

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

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 1125/Kol/2023
Assessment Year : 2015-16

Kamala Properties Private Limited PAN: AABCK 3217 D Appellant	vs	ACIT, Central Circle-1(1), Kolkata Respondent
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Date of Hearing	01.02.2024
Date of Pronouncement	06.02.2024
For the Assessee	Shri P.K. Sanghai, FCA
For the Revenue	Shri I. Jamir, CIT-DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2015-16 is directed against the order dated 29.08.2023 passed by the Id. Commissioner of Income-tax, Appeal, Kolkata-20 [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. That on the facts and circumstances of the case at the relevant time the appellant company did not get the fair chance to canvass the issue before the Id. CIT(A) and was deprived of the reasonable and fair hearing in the matter being raised in the subsequent ground.

2. That on the facts and circumstances of the case the Id. CIT(A) has erred in confirming the action of the Id. AO who disallowed the entire sum of Rs. 96,77,579/- on account of non deposit of tax deducted (TDS) on certain payment of expenses which ought to have been restricted to only 30% thereof as per the provision of section 40(a)(ia) of the I.T. Act, 1961 and thus the Id. CIT(A) was wrong in not passing the order as per law and also without affording the assessee opportunity of hearing on the matter.

3. That the appellant craves leave to add, amend, alter or delete the ground or grounds of appeal.”.

2. Brief facts of the case are that a search and seizure operation u/s 132(1) was conducted in the case of assessee company. Accordingly, notice issued u/s 153A of the Act which was served on the assessee. In response to the notice return on income was filed by the assessee declaring an income of Rs. Nil. Subsequently, notice u/s 143(2) was served on the assessee in response to the notice the ld. AR of the assessee appeared before the AO time to time. During the scrutiny proceeding, the ld. AO noticed that the assessee had not deposited a part of the tax that was deducted at source into the Central Govt. account amounting to Rs. 96,77,576/- and in this regard, the ld. AR of the assessee was asked to explain why such amount shall not be disallowed as per the provision of section 40(a)(ia) of the Act. However, the ld. AR of the assessee admitted that tax conducted at source was not deposited in govt. account. Therefore, the ld. AO disallowed the expenditure to the extent of Rs. 96,77,576/- in the hands of assessee. Similarly, the ld. AO added entire sum of Rs. 11,35,000/- as deemed dividend in the hands of assessee.

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the other grounds relating to disallowance of Rs. 96,77,576/- disallowed u/s 40(a)(ia) of the Act was sustained by the ld. CIT(A) while passing the impugned order.

4. Dissatisfied with the above order, assessee is in appeal before the bench stating that the ld. CIT(A) has erred in confirming the action of ld. AO by disallowing the entire sum of Rs. 96,77,576/- on account of non-deposit of TDS on certain payment of expenses which ought to have been restricted to only 30% thereof as per provisions of section 40(a)(ia) of the Act. Therefore, he prayed before the bench the impugned order passed by ld. CIT(A) was wrong as because the order is not in accordance with law. He stated before the bench that the correct provision of law is that the disallowance on such payments ought to have been made to the extent of 30% only. Therefore, the calculation will be arrived at Rs. 29,03,273/- (i.e. 30%) of Rs. 96,77,576/- and direction may be given to AO to restrict the disallowance to the extent of Rs. 29,03,273/- in place of Rs. 96,77,576/- as has been disallowed by the AO while framing the assessment order. The ld. DR did not make any objection to the prayer made by the ld. AR on the issue.

5. We after hearing the submissions of the parties and perused the material available on record find that the calculation made by the AO to the extent of Rs. 96,77,576/- in the case of assessee is not correct and as per the provisions of law such disallowance to be restricted only 30% of Rs. 96,77,576/- which would be arrived at Rs. 29,03,273/- in the case of assessee. Accordingly, we direct the ld. AO to disallow such expenses to the extent of Rs. 29,03,273/- only in the case of assessee and re-calculate the

correct tax on the income of the assessee. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 06.02.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 06.02.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Kamala Properties Private Limited, 6/2, Queens Park, Ballygung, Kolkata-700019.
2. Respondent – ACIT, Central Circle-1(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata