

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2214/Del/2016
Assessment Year: 2009-10

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| M/s. IREO (P) Ltd A-11, 1st Floor, Neeti Bagh, New Delhi PAN No.AAACO6644B (APPELLANT) | Vs | ACIT Cent. Circle – 26 New Delhi (RESPONDENT) |
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|---------------|---------------------------|
| Appellant by | Sh. S. Krishnan, Advocate |
| Respondent by | Sh. Waseem Arshad, CIT DR |

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|------------------------|------------|
| Date of hearing: | 05/07/2023 |
| Date of Pronouncement: | 07/07/2023 |

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-29, New Delhi dated 29.02.2016 pertaining to A.Y.2009-10.

2. The grievance of the assessee read as under :-

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming disallowance of*

Rs.46,71,500/-, against 'Scrutiny Fees'.

2. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in returning erroneous finding of fact, inter-alia at Para 9.5 of the impugned order, as to payment of Scrutiny fees not having been made by the Assessee, when:*

a. *There was submission duly placed in the impugned order, vide Para 6.4 (Page 8), that documents evidencing proof of payment were not even before the AO;*

b. *In any event, the finding is erroneous on facts.*

3. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in holding that the payment of Scrutiny fees had not linkage with the Assessee's business.*

3. The bone of contention is the claim of written off scrutiny fees of Rs.46,71,500/- in the P & L account by the assessee.

4. During the course of the scrutiny assessment proceedings the AO noticed that the assessee has written off scrutiny fees as under :-

| SCRUTINY FEE WRITTEN OFF | | | |
|--------------------------|---|----------------------|---------------|
| Effective Date | Description Subledger | Vendor/Customer Name | Amount in Rs. |
| 31-Jan-2009 | Being application of CC license of 3.9375 Acres applied for Sec-61 in SU-Estate withdraw and License Fee paid earlier in relation to it be adjusted from PC license applied in Commander of 290 acres and SF be lapsed. | DTCP, Haryana | 2,80,000 |
| 31-Jan-2009 | Being application of CP license of 13.71 Acres applied for Sec-61 in SU-Estate withdraw and License Fee paid earlier in relation to it be adjusted from PC license applied in Commander of 290 acres and SF be lapsed. | DTCP, Haryana | 13,65,000 |
| 31-Jan-2009 | Being application of CP license of 7.00 Acres applied for Sec-58 in SU-Estate withdraw and License Fee paid earlier in relation to it be adjusted from CL applied in SU-Estate of 3.95 acres (earlier 2.73 acres) and SF be lapsed. | DTCP, Haryana | 7,00,000 |
| 28-Feb-2009 | Being application of Commercial license of 1.02 Acres applied for Sec-65 in SU-Estate withdraw and License Fee paid to be adjusted from Comm. Colony license applied in SU for 3.65 acres at sec-65 and Scrutiny fee lapsed. | DTCP, Haryana | 72,200 |
| 31-Mar-2009 | Being scrutiny fee amount of 24.10 acres written off (License applied in Adson Software returned by DTCP) | DTCP, Haryana | 22,54,300 |
| | TOTAL | | 46,71,500 |

5. The assessee was asked to substantiate each expense with supporting bills/ vouchers. In its reply the assessee has simply stated that it has written off Rs.46,71,500/- being scrutiny fees paid to Directorate of Town and Country Planning HUDA and

submitted the copy of the ledger account. The AO observed that the assessee has paid the impugned license fees on behalf of SU Estates Private Limited, Commander Realtors Pvt. Ltd. and Adson Software Pvt. Ltd., therefore, the assessee is not entitled for the claim and disallowed the same.

6. Assessee carried the matter before the CIT(A) and reiterated its claim. The CIT(A) was not convinced with the claim and dismissed the appeal. The relevant observations of the CIT(A) is a under :-

- (i) The payments for scrutiny has been made alongwith application for license fees by other parties and not by the appellant.*
- (ii) These payments does not belongs to the year under consideration.*
- (iii) The application was subsequently withdrawn by the applicants.*
- (iv) The appellant is not the owner of property.*
- (v) There is no direct dealing by the appellant with the DTCP Haryana.*
- (vi) In the withdrawal letter nothing has been mentioned about the forfeiture.*
- (vii) Interestingly 3 withdrawal letters issued by DTCP Haryana to various third parties relates to the financial year 2008-09 whereas one letter addressed to Adson Software is dated 01.12.2009 No business linkages has been established.*
- (viii) No business linkages has been established*

7. Before us the Counsel for the assessee, referring to the documentary evidences, assailed each and every adverse

observations of the First Appellate Authority. We are surprised to find that documents/ evidences referred by the Counsel do not find any place neither in the assessment order nor in the order of the first appellate authority.

8. It appears that the assessment and the appellate proceedings have been completed without understanding the related documents / evidences. The claim that the assessee has made the payment for and on behalf of SU Estates Private Limited, Commander Realtors Pvt. Ltd. and Adson Software Pvt. Ltd. needs to be verified. The claim that the impugned payments have been made pursuant the written understanding between the assessee and the aforementioned parties need to be verified.

9. The claim that all the payments have come either from the bank account of the assessee or from the bank accounts of the respective parties need to be verified. The claim that the license application was withdrawn by the parties but at the same time the fee paid was adjusted with some other contract as per the letter of the Directorate Town and Country Planning need to be verified.

10. All that is mentioned here in above are part of the submissions of the Counsel but no mention in the orders of the authorities below. In the interest of the justice and fair play we restore the issue to the files of the AO. The assessee is directed to furnish all the related documents before the AO and explain why

the impugned payments have been made by it. The AO is directed to examine the same and decide the issue afresh after affording a reasonable and sufficient opportunity of being heard to the assessee.

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

Order pronounced in the open court on 07.07.2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Dated: .07.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi