

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 1934/MUM/2023
Assessment Year: 2018-19

HEM Bhattad,
104, Bajaj Bhavan,
Nariman Point, Churchgate,
Mumbai-400021.

PAN No. AAAAH 2399 L
Appellant

Vs.

National Faceless Appeal
Centre (NFAC), Mumbai.

Respondent

ITA No. 2314/MUM/2023
Assessment Year: 2018-19

DCIT Circle-3(3)(1),
Room No. 609, Aayakar
Bhavan, M.K. Road,
Churchgate, Mumbai-400020.

Appellant

Vs.

HEM Bhattad,
104, Bajaj Bhavan,
Nariman Point, Churchgate,
Mumbai-400021.

PAN No. AAAAH 2399 L
Respondent

Assessee by : Mr. Vimal Punmiya
Revenue by : Mr. P.D. Chogule, CIT-DR

Date of Hearing : 04/10/2023
Date of pronouncement : 10/10/2023

ORDER

PER OM PRAKASH KANT, AM

These cross appeals by the Revenue and the assessee are directed against order dated 29.04.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal



Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2018-19.

2. The grounds raised by the Revenue are reproduced as under:

1. *The CIT(A) erred in granting credit for TDS of Rs.93,97,430/- without appreciating that the corresponding income is not assessable for this year and also without ascertaining as to when this income was offered to tax.*

2. *The CIT(A) erred in deleting various disallowances made u/s 37 and u/s 40(a)(ia) which were made on account of non-compliance of the assessee to the notices of the AO for showing business expediency of the expenses and for producing necessary proof of deduction and depositing of the tax, by merely relying on the submissions of the assessee and not subjecting them to cross-verification by the AO. The CIT(A) ought to have called for a remand report and allowed the AO to cross verify the submissions with reference to evidences towards payment of tax etc.*

3. *The CIT(A) erred in deleting payments made to MCGM as FSI premium, development, cess, property tax etc. totalling to Rs.25,23,91, 144/- despite the assessee's failure to produce the proof of payments during assessment proceedings, by merely relying on the documents produced during the appellate proceedings which constitute additional evidence. The CIT(A) erred in admitting these evidences without affording a reasonable opportunity to the AO for examination of the evidences as per sub rule 3 of Rule 46A of the Income Tax Rules and passed this appellate order in violation of Rule 46A of the Income Tax Rules.*

4. *The CIT(A) erred in deleting the payments made to tenants and stamp duty / registration expenses of Rs. 90,60,260/- and Rs.23,70,602/- respectively without allowing the AO to examine the evidences produced during appellate proceedings C I and accordingly passed appellate order in violation of Rule 46A of the Income Tax Rules.*

5. *The CIT(A) erred in deleting the additions of Rs.49,88,18,107/- and Rs.8,52,71,486/- by holding that the appellant proved the identity, creditworthiness and genuineness of the parties to whom the assessee had purportedly given loans by not appreciating that these are the ingredients to be proved in respect of loan taken. The CIT(A) ought to have remanded this matter for further examination as to whether these are interest-free loans borrowed or advances and any interest disallowance is called for.*

6. *The CIT(A) erred in deleting disallowance of Rs.2,87,05,900/- being 20% of payment made to the associate concern M/s Peninsula*



Land Ltd. without affording an opportunity to the AO to examine the fair market value of the transaction and whether the said party is a related party.

2.1 The grounds raised by the assessee are reproduced as under:

1. The Ld CIT(A) erred in confirming the addition of Rs.27,00,000/- being the legal and professional fee payment at the rate of 30 per cent on Rs.9000000 i.e. Rs.2700000 and added the same to the total income of the assessee in view of section 40 a ia of the IT Act 1961.

2. The Ld CIT(A) erred in confirming the addition of Rs. 1,58,61,967/- being 30 per cent of the payments made to IHFL of Rs.46128174 and to India Bulls of Rs.6745050 totaling to Rs.52873224 i.e. Rs. 15861967 and added the same to the total income of the assessee in view of section 40 a ia of the IT Act 1961.

3. The Ld CIT(A) erred in confirming the addition of Rs.26,400/- being 30 percent of the Finance charges payment to IHFL of 88000 i.e. Rs.26400 and added the same to the total income of the assessee in in view of section 40 a ia of the IT Act 1961.

4. The Ld CIT(A) erred in confirming the addition of Rs.40,968/- being 30 percent of the marketing expenses paid to Regenti Media Pvt Ltd of Rs. 136550 i.e.Rs.40968 and added the same to the total income of the assessee in view of section 40 a ia of the IT Act 1961.

