

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'B' KOLKATA

**BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.598/Kol/2023
Assessment Year: 2012-13**

Greater Calcutta Land & Housing Corporation 75, Ballygunj Garden, Kolkata-700019. PAN: AAFFG 9143 C	Vs.	ACIT, Circle-30, Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri V.N. Datta, Advocate

Respondent by : Shri P.P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 20.09.2023

Date of Pronouncement : 05.10.2023

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 25.05.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. For that the CIT(A) is unjustified in dealing with the reasonable cause for delay in filing the appeal before the CIT(A).

2. For that proper opportunities has not been provided to the assessee in respect of delay in filing the appeal as well as the assessment is not in accordance with law.

3. For that the CIT(A) erred in not considering the assessment is not in accordance to law resulting in the whole assessment is not tenable in law and bad in law.

4. For that the CIT(A) erred in not considering the ground against the addition of Rs. 64,17,701/- u/s 40(a)(ia) of the Act as well as not giving any finding in the merits of the appeal filed before the CIT(A).

5. For that the appellant craves leave to amend, alter, add, delete or substitute any other grounds of appeal before or at the time of hearing of the appeal.”

2. Brief facts of the case are that the assessee is a firm and stated to be engaged in the business of mercantile systems of accounting filed its return of income on 04.01.2013 by declaring net taxable income of Rs. 97,87,631/-. The case of the assessee was picked up for scrutiny followed by notices u/s 143(2) and 142(1) of the Act. The assessment was framed u/s 143(3) vide order dated 25.02.2015 and the total income was determined at Rs. 1,62,05,332/- by inter alia disallowing Rs. 64,17,701.

3. Aggrieved by the order of ld. AO, assessee carried the matter before the ld. CIT(A) vide order dated 25.05.2023 dismiss the appeal of the assessee.

4. Feeling aggrieved by the above order, assessee is in appeal before the Tribunal raising multiple grounds of appeal. The main grievance of assessee is in respect of disallowance of Rs. 64,17,701/- made by the AO while framing the assessment. Before us, the ld. AR on the facts of the matter submitted that during the assessment year under consideration, assessee had paid various payments of Rs. 64,17,701/- to various parties in which no TDS was deducted. The ld. AO disallowed the whole amount of Rs. 64,17,701/- in the hands of assessee and added to the income under the provisions of section 40(a)(ia) of the Act. The ld. AR submitted that with respect to alleged payment made to various parties the disallowance of expenses on account of non-deduction of TDS be restricted to 30% of the expenses in view of the fact that the amendment made by the Finance Act (2) to section 40(a)(ia) is

curative in nature. In support of his contention ld. AR placed before us the case of Muradul Haque reported in (2022) 117 taxmann.com 251 (Delhi – Trib.) have held that disallowance u/s 40(a)(ia) should be restricted to 30% only as against 100% because the amendment to the provision made to section 40(a)(ia) by Finance Act (No. 2) is curative in nature should be applied retrospectively. Therefore, he submitted that in view of his aforesaid submission, the disallowance to be restricted to 30% on such payment made by assessee. The ld. DR on the other hand supports the order of lower authorities.

5. We have heard the rival submission and perused the material available on record. The instant issue in the present appeal is with respect to disallowance of section 40(a)(ia) of the Act. On perusal of the details of payments made by assessee of Rs. 64,17,701/- to various parties, we find that Finance Act (No. 2) has made amendment to section 40(a)(ia) of the Act with effect from 01.04.2015. Various benches of Tribunal including Delhi Bench of Tribunal have held that the amendment made by Finance Act (No. 2) to be curative in nature. We further found that co-ordinate bench of Tribunal held that disallowance u/s 40(a)(ia) of the Act be restricted to 30% of the expenses paid as against 100% because of amendment provisions is curative in nature and provisions should be applied retrospectively.

6. Before us, no contrary binding has been pointed out by the revenue nor the ld. DR pointed out any distinguishing feature in the cases relied upon by the ld. AR. We, therefore, held that disallowance of the expenses on account of non-deduction of TDS be restricted to 30% to expenses made by the assessee of Rs. 64,17,701/- and direct the AO delete a sum of Rs. 44,92,391/- from the income of the assessee. In

terms of above direction, the appeal filed by the assessee is partly allowed.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 05.10.2023

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 05.10.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Greater Calcutta Land & Housing Corporation.
2. The Respondent: ACIT, Circle-30, Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata