

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "SMC" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.322/PUN./2024
Assessment Year 2012-2013

M/s. New Ventures, Nanak Vill, Bhujbal Farm Road, Cidco, NASHIK. PIN – 422 009 Maharashtra. PAN AAIFN3226H	vs.	The Income Tax Officer, Ward-2(3), Wani House, Mumbai-Agra Road, NASHIK – 422 002. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Sanket Joshi
For Revenue :	Shri Manish Mehta

Date of Hearing :	20.03.2024
Date of Pronouncement :	17.05.2024

ORDER

This assessee's appeal for assessment year 2012-13, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2021-22/1042324980(1), dated 31.03.2022, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *"The learned CIT-(A) erred in confirming the disallowance of Rs.13,14,370 made by the A.O without appreciating that the said disallowance was not justified on facts and in law.*

2. *The assessee submits that the payee had shown the amount received from appellant as income in the return of income furnished u/s 139 and also paid the taxes on it and therefore, no disallowance was warranted in the present case in view of the provisions of section 201(1) of the Act.*
3. *Without prejudice to the above grounds the assessee submits that the disallowance u/s.40(a)(ia) of Rs.13,14,370 should be restricted to 30% only as against 100% because the amended provision made to section 40(a)(ia) by Finance (No 2) Act is curative in nature and should be applied retrospectively.*
4. *The appellant craves leave to add/alter/amend any of the grounds of appeal.”*

3. Learned counsel is fair enough in not pressing for the assessee's above extracted third substantive ground during the course of hearing. Rejected accordingly.

4. Next comes the sole substantive issue of correctness of both the learned lower authorities action invoking sec.40(a)(ia) disallowance of Rs.13,14,370/- on account of the assessee's failure in not having deducted TDS. It is made clear that the assessee itself is indeed very fair enough in not disputing its TDS deduction liability in principle whilst making payments to M/s. Annamalai University, M/s. NIFD

franchise fee and M/s. Pacific Advertising Marketing Agency. Learned counsel's sole substantive plea during the course of hearing is only regarding the above stated third payee M/s. Pacific Advertising Marketing Agency that the said latter recipient has already stand assessed as per the assessee's additional evidence filed herein along with corresponding Form-26AS.

5. The Revenue at this stage vehemently argued that the said payees assessment details are being submitted for the first time u/sec.254(2) proceedings which requires the Assessing Officer's detailed factual verification.

6. Faced with this situation, I deem it appropriate that larger interests of justice would be met in case learned Assessing Officer re-verifies the assessee's foregoing additional evidence so as to satisfy the rigor of sec.40(a)(ia) second proviso inserted in the Finance Act 2012 w.e.f. 01.04.2013 already held to be retrospective being curative in light of PCIT vs. Perfect Circle India Pvt. Ltd., [2019] 104 CCH 08 (Bom.) Ordered accordingly.

7. Delay of 627 days in filing the instant appeal is condoned as per assessee's solemn averments in light of Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) having settled the law long back that all such technical aspects must make a way for the cause of substantial justice.

7. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open Court on 17.05.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 17th May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "SMC" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.