by it to the land lords tenants on account of non deduction of TDS u/s 40(a)(a) of the IT Act. The appellant company has stated that an aggregate sum of Rs. 2,01,27,386/- has been paid as hardship compensation to the owner's of the land and tenants for shifting temporarily from the land to be developed by the appellant company. Further, it has been argued that a

said of sum of money was not a claim as an expense in the profit and loss account and was reflected as project cost under schedule 17 The AO has disallowed Rs. 1,78,59,650 under 40(a)(ia) of the IT Act out of the aggregate payment of Rs. 2,01,27.386/. Further, it has been argued that the said payment were made to land lord/tenants as hardship compensation and/or reimbursement of expenses for alternate accommodation temporarily. Therefore, it can be said that the person to whom such payment were neither lessor/lessee of the appellant company and that such payment were not in the nature of rent. The relation between land lord/tenants and the appellant company is that of builder and the appellant company is making payment in the nature of reimbursement/compensatory payment towards his/her expense for shifting and temporary accommodation. There is no lessor/lessee relation as such. Further, the appellant has said that the payment has been made under the agreement for Slum Rehabilitation which has been approved by Slum Development Authority (SRA) In support of its contention the appellant has relied upon the decision of jurisdictional Tribunal where under identical cases said disallowances made by the AO has been dismissed. Which are given as under:

- 1. Sahana Dewellers Pvt Ltd vs. ITO [2016] 67 taxmann.com 202 (Mum Tribunal) - In the said judgment it was held that where assessee-builder entered into contract for development of SRA project (Slum rehabilitation), since assessee had to pay certain compensation to slum developers due to its failure to provide alternative accommodation during period of construction, said payment not being in nature of "rent did not require deduction of tax at source under section 194I of the Act.*
- 2. Shanish Construction Pvt Ltd vs. ITO ITA Nos.6087 & 6088/Mum/2014, Judgment dated 11.01.2017. Following the aforesaid judgment, the Hon'ble ITAT held as under "In the facts of the case before us also, the assessee has merely paid compensation to the members of the society. It is for them to utilise this amount for payment of rent or otherwise. Even if it has been paid as rent the contract of rent/lease would be between the members and their respective landlords from whom these members would take premises (alternative accommodation) on rent/lease, and then the amount payable by these members to their respective landlords may be liable for deduction of TDS us 194-1 if applicable upon them. As far as assessee is concerned there was no transaction, much less, transaction of rent between the assessee and the landlords of members of the society. Therefore, it would be highly unjustified to treat this amount as payment of rent and to make it liable for deduction of tax at source u/s 194-1. Under these circumstances, invoking of provisions of section 40(a)(ia) is unjustified. Thus, the disallowance made by the lower authorities is legal and therefore, directed to be deleted. Ground 1 is allowed."*

4.4 In the light of above discussion and in view of the jurisdictional ITAT decision it is seen that there is force in the argument and explanation of the appellant company. It is important to note that appellant company has not booked any expenses in the Profit & Loss Account with regard to compensation/hardship payments. There is no clear cut relationship of lessor and lessee. From the facts of the case it emerges that the payment was actually compensatory in nature, where application of TDS provision u/s 194I is not applicable. The jurisdictional ITAT in the case of Sahana Dewellers Pvt Ltd vs. ITO [2016] 67 taxmann.com 202 (MumTribunal) had held that the nature of payment is not 'rent. Therefore, the disallowances on account of non deduction of TDS and resulting addition us 40(a)(a) is not warranted. Accordingly, AO is directed to delete the addition made u/s 40(a)(ia) of the IT Act. Therefore, these grounds of appeal are allowed.”

6. We have perused the order passed by the Ld. CIT(A) which does not call for any inference being based upon fundamental principle of law that when the assessee company has not booked any expenses in the profit and loss account qua compensation/hardship payment no relationship of lesser and lessee between assessee and the payer have come on record. Moreover, the payment made is of compensatory nature where provisions contained under section 194-I of the Act as held by the AO are not attracted. Furthermore, the payment in question has been made as per agreement for slum rehabilitation which was duly approved by Slum Development Authority (SDA). So in view of the matter, we find no illegality or perversity in the impugned order passed by the Ld. CIT(A), hence appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 23.01.2023.

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Mumbai, Dated: 23.01.2023.

* Kishore, Sr. P.S.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.