3. Briefly stated facts of the case are that the assessee, an Association of Person (AOP), was engaged in the business of real estate development during relevant year. The assessee entered into a joint development agreement dated 27.09.2012 with 'R M Bhutter and Co. Ltd'. being a confirming party and 'Peninsula land ltd'. being the developer. In view of the agreement, the assessee had been allotted specified area of duly constructed apartment. Out of the area allotted, the assessee had sold under construction apartment to various buyers since financial year 2013-14. During the year under consideration the assessee received sale proceeds from the various buyers to whom the apartments were sold and as



per the provisions of section 194IA of the Income-tax Act, 1961 (in short the Act), the buyers had deducted TDS @ 1% on the payments made to the assessee. It is claimed by the assessee that it was following **project completion method** of accounting and therefore, revenue was to be recognized only on the completion of the project and till the completion of the project the expenditure was to be carried forward as work-in-progress.

For the year under consideration the assessee filed return of income on 31.10.2018. The return of income filed by the assessee was selected for complete scrutiny and statutory notices under the Act were issued. The Assessing Officer issued various notices u/s 142(1) of the Act but there was no compliance on the part of the assessee. The Ld. Assessing Officer has referred various date of the such notices issued as 28.10.2019 ; 08.12.2020 ; 06.01.2021. Thereafter the assessee responded partly to the notices issued on 28.02.2021, 06.02.2021 and 19.03.2021. But in view of the part compliance the Assessing Officer rejected the claim of TDS credit of Rs.93,97,430/-. The Assessing Officer also disallowed the percentage of various expenses. For ready reference, the finding of the Assessing Officer in respect of 'miscellaneous legal expenses' and 'consultancy charge payment' is reproduced as under:

"2) Assessee was requested to provide details of mis.legal (MBDC-exp.)/service tax payment of Rs. 166366 i.e. name of payee/pan/address, date, amount, mode of payment, bank name & a/c no. and reflection of aforesaid payments in it's bank statement unless it was requested to show cause why 20% of Rs.166366



should not be added to it's total income and penal action should not be initiated;

In response, there was non-compliance from it's end on or before due date and time. Therefore, 20% of Rs. 166366 i.e. rs.33273 is added to it's total income u/s 37 and penalty proceeding u/s 271(1)(c) is initiated separately.

3)regarding consultancy charges payment, assessee did not deduct and pay tds on payments made to Architect Hafeez contractor (Rs.5000000) & MB development corporation (Rs.2225000), therefore, it was requested to show cause with proper supporting documents why 30% of aforesaid expenses should not be added to it's total income and penal action should not be initiated;

In response, there was non-compliance from it's end on or before due date and time. Therefore, 30% of Rs.7225000(5000000+2225000) i.e. rs.2167500 is added to it's total income u/s 40(a)(ia) and penalty proceeding u/s 271(1)(c) is initiated separately.”

3.1 The Assessing Officer has similarly made disallowance for other items of the expenses. A detailed chart of the addition made by the assessee while computing the total income is reproduced as under:

Income Declared by the assessee in the ITR for AY 2018-19			Rs. Nil
Para No.	Particulars	Addition (Rs.)	Rs.
1.	TDS claim for AY 2018-19 of Rs.9397430		
2.	20% of mbdc exp.	33270	
3.	Consultancy charges	2167500	
4(a)	Legal & prof. fee	21529425	
4(b)	Legal & prof. fee to Kotak Hahindra inv. Ltd.	2700000	
5.	Interest payment	15861967	
6.	Finance charges-ihfl	26400	
7(a).	Rent rates taxes mcgm development cess etc.	252391144	
7(b)	Rent rates taxes rent	9060263	
8.	Loan given	498818107	
9.	Stamping charge	2370602	
10.	Regent media	40968	
11(a)	Transit premises accommodation	27000	
11(b)	Arihant corpn.	21645	
12.	Security charge	99534	
13.	Development exp.	225832	



14.	Sundry creditor	422579	
15.	Admn. Exp.	1391560	
16.	Peninsula land	28705900	
17.	Bhattad bros. etc.	85271486	921165182
		Assessed total Income	921165182
		Assessed total income r/o to	921165180

4. On further appeal, the assessee filed various documents and evidences before the Ld. CIT(A). After considering those evidences the Ld. CIT(A) deleted the additions partly.

5. Aggrieved, both the assessee and the Revenue are before the Tribunal by way of raising respective grounds.

6. As far as the ground No. 1 of the appeal of the Revenue is concerned we find that the Ld. CIT(A) has directed the Assessing Officer to allow the benefit of the TDS credit in the assessment in which income is offered subject to verification by the Assessing Officer. The relevant finding of the Ld. CIT(A) is reproduced as under:

“4.2 GROUND NO 10

The Ld. A.O. has erred in disallowing the claim of TDS of Rs.93,97,430/- of the assessee and thereby erred in stating that the assessee has not sold any property.

AO in assessment order has stated that TDS amount of Rs.93,97,430/- have been deducted by property buyers @ 1% u/s 194IA of the Act on advances payments of Rs.93974300 to assessee. AO has given inference that as the advances of Rs. 93974300 are not assessee's income during the year, assessee is not eligible to claim TDS deduction of Rs.9397430 during the year.

The appellant in the submission above has quoted section 198 & 199 of the Income Tax Act. The appellant has stated that as per these sections, the TDS provision are not charging sections and have no impact on computation of total income of the appellant.



There is no dispute to the fact that the appellant has shown advance of Rs.9,39,74,300/- in the year in respect of which TDS was deducted by the purchasing party. The issue is whether the appellant can claim the benefit of TDS i.e. in A.Y. 2018-19 i.e. year under consideration or the year in which it offers corresponding income in the income tax return. In this regard, I note that sub-rule (3) to the rule 37BA of Income Tax Rule r.w.s. 199 of the Act provides that Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. Accordingly, I am of the view that the appellant should be allowed the benefit of TDS credit in the AY in which income is offered, subject to the verification.

Hence, the ground of appeal of the appellant is allowed in the terms of the above direction.

Ground No. 10 is allowed.”

7. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In our opinion, the Ld. CIT(A) has adjudicated the issue following the relevant rules of the Income-tax Rules, 1962 (in short ‘the Rules’) and directed the Assessing Officer to allow the benefit of the TDS credit in the assessment year in which income could be offered by the assessee. In our opinion, there is no infirmity in the finding of the Ld. CIT(A) on the issue in dispute and accordingly, we dismiss the ground No. 1 of the appeal of the Revenue.

8. As far as to ground nos. 2 to 6 of the appeal of the Revenue are concerned, the grounds revolves mainly around the issue of not providing opportunity of being heard to the Assessing Officer in respect of the additional evidence filed before the Ld. CIT(A) under the procedure laid down in Rule 46 of the Rules.



8.1 We find that the Ld. CIT(A) has mainly allowed relief to the assessee, in view of the various submissions and documents produced before him but the Ld. CIT(A) has not followed the procedure laid down under Rule 46A of the Rules and did not provide any opportunity to the Assessing Officer for commenting on those additional evidences. For ready reference, the finding of the Ld. CIT(A) in respect of disallowance of legal expenses, transit permit expenses etc. is reproduced as under:

“GROUND NO 27

The Ld. A.O. erred in disallowing the 20 percent of the Administrative expenses of Rs.69,57,798/- that is Rs.13,91,560/- and added the same to the total income of the assessee in view of section 37 of the IT Act 1961.

The grounds of appeal and submission of the appellant has been perused. AO has disallowed 20% of the miscellaneous legal expenses, transit premises expenses, payment made to Arihant Corporation, payment made to Sundry Creditor Sh.

Dinanath Gupta and Administrative expenses as no reply to final show cause notice has been given. The appellant has stated that AO has neither pointed out any defect in books of accounts nor has rejected the books of accounts.

During the appellate proceedings, the appellant has furnished ledger, cash book, bank statement and party wise details of these expenses. There is no rationale given by AO for adhoc 20% disallowance of such expenses in the assessment order. The AO has not given any evidence or basis for considering 20% expenses as non-genuine. Hence, the adhoc disallowance of 20% as mentioned in above grounds of appeal is deleted.”

8.2 The Ld. CIT(A) has allowed relief in respect of other grounds also in similar manner. In our opinion the action of the Ld. CIT(A) is in violation of the Rules 46A of the Rules and therefore, we feel it appropriate to set aside the finding of the Ld. CIT(A) in respect of



issues raised in ground Nos. 2 to 6 of the appeal and restore the matter back to the file of the AO for deciding afresh after considering the submission of assessee and the documentary evidence in support of claim by the assessee. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The ground Nos. 2 to 6 of the Revenue are allowed for statistical purposes.

9. In ground Nos. 1 to 4 of the appeal of the assessee, the Ld. Counsel of the assessee submitted that the Ld. CIT(A) has confirmed the expenses without taking into consideration the documentary evidence of the assessee and therefore, same also might be sent back to the Ld. Assessing Officer for deciding afresh. The Ld. Departmental Representative (DR) fairly accepted the proposition of the Ld. Counsel of the assessee. In view of the facts that the Ld. CIT(A) has not considered the documentary evidences in respect of additions made by the Assessing Officer, therefore, we set aside the finding of the Ld. CIT(A) on the issues raised in ground Nos. 1 to 4 of the appeal and restore the issues to the file of the Assessing Officer for deciding afresh after considering the submission of the assessee and documentary evidence filed by the assessee. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The ground Nos. 1 to 4 of the assessee are accordingly allowed for statistical purposes.



10. In the result, the appeal of the Revenue is partly allowed for statistical purposes whereas the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 10/10/2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/10/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai