

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.277/Mum/2024
(Assessment Year :2021-22)**

M/s. Corner Contractors P. Ltd Unit No.403, B2 Wing, Kanakia Boomrang Chandivali, Farm Road Yadav Nagar Andheri(E) Mumbai - 400 072	Vs.	The NFAC JAI-The ITO 15(1)(1) Mumbai
PAN/GIR No.AAGCC2353R		
(Appellant)	..	(Respondent)

Assessee by	Shri Govind Javeri
Revenue by	Shri H.M. Bhatt
Date of Hearing	09/05/2024
Date of Pronouncement	17/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 30/11/2023, passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2021-22.

2. Before us following effective grounds have been raised:-

“1.The learned CIT (A) has erred in law and on facts in upholding the disallowance of Rs. 45,000/- made by the A.O. u/s. 40(a)(ia) of the Act.

2. The learned CIT(A) has erred in confirming the disallowance of Rs. 40,11,200/- made by the Assessing Officer in respect of professional fees paid to Dr. Abhishek Shukla as legal and professional fees for business consultation.

3. The learned CIT(A) has erred in not taking into account the bills of Dr. Abhishek Shukla for deciding the issue.

4. The learned CIT(A) having held in para 8.4 of the appellate order that 'payment made to Dr. Abhishek Shukla is salary in nature, not consultancy fee as claimed by the appellant company', the CIT(A) ought have allowed the same as 'business expenditure'.”

3. The brief facts are that Assessee Company is engaged in the business of real estate development and construction services. The assessee has filed return of income u/s.139(1) on 11/03/2022 declaring loss of Rs.(-)1,51,77,595/-. The case was selected for scrutiny through CASS under e-assessment Scheme 2019 for the reason *“Large payments made under section 194J to persons who have not filed return of income in comparison to total payments on TAN corresponding to PAN in Form 26Q for section code 194J.”* On perusal of the details, the ld. AO noted that assessee has made payment of Rs.40,11,200/- as ‘professional fees’ to Dr. Abhishek Shukla for business consultation. As per AO, in response to the notice, assessee did not submit any reply or furnished any acknowledgment of return of income, copy of ledger account and copy of bank statement in the case of Dr. Abhishek Shukla. Even the notice u/s.133(6) dated 23/11/2022

and 07/12/2022 issued to Dr. Abhishek Shukla and served upon him to submit the details, however, there was no response. He thus added Rs.40,11,200/- for the professional fee payment made to Dr. Abhishek Shukla which was claimed to have been paid as professional and legal fee which assessee could not substantiate. Further, ld. AO noted that assessee has also made payment to Accord Fintech Pvt. Ltd., for amount of Rs.1,50,000/- on which again no TDS was deducted. Accordingly, ld. AO made 30% on amount was paid of Rs.1,50,000/- was disallowed which comes to Rs.45,000/-.

4. Before ld. CIT(A), assessee had made following submissions with regard to fee paid to Dr. Abhishek Shukla. The relevant portion of which is reproduced hereunder:-

*“1. In this respect, it is respectfully submitted that the disallowance made by the AO is unlawful and unwarranted. The appellant attempted to file the details called for on IT portal but it was unable to upload the same. Hence the CA vide its email dated 22.12.2022 at 6:43 pm had filed PAN Card copy, Ledger account, Bank statement highlighting payment of Dr Abhishek Shukla and covering letter through email addressed to **delhi.cil.naec@incometax.gov.in** and to JAO at **mumbai.ito15.11@incometax.gov.in**. Copy of the same as proof is enclosed herewith. On perusal of the covering letter, it can be seen that copy of ITR was requested to Dr. Abhishek Shukla but it was not received. Hence, request was made to the A.O. to exercise the powers vested in him and procure such personal details. On perusal of the details submitted, it can be seen that the Appellant has deducted tax at source in respect of fees paid to Dr. Abhishek Shukla and the payment is made through regular banking*

make addition in the hands of an assessee in respect of any expenditure claimed if the counter party fails to offer to tax corresponding income in its hands. Therefore, the disallowance made by the A.O. is unlawful and deserves to be set aside.

5. The ld. CIT(A) treated the reply filed before the ld. AO on email, which has not been considered by the ld. AO to have been filed during the course of the assessment proceedings. He also perused the submissions made by the assessee, however has confirmed the said addition after observing and holding as under:-

8.4 The reply sent by the appellant through email on 22.12.2022 has been perused and considered carefully. A perusal of copy of account in the name of Dr. Abhishek Shukla shows that the appellant has made him montly payment of Rs. 4,00,000/-, under the head consultancy fees and Rs. 40,000/- under the head reimbursement of house rent paid by him. Regular monthly payment of fix amount indicates that the payment made to Dr. Abhishek Shukla is salary in nature, not consultancy fee as claimed by the appellant company. But the appellant has shown the same under the head professional fee and made lessor TDS u/s 194J

8.5. The appellant has itself mentioned that it forgot to furnish copy of bills pertaining to the payment of professional fee to Dr Abhishek Shukla while it was sending reply through email. During the appellate proceedings, the appellant furnished copy of the bills but a perusal of point no. 12 of Farm 35 shows that the appellant has claimed that it has not furnished any additional evidence during the appellate proceedings. In its written submission too, the appellant has not requested to accept additional evidence under rule 46A. Therefore, these bills are not taken into account for deciding the issue.

8.6. Without prejudice to what has been stated in para 9.5. above, the bills of payment of professional fee to Dr. Abhishek Shukla do not show that what was the nature of consultancy services

provided by Dr Abhishek Shukla for which such huge amount was being paid to him despite the fact that no business activity was carried out by the appellant company during the year under reference and the appellant company was incurring huge loss. The appellant has not furnished a copy of contract for consultancy services with Dr. Abhishek Shukla. Thus, the business exigency for such huge payment is not proved. Moreover, if the consultancy services was being taken for upcoming real estate projects, the payment should have been shown as a part of work in progress keeping in view the fact that no business was carried out by the appellant company during the year under reference. Keeping in view the facts and circumstances of the case, I am of considered opinion that the payment made to Dr. Abhishek Shukla was not for the purpose of business. The appellant has failed to prove the business exigency of this expenditure. It is therefore held that the addition made by Id. AO on account of the payment made to Dr. Abhishek Shukla is justified and deserves to be sustained and upheld. Accordingly, the ground no. 2 of the appeal is dismissed and not allowed.

6. He also confirmed the disallowance of Rs.45,000/- made u/s.40(a)(ia) after observing and holding as under:-

“7.1 I have carefully considered the written submission of the appellant on the issue under reference. It is a fact that the appellant has admittedly not made TDS on payment of Rs. 1,50,000/- u/s 194J of the Income Tax Act, 1961, I have also perused and considered the proviso to section 40(a)(ia) and first proviso to section 201(1) of the Income Tax Act, 1961 It is the responsibility of the person who has made payment without making TDS to prove that the payee has furnished his return of income u/s 139 of the Income Tax Act, 1961, he has taken into account such sum for computing income in such return of income; and he has paid the tax due on the income declared by him in such return of income. Since the appellant has failed to prove that the payee has fulfilled all terms and conditions as stipulated in the first proviso to section 201(1) of the Income Tax Act, 1961, the addition made by the Id. AO is justified and deserves to be upheld. Accordingly, ground no. 1 of the appeal is dismissed and not allowed.”

7. Before us assessee had filed certain additional evidences like Consultancy Agreement dated 01/08/2019 between Dr. Abhishek Shukla and the assessee, copy of ledger account of legal and professional fees paid to the said person and invoice copy of Accord Fintech P Ltd., dated 26/06/2020 stating that same was for renewal of subscription for which no TDS was required to be deducted. The petition for admission of additional evidences reads as under:-

“2. Before the CIT(A), the appellant had requested to grant opportunity to provide the details required while disposing the appeal. However, without granting any opportunity, the CIT(A) confirmed the disallowance made by the A.O. in respect of Legal & Professional Fees paid on the ground that the appellant had not furnished copy of contract for consultancy services rendered by Dr. Abhishek Shukla.

3. Since the appellant was not granted an opportunity to adduce required evidences, the appellant could not produce the same before lower authorities. Similarly, The Appellant also humbly submits that it had not received proper guidance while representing its case before the lower authorities which culminated into unwarranted addition in the hands of the Appellant.

4. However, at this appellate stage, the Appellant has been able to provide required details and file /adduce before Your Honours paper book which contains the Contract with Dr. Abhishek Shukla, ledger copies of Legal & Professional fees as well as that of Dr Abhishek Shukla and copy of invoice. which show that these transactions basically were entered into regular course of business and the disallowance thereof in the hands of the Appellant is unjustified / unwarranted.

5. Therefore, the Appellant humbly prays Your Honours to kindly admit the additional evidences filed and dispose the appeal judiciously as per law.

6. The Appellant submits that if the prayer of the Appellant is granted by Your Honours it will advance justice to the Appellant

and no prejudice will be caused to the Revenue as the matter will be decided on merit as per the law.

8. It was further submitted that assessee for starting its business had engaged Dr. Abhishek Shukla for carrying out various consultancy for development of new projects, strategic planning, market analysis etc, therefore, such a payment was towards the business purpose.

9. On the other hand, ld. DR submitted that there has been no business carried out by the assessee and no justification has been given for the purpose of making such a huge consultancy payment to Dr. Abhishek Shukla nor there is any documentary evidences for rendering of any services and therefore, the order of ld. CIT (A) should be confirmed.

10. Regarding payment of Rs.1,50,000/- to Accord Fintech Pvt. Ltd, he submitted that nowhere it has been stated by the assessee before the ld. AO and ld. CIT(A) that this payment was towards subscription fee and therefore, this matter needs to be restored back to the file of the ld. AO to examine the additional evidences.

11. We have heard both the parties, perused the relevant finding given in the impugned order as well as certain documents filed before us which are in the nature of additional evidences. From the perusal of the profit and loss account it is seen that there is no revenue from operations or any other income either in the A.Y.2020-21 or A.Y.2021-22. Though assessee debited various expenses but one of the major issue before us is the payment of

consultancy fee of Rs.40,11,200/- to one Dr. Abhishek Shukla which has been stated to be 'professional fee for business consultation'. Though before the ld. AO assessee has sent certain replies through e-mail enclosing copy of PAN Card, ledger account and bank statements highlighting the payment given to Dr. Abhishek Shukla, but this was not acknowledged by the ld. AO. Before the ld. CIT (A), assessee too filed certain details and explanations however, same has been disallowed holding that the payment is not for the business purpose.

12. If the payment has been made during the course of the business even if the business did not result into revenue in that year, then also it is allowable, but onus is heavily upon the assessee to substantiate that the payment was for the purpose of business, and what was the scope of work and activity carried out by the professional. Since most of the documents were not before the ld. AO and ld. CIT (A) therefore, in the interest of justice, this issue is restored back to the file of the ld. AO to examine this issue afresh after considering the documents. The onus will be on the assessee to substantiate the purpose of payment of professional fees for the business and nature of professional services rendered by the said person. Accordingly, this issue is remanded back to the ld. AO.

13. In so far as disallowance of Rs.45,000/- is concerned, from the perusal of the invoice, it is seen that the same is for the purpose of renewal of some annual subscription. Since this document was not before the ld. AO and ld. CIT (A), accordingly,

this issue is also restored back to the file of the ld. AO and if it is in the nature of subscription fee, then no TDS is required to be deducted. Accordingly, ground No.2 is also set aside.

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

Order pronounced on 17th May, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai; Dated 17/05/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mumbai