

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM**

आयकरअपीलसं/I.T.A. No.153/Mum/2023  
(निर्धारणवर्ष/Assessment Year: 2018-19)

M/s Akshar Realtors Unit No.0047, O Wing, Ground Floor, Akshar Business Park, Plt. No. 03, Sector 25, Vashi Navi Mumbai-400 705	<b>बनाम</b> Vs.	National e-Assessment Centre, Delhi Through PCIT (Central), Mumbai-2 1920, 19 <sup>th</sup> Floor, Air India Building, Nariman Point Mumbai-400 021
<b>स्थायीलेखासं/जी. आइ. आर. सं./PAN/GIR No: .AAQFA7737E</b>		
अपीलार्थी/ <b>Appellant</b>	..	प्रत्यर्थी / <b>Respondent</b>
Assessee by:	None	
Revenue by:	Shri Bharat Andhale	

सुनवाईकीतारीख/Date of Hearing : 15/03/2023  
घोषणाकीतारीख/Date of Pronouncement : 12/05/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee company against the order of Ld. Commissioner of Income Tax Appeals-51, Mumbai [hereinafter referred to as the "Ld. CIT(A)"] dated 20.12.2022 for assessment year 2018-19.

2. The grounds of appeal raised by the assessee are as under:

"1. BECAUSE, the Ld. CIT(A) has erred in law and on facts in confirming the disallowance of Rs.14,79,327/- being 30% of interest expenditure of Rs.49,31,090/- u/s 40(a)(ia) of the Act ignoring the fact that the Appellant has deducted TDS on the said interest amounting to Rs.4,93,109/- and duly deposited the same into the government account in subsequent assessment year i.e. AY 2019-20.

2. BECAUSE, the Ld. CIT(A) has erred in law by not dealing with important grounds of the Appellant which were raised in appeal memo filed before Ld. CIT(A) and are as under:



- a. Ground No. 5: the disallowance of Rs.14,79,327/- ought to be allowed as deduction in computing the income of AY 2019-20 as per 1<sup>st</sup> proviso to section 40(a)(ia) since TDS has been duly deposit in AY 2019-20.
- b. Ground No. 6: the disallowance of Rs.14,79,327/- could only reduce the work-in-progress and cannot be treated as income of the year.
- c. Ground No. 7: an amount of Rs.14,79,327/- ought to be added as allowable expense in the work in progress for AY 2019-20 when the full TDS has been deposited into the government account.”

3. None appeared for the assessee. However, on perusal of the grounds of appeal raised by the assessee, it is discerned that assessee is aggrieved by the action of the Ld. CIT(A) confirming the disallowance of Rs.14,79,327/- being 30% of the interest expenditure of Rs.49,31,090/- u/s 40(a)(ia) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by ignoring the fact that the assessee had deducted TDS on the said interest amount and duly deposited the same in the Government Account in the subsequent assessment year for AY 2019-20. According to the assessee, since the assessee has deposited the TDS amount in AY 2019-20, it should get benefit of first proviso to section 40(a)(ia) of the Act.

4. The brief facts of the issue is that assessee firm is engaged in the business of real estate development constructing the Project “One Akshar” and was following ‘*project completion method*’, which has been accepted in the earlier years by the AO. Assessee in this relevant AY had filed ROI on 31.10.2018 by declaring total income of Rs Nil which was processed u/s 143(1) of the Act. Later the case was selected for scrutiny. And the AO noted that during the year under consideration, the assessee had paid an amount of Rs.59,50,663/- as interest to M/s Hinduja Leyland Finance Ltd which expense was capitalised in work-in-progress of project ‘one Akshar’. In this regard, AO noted that assessee had deducted TDS of Rs. 5,95,067/- (10% of interest amount) but remitted in



government account only Rs.1,01,958/- instead of Rs.5,95,067/-. So, Assessee was asked to furnish the documentary evidence regarding balance tax deducted amounting to Rs.4,93,109/-. The assessee in its submission had stated that the TDS on interest on loan from M/s Hinduja Leyland Finance Ltd. had been duly remitted after the due date of filing of return for the said assessment year. And the photocopy of challan was furnished by the assessee which revealed that payment of Rs.4,93,109/- was made on 30.10.2019. Taking this fact in to consideration, the AO noted that as per section 40(a)(ia) of the Act, the claim of expenditure cannot be allowed up to 30% of the claim, since the assessee had not deducted the tax or not paid into Government Account after deduction of tax before filing of return. Hence, AO disallowed an amount of Rs.14,79,327/- (30 % of Rs.49,31,090/-) and added the same to the total income of the assessee. On appeal, the Ld. CIT(A) noted that the assessee had deducted Rs.5,95,067/- being 10% of the interest amount of Rs.59,50,663/-, but only remitted TDS to the extent of Rs.1,01,958/- as on 31.10.2018 i.e. before filing return of income u/s 139(1) of the Act and short TDS was to the tune of Rs.4,93,109/- which was deposited only on 30.10.2019 (next year). Therefore, according to the Ld. CIT(A), since the assessee has not remitted TDS of Rs. 4,93,109/- to the Government Account before filing of the return, 30% of the expenditure claimed is not allowable and confirmed the action of AO. Aggrieved the assessee is before us.

5. The main plea of the assessee is that in the next year i.e. on 31.10.2019 the assessee has remitted the balance TDS of Rs. 4,93,109/- on the aforesaid interest expenditure in Government treasury. Therefore, assessee has sought benefit of the same before the Ld. CIT(A) but he ignored it. For better



understanding the grounds raised by the assessee, we reproduce section 40(a)(ia) of the Act, which is as under:

**Amounts not deductible.**

**Section 40;** Notwithstanding anything to the contrary in section 30 to [38], the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession,”

(a) .....

(ia) [thirty per cent of any sum payable to a resident], on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, [has not been paid on or before the due date specified in sub-section 1 of section 139:]

[Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, [thirty per cent of] such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:]

6. From a bare reading of the aforesaid provision, it is clear that if TDS need to be deducted by an assessee before making any payment and claim as deduction, then assessee's claim of expenditure is not allowable as deduction, unless assessee had deducted at source tax under Chapter XVII-B and has paid on or before the due date specified in sub-sec. 1 of sec.139 of the Act (return of income). However, according to first proviso [supra] the ibid claim of expenditure is allowable as deduction in a subsequent year, provided assessee has remitted the TDS in that previous year. So, therefore as per the first proviso to section 40(a)(ia) of the Act, once TDS amount is deducted as per chapter XVII-B of the Act and has been paid in the Government Account, then such expenditure shall be allowed as deduction, since in the present case the assessee claims to have deposited out of Rs. 5,935,067/- (TDS) only Rs. 1,01,958/- before ROI was filed for AY 2018-19, the AO disallowed 30% of the



expenditure claimed by it i.e. 30% of Rs. 49,31,390 = Rs. 14,79,327/-. However the assessee brought to the notice of Ld. CIT(A) that it has remitted Rs. 4,93,109/- (balance TDS) on 30.10.2019 before filing of ROI for AY 2019-20, which has been ignored by Ld. CIT(A). Now the question is since assessee remitted the TDS balance amount of Rs. 4,93,109/- on 30.10.2019, the alternate prayer of the assessee is that disallowance of Rs.14,79,327/- made in AY 2018-19 should be allowed for AY 2019-20, which prayer we find force in the light of first proviso to section 40(a)(ia) of the Act. Therefore, the impugned order of the Ld. CIT(A) is set-aside and issue is remitted back to the file of AO to verify as to whether the assessee had remitted the balance TDS amount to the tune of Rs.4,93,109/- on 30.10.2019 and if so, the disallowance made in respect of interest expenditure/claim for AY 2018-19 be allowed for AY 2019-20 as per first proviso to section 40(a)(ia) of the Act and in accordance to law. Needless to say, assessee may be heard before passing the order.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on this 12/05/2023.

**Sd/-**

(AMARJIT SINGH)

**ACCOUNTANT MEMBER**

**Sd/-**

(ABY T. VARKEY)

**JUDICIAL MEMBER**

मुंबई/Mumbai

दिनांक/Dated : 12/05/2023

*Mahesh R. Sonavane*

**प्रतिलिपिअग्रेषितCopy of the Order forwarded to:**

1. अपीलार्थी/The Appellant
2. प्रतिवादी /The Respondent



3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि ,आय ,.अपी.अधि.मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

// True Copy//

Dy/.Asstt.Registrar

**ITAT, Mumbai**