

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 345/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2020-21)

Mega Vision Projects India Vs. Income Tax Officer,
Private Limited, Ward-16(1),
Hyderabad Hyderabad
[PAN No. AAKCM1707F]

अपीलार्थी / Appellant प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri T. Chaitanya Kumar, AR
राजस्व द्वारा/Revenue by: Shri Ashish Kumar Shukla, DR

सुनवाई की तारीख/Date of hearing: 02/05/2024
घोषणा की तारीख/Pronouncement on: 06/05/2024

आदेश / ORDER

Aggrieved by the order dated 07/02/2024 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Mega Vision Projects India Private Limited ("the assessee") for the assessment year 2020-21, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company in the business of real estate. For the assessment year 2020-21, it filed its return of income on 09/02/2021, declaring an income of Rs. 10,33,180/-. During the course of assessment proceedings, the learned Assessing Officer noticed that the assessee has two Directors, holding 50% of shares each. Learned Assessing Officer, further noticed that During the year, the Directors claimed salary @ Rs. 4 lakhs each, professional charges @ Rs. 8 lakhs each and commission @ Rs. 7.5 lakhs each. Apart from this, the

assessee paid a sum of Rs. 7.5 lakhs each to the wives of these two Directors. In total under these heads assessee claimed expenses to the tune of Rs. 54 lakhs.

3. Learned Assessing Officer noted that the assessee did not establish any business connection of the wives to pay a sum of Rs. 7.5 lakhs each, apart from this, the learned Assessing Officer noted that the Directors in their ITRs claimed 50% of their income as 'expenses' by declaring the receipts under presumptive profits under section 44ADA of the Income Tax Act, 1961 ('the Act'). According to the learned Assessing Officer, these expenses to the tune of Rs. 54 lakhs fall in the ambit of 40A(2)(b) of the Act. Accordingly, learned Assessing Officer disallowed 50% of these expenses and added back a sum of Rs. 27 lakhs to the income of the assessee.

4. Aggrieved, assessee preferred appeal before the learned CIT(A). Learned CIT(A) by way of impugned order observed that the Directors shifted the salary into professional and commission and claimed 50% as expenses under presumptive taxation and by making these payments, the assessee reduced its profits, by making excess payments not only to the Directors, but also to their wives and, therefore, such payments made to the persons specified in section 40A(2)(b) of the Act cannot be allowed in full. Learned CIT(A), then agreed with the learned Assessing Officer in disallowing 50% of such expenses and dismissed the appeal.

5. Hence, this appeal by the assessee contending that the Revenue authorities erroneously disregarded the legitimate tax planning measures undertaken by the assessee and its Directors and their relatives and illegally disallowed 50% of the expenses, holding it to be excessive. Learned AR submitted that as a matter of fact, the assessee made commission payments to so many others as enumerated at page No. 32 to 38 of the paper book, and, therefore, suspecting the commission paid to

the wives of the Directors cannot be reasonable. He further submitted that insofar as the salary paid to the Directors is concerned, it is a legitimate payment.

6. Per contra, learned DR submitted that the assessee failed to justify the payments under professional with reference to any material. He further submitted that the commission payments to the Directors and their wives was uniform at Rs. 7.5 lakhs each without bearing any proportion to the business promoted by them. He, therefore, submitted that 50% disallowance is reasonable.

7. I have gone through the record in the light of the submissions made on either side. Insofar as the salary to the Directors @ Rs. 4 lakhs each is concerned, I do not see any illegality in that payments. How the Directors shown it in their ITR, is not the concern of the assessee. Hence, no disallowance could be made in such expense. Coming to the professionals, assessee failed to explain before me also how the assessee was benefitted by such an expense. When the gross profit is Rs. 1.92 crores, payment of Rs. 16 lakhs out of it must be explained with reference to the services rendered by the Directors. Learned Assessing Officer, however, did not suspect rendering of such services, but felt it excessive and disallowed 50% thereof also. Hence, I see no reason to interfere with such disallowance.

8. Coming to the commission paid to the Directors and their wives at Rs. 7.5 lakhs each, I find some strength in the submissions made on behalf of the assessee that apart from these four persons, so many others were paid commission, and these four persons may also be paid commission in the proportion to the business promoted by them as in the case of others. I, therefore, direct the assessee to produce the details relating to the business done by the Directors and their wives and also others to verify the rate of commission paid to others so that the Directors and their wives

are also allowed commission at such rate on the business done by them, so that the rest could be disallowed.

9. With the above view of the matter, I allow the salary expense and 50% of the professionals paid to the Directors. In respect of the commission, on the basis of the material produced by the assessee, the learned Assessing Officer will determine the rate of commission paid to others and allow the same rate to the Directors and their wives on the business done by them and excess if any, shall be disallowed. Grounds are answered accordingly.

10. In the result, appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on this the 6th day of May, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 06/05/2024

TNMM

Copy forwarded to:

1. Mega Vision Projects India Private Limited, E-101, Aditya Empress Towers, Shaikpet Nala, Tolichowki, Golconda Post, Hyderabad.
2. Income Tax Officer, Ward-16(1), Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD