

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.3134/Del./2019
(ASSESSMENT YEAR : 2013-14)**

Universal Energies Ltd.,
607, Somdutta Chamber – II,
Bhikaji Cama Place,
New Delhi – 110 066.

vs. DCIT, Circle 27 (1),
New Delhi.

(PAN : AAACU9022F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sudesh Garg, Advocate
REVENUE BY : Shri Sanjay Kumar, CIT DR

Date of Hearing : 27.09.2023
Date of Order : 05.10.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of Id.
CIT (Appeals)-16, New Delhi dated 25.02.2019 pertaining to assessment
year 2013-14.

2. Grounds of appeal taken by the assessee read as under :-

“1. The Ld. CIT(A) has erred on facts and in law in confirming the order of the Ld. Assessing Officer making an addition of Rs: 10,85,000/- by treating this amount as unexplained credit without appreciating the fact that the unsecured loan was received from the Promoter and Director of the appellant company and he had ambiguously confirmed the same and there was no rationale or justification for making addition under section 68 of the Income Tax Act.

2. The Ld. CIT(A) has erred on facts and in law in confirming the order of the Ld. Assessing Officer by making an addition of Rs. 4,53,62,080/- u/s 40(a)(ia) of the Income Tax Act.

3. The Ld. CIT(A) has erred on facts and in law in confirming the order of the Ld. Assessing Officer by making an addition of Rs.4,53,62,080/- u/s 40(a)(ia) of the Income Tax Act ignoring the second proviso of section 40(a)(ia) and ignoring the amendment brought on statute providing for disallowance of only 30% of the sum payable covered by section 40(a)(ia) of the Act.

4. The Ld. CIT(A) has erred on facts and in law in not deleting the sum of Rs.1,36,62,728/- added u/s 438 of the Income Tax Act on account of unpaid Service Tax and has further erred in setting aside to the AO which is violative the proviso of section 2S1(1)(a) of the Act.

5. The Ld. CIT(A) has erred on facts and in law in confirming the order of the Ld. Assessing Officer by making an addition of Rs.49,245/- by treating this sum as penalty not allowable u/s 37 of the Income Tax Act.”

3. Brief facts of the case are as under :-

Return of income was electronically filed on 30.09.2013 declaring Loss of Rs.13,42,66,104/- which was processed u/s 143(1) of the Income-tax Act, 1961 (for short 'the Act'). The case was selected for scrutiny and statutory notices were duly issued and served upon the assessee. During the year under consideration, the assessee was engaged in the business of a Contractor. During the course of assessment proceedings, the AO observed that the assessee had made an investment of Rs.1,48,97,880/- in UEL-RVCPL-JV during the year under consideration. The AO accordingly invoked the provisions of section 14A read with Rule 8D and disallowed a sum of Rs.14,22,252/-on this account. The AO also noted that assessee had claimed deduction of

Rs.2,12,52,867/- in his computation of income on account of amount disallowed u/s 43B in earlier years. He, accordingly disallowed the same. Further, the AO disallowed a sum of Rs.10,85,000/- by invoking the provisions of Section 68. Holding that the said amounts were unexplained credits in the hands of the assessee. The AO also disallowed a sum of Rs.1,36,62,728/- being unpaid service tax. Also, the AO observed that the assessee had deducted but not deposited a TDS of Rs.4,53,62,080/-. The AO, accordingly, invoked the provisions of Section 40(a)(ia) and disallowed the same. The AO also disallowed a penalty of Rs.49,245/- by invoking Explanation 1 to section 37 of the Income Tax Act, 1961. Aggrieved by the order, the assessee is in appeal.

4. Against the above order, assessee appealed before the Id. CIT (A). Ld. CIT (A) partly granted some relief to the assessee.

5. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. Apropos addition of Rs.10,85,000/- : On this issue, the assessee has received a loan of Rs.10,85,000/- from Aditya Ranjan Singh. The assessee submitted copy of ITR of the lender and his bank account statements of the said person and it was pleaded that the assessee has discharged its onus. However, AO made the addition. Ld. CIT (A)

upheld the addition on the ground that the said person has total income of Rs.1,46,474/- and is an employee in the assessee firm.

7. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

8. Ld. Counsel of the assessee submitted that the said person, Aditya Ranjan Singh is one of the promoter/director of the assessee company and for the relevant year, he held 1,38,96,000 shares out of total shares of 1,68,53,000 which works out to roughly 82%. Further, it was submitted that during the year under consideration, the number of shares held by Aditya Ranjan Singh increased from 94,98,000 to 1,38,96,000. It is claimed that this was accepted by the AO. Hence, it is submitted that there was no issue as regards section 68 of the Act with regard to the sums received from Aditya Ranjan Singh and it cannot be disallowed on the ground that Aditya Ranjan Singh was not capable to grant the loan.

9. We find ourselves in agreement with the submissions of the Ld. Counsel for the assessee and we hold that the said person, Aditya Ranjan Singh has sufficient creditworthiness which is duly accepted by the AO himself and addition on this ground is liable to be deleted. We order accordingly and allow this ground.

10. Apropos addition of Rs.4,53,62,080/- under section 40(a)(ia) of the Act : On this issue, AO has made disallowance of Rs.4,53,62,080/- u/s

40(a)(ia) of the Act. Upon assessee's appeal, ld. CIT (A) referred to the provisions of the Act and observed that in case of non-deduction or non-payment of tax deducted at source from certain payments made to residents, the entire amount of expenditure on which tax was deductible is disallowed u/s 40(a)(ia) of the Act for the purposes of computing income under the head 'Profits and gains of business or profession'. Hence, ld. CIT (A) dismissed this ground.

11. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

12. Assessee's plea is that disallowance is to be restricted to 30% of the sums on which TDS was deducted/paid. Assessee has referred to several case laws in this regard and submitted that the amendment was clarificatory and curative and applicable to year prior to the amendment.

13. Upon careful consideration, we note that amendment was made in section 40(a)(ia) to provide for deduction of 30% of the amount by Finance Act, 2014 w.e.f. 1.4.2015. In several case laws, it has been held that the amendment is clarificatory and it will apply to earlier year as well. Following case laws support this proposition :-

- (i) Muradul Haque vs. ITO (2020) 117 taxmann.com 251 (Delhi-Trib.);
- (ii) ACIT vs. Satish Sehrawat (2018) 92 taxmann.com 231 (Delhi-Trib.);

- (iii) RH International Ltd. vs. ITO – ITA No.6724/Del/2018 (ITAT Delhi) dated 20.03.2019;
- (iv) Archit Corporation LLP vs. ITO (2022) 138 taxmann.com 373 (Ahmedabad-Trib.)
- (v) Valsad District Co-operative Bank Ltd. vs. Addl.CIT (2019) 104 taxmann.com 414 (Surat-Trib.)
- (vi) Shri Niteshkumar Maganbhai Patelm vs. ITO – ITA No.1763/Ahd/2019 (ITAT Ahmedabad); and
- (vii) Punabhai G. Pardava vs. ITO – ITA No.219/RJT/2018 dated 08.06.2022.

Respectfully following the same, we direct for disallowance of 30% of the amount.

14. Apropos addition of Rs.1,36,62,728/- under section 43B of the Act: Pursuant to AO's addition, assessee submitted before the Id. CIT (A) some details in this regard. Considering the same, Id. CIT (A) gave direction to AO as under :-

“The appellant has claimed that the service tax for the current year was to the extent of Rs.96,48,043/-. The appellant had paid a sum of Rs.58,36,162/- during the year which was accepted and considered by the AO. However, in making the disallowance, the AO wrongly considered the opening balance of Service Tax payable. as on 01.04.2012 which was Rs.1,94,98,890/- After reducing the amount of Rs.58,36,162/- paid during the year under consideration, the AO made a disallowance on this account of Rs 1,36,98,980/- (Rs.1,94,98,890/- less Rs.58,36,162/-). The appellant placed before me the order u/s 154/143(3) In which the amount of Rs.1,56,87,009/- was disallowed by the AO to substantiate his claim. There appears to De some weight in the claim of the appellant. However, in the absence of the records of the previous year as well as subsequent years, it is not possible for

the undersigned to ascertain the correctness and the quantum of the claim. The AO, is therefore directed to verify the claim of the appellant and after due verification allow the claim in adherence with the provisions of the Act.”

15. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

16. We find that ld. CIT (A) has given a direction to the AO for examination and thereafter allowance of the claim. We do not find any infirmity in this regard. Hence, we uphold the ld. CIT (A)'s order on this issue.

17. Apropos addition of Rs.49,245/- : on this issue, AO made an addition for disallowance u/s 37 of the Act for an amount of Rs.49,245/- by treating it as penalty on VAT. On the same assumption, ld. CIT(A) has confirmed the disallowance.

18. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

19. It is the claim of the assessee that the amount of Rs.49,245/- disallowed consists of two parts i.e. Rs.24,180/ and Rs.24,965/-. In the second part of amount only Rs.785/- pertained to Sales-tax penalty and the balance amount of Rs.24,180/- (Rs.24,965/- minus Rs.785/-) pertained to sales-tax liability. It is pleaded that this amount of Rs.24,180/- be deleted.

20. We find that this issue needs factual verification. Hence, we remit this issue to the file of AO. AO shall consider the above and pass an order as per law after giving the assessee proper opportunity of being heard.

21. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 5th day of October, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 5th day of October, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-16, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**