

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 251/Del/2021, A.Y. 2008-09

ITO Ward-23(1), New Delhi	Vs.	Shivaai Industries Pvt. Ltd. E-3/38, IInd Floor, Section- 7, Rohini New Delhi-110085 PAN : AABCS4829F
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Assesseeby	Sh. R.K.Gupta, CA
Revenue by	Ms. Sapna Bhatia, CIT-DR

Date of hearing:	24.04.2023
Date of Pronouncement:	27.04.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Revenue against the order dated 23.09.2020 of CIT(A)-8, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 10278/18-19 arising out of an appeal before it against the order dated 14.12.2018 passed u/s 254/147/143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-23(2), New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. The revenue is in appeal raising following grounds :-

"1. Whether, on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in deleting the disallowance of

Rs,17,67,16,747/- under section 40(a)(ia) applicable w.e.f 01/04/2013 and is retrospective in operation?

2. Whether, on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in relying upon Delhi High Court decision in the case of CIT vs Ansal Land Mark Township Pvt Ltd reported as (2015) 377 1TR 635 (Del) without appreciating that appeal has been admitted by Hon'ble Delhi High Court against this judgment?

3. "The Ld.CIT(A) failed to appreciate that second proviso to section 40(a)(ia) and proviso 201 of the Income Tax Act,1961, inserted by the Finance Act,2012 and made effective from 01.04.2013 and 01.07.2012 respectively are retrospective in nature?"

4. The Appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal?

4. Ld. DR has confined the arguments to the grounds raised while Ld. AR submitted that Ld. CIT(A) has rightly followed the decision of Hon'ble Delhi High Court.

5. The appreciation of record shows that the assessment of assessee was completed by making addition u/s 40(a)(ia) of the Act for failure to deduct tax on site rent in respect of contract with DTC for display of advertisement on DTC Bus Queue Shelters and Times Keeper Booths. Aggrieved with the addition made in the assessment order dated 28.03.2014 passed u/s 147/143(3), the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A)-28 vide order dtd 19.10.2015 in Appeal No. 268/14/-15/54/15-16 allowed relief to the assessee and deleted the addition of Rs. 17,67,16,747/- for A.Y 2008-09 made by the AO u/s 40(a)(ia) by following order of his predecessor CIT(A) in assessee's own case in A.Y 2007-08. The department did not accepted the findings of the Ld. CIT(A) and filed further appeal before the Hon'ble ITAT. The Hon'ble ITAT vide its order in ITA No. 6484/Del/2015 dated 16.03.2018 set aside the matter to the file of AO and directed that the case may be decided after verification of condition of proviso to section 201(1) and in

view of the Tribunal's findings in assessee's own case in AY 2007-08 wherein similar type of issue involved.

5.1 The set aside proceedings were taken up by the Ld. AO in this case. and the Ld. AO passed an order on 14.12.2018 u/s 254/147/143(3) of the Act and the amount of Rs. 17,67,16,747/- has again been added to the income of the assessee company on account of violation of provisions to section 40(a)(ia) of the Act.

5.2 Ld. CIT has observed;

*“Whereas, the set aside matter before the AO was for carrying out the said verification only in respect of the issue of amounts payable to DTC as per department's appeal in respect of which the assessee had not deducted tax and to which the provisions of section 40(a)(ia) were attracted unless the assessee's case fell under second proviso to section 40(a)(ia) as was held by the Jurisdictional High Court in the case of **CIT v. Ansal Landmark Township (P) Ltd. [2015] 377 ITR 365 (Delhi)**. And also finding of the Tribunal in assessee's own case in A. Y. 2007-08. The remand was only for verification of payments to DTC as the department itself was not in appeal against the payments to MCD, in the light of proviso to section 201 and the order of the ITAT for A. Y. 2007-08.*

5.3 Ld. CIT(A) concluded that;

“I have also considered the documents submitted viz. MCD & DTC payment ledger account, relevant bank statement indicating payment to DTC & MCD by the assessee in respect to prove the payments made to DTC & MCD at Pg. No. 46 to 74 of paper books, also the copy of assessment order in the case of DTC for the AY. 2008-09 dated 14-12-2010. The appellant had filed these necessary details and the documents before the assessing officer also during the set aside

proceedings on 22-05-2018. The AO had placed them on record and no adverse finding has been given as far as compliance to the conditions specified in proviso to section 201(1) of the Income Tax Act are concerned. Thus, the same seems to be acceptable to him. The scope of power of the AO in this case, as per directions of the Appellate Tribunal was to verify and to decide the issue in the light of finding of the Tribunal in the case of the assessee for A, .Y. 2007-08. But the AO has travelled beyond the directions of ITAT in ITA No. 6484/Del/2015 dated 16.03.2018 in holding vide para 7 of his order that the amendment by the Finance Act 2012 inserting second proviso to section 40(a)(ia) was 'prospective w.e.f. 01-04-2013 and the department has not accepted the decision of the Hon'ble Jurisdictional High Court in the case of Ansal Landmark Township (P) Ltd. and department's SLP is pending before the Apex Court. He again made addition of Rs. 17,67,16,747/- u/s 40(a)(ia) of the Income Tax Act."

6. It is admitted fact that Ld. CIT(A) has merely followed the judgment in favour of the assessee in his own case. Hon'ble Delhi High Court by order dated 21.05.2018 dismissed the the appeal of revenue vide ITA No. 612/2018 with following findings :-

"This issue is covered by a judgment of this Court in Commissioner of Income Tax vs. Rajinder Kumar 2013 TIOL 547 and also the Commissioner of Income Tax vs. Ansal Land Mark Township Pvt. Ltd. (2015) 377 ITR 365 (Delhi)."

7. Consequently finding no error in the conclusion of Ld. CIT(A) the ground raised have no substance and **the appeal of Revenue is dismissed.**

Order pronounced in the open court on 27 April, 2023.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER
Date:- 27.04.2023

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI