

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No. 237/Hyd/2019		
Assessment Year: 2015-16		
Café D Lake (P) Ltd Hyderabad PAN:AACCC2044F	Vs.	Income Tax Officer Ward 1(4) Hyderabad
(Appellant) PAN:		(Respondent)
Assessee by: Shri P. Murali Mohan Rao, CA		
Revenue by: Shri Kumar Aditya, DR		
Date of hearing: 24/05/2023		
Date of pronouncement: 25/05/2023		

ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 03.10.2018 of the learned CIT (A)-1, Hyderabad relating to A.Y.2015-16.

2. Brief facts of the case are that the assessee is engaged in the business of hospitality services and filed its return of income for the A.Y 2015-16 on 27.09.2015 declaring total income of Rs.73,22,170/- under normal provisions and Rs.31,82,596/- under the provisions of section 115JB. The case was selected for scrutiny under CASS and statutory notices u/s 143(2) and 142(1) were issued to which the AR of the assessee appeared before the Assessing Officer from time to time and furnished the requisite

details. Thereafter the Assessing Officer completed the assessment on 29.12.2017 and determined the total income of the assessee at Rs.87,85,283/-.

3. In appeal, the learned CIT (A) upheld the addition made by the Assessing Officer in absence of any documentary evidence.

4. The learned Counsel for the assessee submitted that the learned CIT (A) dismissed the appeal of the assessee on the issue of addition towards disallowance of payment of employee contribution of PF & ESI amounting to Rs.10,27,979/- and Rs.2,24,261/- respectively without affording reasonable opportunity of being heard and further disallowed u/s 40(a)(ia) as the assessee failed to provide necessary information.

5. The Tribunal vide order dated 3.2.2021 has dismissed the appeal of the assessee. Thereafter the assessee had preferred the M.A No.61/Hyd/2021 whereby the order of the Tribunal was sought to be recalled. The contention of the learned Counsel for the assessee are as per Para 2.3 of the M.A reads as under:

“2.3 Your Honors vide its order in ITA 237/Hyd/2019 dated 03.02.2021 has not adjudicated the grounds with regard to disallowance u/s 40(a)(ia) with a view that the learned CIT (A) has already deleted the addition made by the Assessing Officer. But the fact remains that the learned CIT (A) has not deleted the addition and relevant extract of the CIT (A) order produced as under for your instant perusal:

“7.3 The submissions of the appellant have been carefully considered. The appellant has not submitted form 26AS regarding deduction of TDS. The appellant before me neither appeared nor submitted any evidence to substantiate that the TDS was deducted on 7,02,910. In absence of any documentary evidence, the addition made by the Assessing Officer is upheld”.

6. The Tribunal after hearing both the parties have recalled its order vide order dated 3.2.2021 vide its order dated 6.3.2023 for limited purposes of adjudicating the ground relating to disallowance u/s 40(a)(ia) of the Act.

7. The contention of the learned AR before us that the other party had deposited the taxes in accordance with 2nd proviso of section 40(a)(ia) and therefore, the above said fact is required to be verified and thereafter the assessee is entitled to relief.

8. Per contra, the learned DR had submitted that despite affording sufficient opportunity, the assessee had not provided the above said information and our attention was drawn to para 7.2 and 7.3 of the order.

9. We have heard the rival arguments made by both the sides, perused the material available on record. Undoubtedly if the assessee submits that the other party had paid the taxes on the amount on which the assessee had failed to deduct the taxes then in view of the 2nd proviso to section 40(a)(ia) of the Act, it is for the assessee to prove this and thereafter assessee is entitled to the deduction. The above said information was not provided by the assessee before the lower authorities. Now the assessee is willing to provide the above said information to the satisfaction of the Assessing Officer. In the light of the above, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to carry out fresh exercise of verification of the above noted facts, i.e. whether the above party to whom the payment was made by the assessee towards the audit & interest expenditure, have paid due taxes on the amount so received from

the assessee within a time frame granted by the Act. With the above said observation, the issue of non-deduction of TDS u/s 40(a)(ia) on the above amount paid is restored to the file of the Assessing Officer to decide the issue afresh after affording reasonable opportunity of being heard to the assessee. Thus, the issue of section 40(a)(ia) is restored to the file of the Assessing Officer.

10. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 25th May, 2023.

Sd/- (R.K. PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 25th May, 2023.

Vinodan/sps

Copy to:

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2	Income Tax Officer Ward 1(4) Hyderabad
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order