

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.84/Ind/2023
(Assessment Years:2012-13)

ITO-1(1) Bhopal	Vs.	M/s Friends Associates Shop No.32, G.T.B. Complex New Market, Bhopal
(Appellant / Revenue)		(Assessee)
PAN: AACFF 4247J		
Revenue by	Shri Ashish Porwal Sr. DR	
Assessee by	None	
Date of Hearing	11.09.2023	
Date of Pronouncement	13.09.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the Revenue is directed against the order dated 27.01.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2012-13.

2. The assessee has not been appeared in this appeal since beginning despite the notice issued through RPAD as well as e-mail to ID given in Form No.36. Thereafter, the Bench directed for the services of notice to the assessee through AO. The AO has filed the report of the services whereby the notice was served to the assessee on 5th August 2023. Further the notice sent through e-mail ID was also delivered as per the status of delivery placed on record. The AO has sent a copy of the service

report along with letter dated 16th August 2023. Accordingly the Bench is of the view that the assessee/respondent is not interested in contesting this appeal filed by the revenue and proposes to hear and disposed of this appeal *ex-parte*. The revenue has raised following grounds of appeal:

"On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in directing the A.O. to limit the disallowance to the extent of 30% on account of non-deduction of TDS instead of Rs. 1,00,82,950/- disallowed by the A.O."

3. Ld. DR has submitted that initially the assessment was reopened vide notice u/s 148 issued on 22.03.2019 and the assessment u/s 143(3) r.w. section 148 was completed on 19.12.2019. Subsequently, the AO initiated the proceedings u/s 154 of the Act to rectify the mistake of allowing the claim of deduction in respect of the expenditure on which no TDS was deducted as reflected in the tax audit report in form 36. Ld. DR has submitted that the AO while passing the order u/s 154 of the Act dated 24.02.2022 made a disallowance of Rs.1,00,82,950/- u/s 40(a)(ia) of the Act. On appeal the Ld. CIT(A) has restricted the disallowance made by the AO u/s 40(a)(ia) of the Act to 30% instead of 100% disallowance made by the AO. He has pointed out that even before the Ld. CIT(A) the assessee did not file any record or submissions in support of the grounds of appeal but the Ld. CIT(A) has granted relief to the extent of 60% of the expenditure disallowed by the AO u/s 40(a)(ia) of the Act. He has relied upon the order of the AO passed u/s 154 of the Act.

4. As regards the tax effect in the present appeal the Ld. DR has submitted that this case falls in the exceptions provided in the CBDT Circular No.17/2019 as the order u/s 154 was passed by the AO based on the audit objection. He has referred to the authorization for filing the appeal wherein despite the low tax effect the AO was authorized to file the appeal as the case falls in the exceptions of CBDT circular.

5. We have considered the rival submissions as well as relevant material on record. The AO has made disallowance u/s 40(a)(ia) of the Act for want of TDS on various expenses given in table as under:

No.	Name (whose paid)	Date	Voucher no.	Amount	Progress agency wise
1	Pragati Associates	27.9.11	89	1250000	4902000
		29.9.11	90	677000	
		12.12.11	187	1525000	
		15.12.11	198	750000	
		15.12.11	199	700000	
2	Shri Mukesh Maran	23.7.11	46	62200	80200
		13.10.11	106	18000	
3	Krishna Industries	14.10.11	107	48000	108000
		31.2.12	340	60000	
4	Shri Kiyakat Khan Civil & Road Contracotr	1.12.11	169	160627	490000
		1.12.11	171	329373	
5	Kimplas Piping System Ltd.	31.3.12	339	892570	892570
6	Om Contruction	31.3.12	341	1880000	1880000
7	Vikald Enterprises	31.3.12	352	95000	95000
8	Shri Saurabh Maran	31.3.12	363	450000	450000

9	Shri Ram Charan Pandey	31.3.12	364	375000	375000
10	Shri Mohit Prasar	31.3.12	365	350000	350000
11	Shiv Shakti Enterprises	31.3.12	366	460000	460000
	Grant Total			1,00,82,950	1,00,82,950

5.1 Thus the AO made the disallowance of Rs.1,00,82,950/- u/s 40(a)(ia) of the Act for want of TDS while passing the order u/s 154 dated 14.02.2022. The Ld. CIT(A) has not disturbed the quantum of expenses which were considered by the AO for making disallowance u/s 40(a)(ia). However since there was an amendment in the provisions of section 40(a)(ia) vide Finance Act 2014 to restrict the disallowance of expenses to 30% therefore, the CIT(A) has restricted the disallowance to 30%. The relevant finding of the Ld. CIT(A) in para 4.3 to 4.4 is as under:

“4.3 I have considered the facts of the case, it is to point out that the appellant has claimed expenditure of Rs.1,00,82,950/- and the same has been disallowed by the AO on account of non- deduction of Tax at Source. Section 40(a)(ia) of the Income Tax Act states as under,

(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:

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.

Explanation For the purposes of this sub-clause-

(i) "commission or brokerage" shall have the same meaning as in clause (i) of the Explanation to section 194H

(ii) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(iii) "professional services shall have the same meaning as in clause (a) of the Explanation to section 194J,

(iv) "work" shall have the same meaning as in Explanation III to section 194C:

(v) "rent" shall have the same meaning as in clause (1) to the Explanation to section 194-1;

(vi) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub- section (1) of section 9,

4.4 In this regard, the amendment was brought by the Finance Act (No. 2) 2014 effective from 1-4- 2015 whereas the year before us relates to the assessment year 2012-13. The Finance Act, 2014 brought an amendment to the first proviso to the section 40(a)(a) of the Act which reads as under-

"14.4 Accordingly, Section 40(a) (ia) of the Income-tax Act has been amended to provide that in case of non-deduction of tax at source or non-payment of tax so deducted on payments made to residents as specified in section 40(a)(ia) of the Income-tax Act, the disallowance shall be restricted to 30% of the amount of expenditure claimed."

5.2 As apparent from the impugned order of the Ld. CIT(A) that the disallowance made by the AO u/s 40(a)(ia) has been restricted to 30% by following various decisions of this Tribunal on this issue. No contrary decision has been brought to our notice by the department. As regards the low tax effect we find from the authorization for filing the appeal that this matter falls in the exceptions provided in para 10(c) of the CBDT Circular no.17 of 2019 being the revenue audit objection was accepted by the department and consequently the order u/s 154 was passed by the AO. Accordingly in the facts and circumstances of the case and in view of the various decisions of this Tribunal as followed by the CIT(A) we do not find any error or illegality in the impugned order of the Ld. CIT(A) and the same is upheld.

6. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 13.09.2023

Sd/-

(B.M. BIYANI)
Accountant Member

Sd/-

(VIJAY PAL RAO)
Judicial Member

Indore, 13.09.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore