

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA Nos.480 & 477/Mum/2024
(A.Ys. 2015-16 & 2016-17)**

DCIT, CC-3(4) 1915, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	Patel Realty (India) Ltd. 2 nd Floor Patel Engineering Compound, Patel Estate Road, Jogeshwari (West) Mumbai - 400102
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAEC2373A		
Appellant	..	Respondent

Appellant by :	Madhumalti Ghosh
Respondent by :	Anuj Kisnadawala

Date of Hearing	27.05.2024
Date of Pronouncement	11.07.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

Both these appeals filed by the revenue for assessment years 2015-16 & 2016-17 are adjudicated together by this common order.

ITA No.480/Mum/2024

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in restricting the disallowance u/s. 40(a)(ia) of the Income Tax Act, 1961 of Rs.14,75,22,972/-without considering the fact that in the clause No.21(b) of the Income Tax Audit Report, auditor has specifically mentioned the amount Le Rs.49,17,43,240/- on which tax was not deducted @ 30% which is to be disallowed.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in restricting the disallowance u/s.40(a)(ia) of the Income Tax Act, 1961 without considering the fact that disallowance u/s.40(a)(ia) is independent of whether the expenditure is covered by section 40(a)(ia), forms part of closing WIP or otherwise."

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in restricting the disallowance u/s. 14A of the Income Tax Act, 1961 r.w.r. 8D(2)(iii) of the Income Tax Rules, 1962, to the extent of exempt income received by the assessee during the year under consideration without appreciating the clarification of legislative intent provided by the CBDT vide Circular No. 5/2014 dated 11.02.2014 and to this effect even an amendment was made by Finance Act, 2022 by way insertion of Explanation to Section 14A of the Income Tax Act, 1961.*
4. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing the AO to delete the disallowances made on account of interest on delayed payment of TDS treating the same as not penal but compensatory in nature ignoring the fact that such a default in respect of statutory liability is always penal in nature.*

The appellant craves to leave, to add, to amend and / or to alter any of the ground of appeal, if need be.

The appellant, therefore, prays that on the ground stated above, the order of the ld. CIT(A)-51, Mumbai, may be set aside and that of the Assessing Officer restored.”

2. Fact in brief is that return of income declaring total income of Rs.11,07,67,290/- was filed on 30.11.2015. The assessee has filed revised return of income on 16.01,2017 and declared income of Rs.10,78,67,290/-. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 17.08.2016. The National Company Law Tribunal (NCLT), Mumbai bench vide order dated 14.07.2017 approved the scheme of amalgamation between Patel Realty Ltd. (Transferor Company) and Patel Engineering Ltd. (Transferee Company). The assessee company was engaged in the business of property development. During the course of assessment on perusal of tax audit report filed by the assessee, it was not noticed that as per clause 21(b) of 3CD an amount of Rs.49,17,43,240/- was inadmissible u/s 40(a)(ia) and same should be added back to the total income of the assessee. However, the assessee has not disallowed the same in the return of income. On query the assessee explained that aforesaid amount of Rs.49,17,43,240/- had not been claimed as a deduction and the aforesaid amount was a part of work in progress (WIP) and same was not debited to profit and loss account. The relevant extract of the

submission of the assessee reproduced in the order of the assessing officer is as under:

"In view of the above, as the Assessee has not claimed the said expenditure of Rs.49,17,43,239/- as a deduction, the question of disallowance u/s 40(a)(ia) does not arise.

Without prejudice, we may add that in any case the Assessee has reversed this provision of Rs.49,17,43,239/- in subsequent year and Tax has deducted at source on the expenses booked and deposited before the due date of filling the return (details enclosed).

As regards the disallowance u/s 40a(ia) of Rs.29,12,51,182/- during the assessment proceedings of A.Y. 2014-15, we submit that the said amount has also been paid in A.Y 2015-16 and hence we request you to allow deduction of the same in this year."

5.2 Further vide letter dated 27-12-2016 assessee has filed its submission as under:

"As regards the disallowance u/s 40(a)(ia) of Rs.29,12,51,182/- during the assessment proceedings of A.Y. 2014-15, we may draw your goodselfs attention to 1st proviso to section 40(a)(ia), which reads as under:

"Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in subsection (1) of section 139, such sum shall be allowed as deduction in computing the Income of the previous year in which such tax has been paid."

In view of the above, we submit that out of Rs.29,12,51,182/- the Assessee has paid Tax on Rs.18,54,38,690/- in A.Y 2015-16, details along with payment challans, ledger account of parties demonstrating the deduction and payment of the Tax deducted at source in the year under consideration are enclosed.

Hence we request your goodself to allow an amount of Rs.18,54,38,690/- on which tax has been duly deducted and paid by the assessee in the year under consideration."

However, the AO has not agreed with the submission of the assessee and stated that assessee has not been able to demonstrate that the tax (TDS) paid on the sum of Rs.18,54,38,690/- was towards part of the disallowance in the assessment order 2014-15 amounting to Rs.29,12,51,182/- u/s 40(a)(ia) of the Act. The assessing officer was of

the view that disallowance u/s 40(a)(ia) was independent of whether the expenditure covered by Sec. 40(a)(ia) forms part of closing WIP or otherwise also the auditor has specifically mentioned the amount of Rs.49,17,43,240/- in clause 21(b) of the audit report on which tax was not deducted. Therefore, the assessing officer has disallowed 30% of Rs.49,17,43,240/- to the amount of Rs.14,75,22,972/- and added to the total income of the assessee.

3. During the course of assessment proceedings the AO has also noticed that assessee has made investment in the subsidiaries/associate companies on which no disallowance was made u/s 14A. On query, the assessee explained that it had made investment as on 31.03.2015 of Rs.2822.02 lacs mainly in subsidiaries company of the assessee and purpose of the said investment was to gain controlling interest in those companies and also explained that assessee had not earned any exempt income from the investment made, therefore no disallowance u/s 14A should be made in the case of the assessee. However, AO has not agreed with the submission of the assessee and determined the expenditure of Rs.14,11,012/- as per Sec. 14A r.w.Rule 8D of the Income Tax Rule 1962.

4. Aggrieved the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee.

5. Heard both the sides and perused the material on record. The case of the assessee was subject to scrutiny assessment u/s 143(3) of the Act as discussed supra, the assessing officer has made disallowance of Rs.14,75,22,972/- u/s 40(a)(ia) and also made addition of Rs.14,11,012/- u/s 14A of the Act. Regarding disallowance of Rs.14,75,22,972/- made u/s 40(a)(ia) of the Act we find that assessee has provided relevant supporting detail demonstrating that it has not debited any such expenditure to the profit and loss account and same

was related to construction expenses of the project which was charged to work in progress. The Id. CIT(A) in his finding has mentioned that the complete detail relating to work in progress account showing that the entire amount was part of work in progress and same was not debited to the profit and loss account were filed. We find that the similar submission and relevant supporting document were also furnished before the assessing officer showing that said amount was never charged to the profit and loss account and same was part of work in progress, however, the assessing officer without controverting such facts had made disallowance u/s 40(a)(ia) as discussed above in this order. Considering the above facts and findings of the Id. CIT(A) supported with relevant material, we don't find any merit in the grounds of appeal filed by the Revenue, therefore, this ground of appeal of the revenue is dismissed.

6. Regarding the disallowance u/s 14A of the Act we find that during the course of assessment the assessee has brought to the notice of the assessing officer that the entire investment of Rs.28,21,52,312/- was made in the equity shares of subsidiaries/associate companies and it had not earned any exempt income during the year under consideration, however, the AO has determined the amount of disallowance u/s 14A as provided under Rule 8D of the I.T. Rule 1962, It is undisputed fact that assessee has not earned any exempt income during the year under consideration and this issue is settled by the various decision of the ITAT Benches of Mumbai that if no exempt income is earned then no disallowance u/s 14A is to be made. The Id. CIT(A) has elaborated in his finding the various judicial pronouncements including the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Corrttech Energy Pvt. Ltd. wherein the Hon'ble High Court held that disallowance cannot exceed the exempt income so earned by the assessee during the year under consideration. The Id.

CIT(A) has also referred the decision of Hon'ble Madras High Court in the case of Chettinad Logistics Pvt. Ltd. (95 taxmann.com 250) and the decision of Hon'ble Bombay High Court in the case of Nived Traders Pvt. Ltd. (ITA No. 149 of 2017) on the proposition that disallowance made u/s 14A is not tenable in the light of the fact that during the year the assessee has not earned any exempt income. The ld. CIT(A) has also referred the decision of hon'ble Delhi High Court in the case of Era Infrastructure (I) Ltd. (2022) 141 taxman.com 289 (Delhi) wherein held that amendment of Sec.14A cannot be applied retrospectively, therefore, considering the above facts and finding we don't find any infirmity in the decision of ld. CIT(A).

7. Regarding ground of appeal of the revenue pertaining to delete the disallowance made on the account of interest on delayed payment of TDS, we find that the ld. CIT(A) has followed the decision of ITAT, Mumbai in the case of Resolve Salvage and Fire India Pvt. Ltd. (2022) 139 taxman.com 196 (Mumbai Tribunal) wherein held that interest on delayed payment of TDS is an allowable deduction. Following the decision of ITAT as referred in the finding of ld. CIT(A) we don't find any merit in this ground of appeal of the revenue, therefore the ground of revenue is dismissed.

8. The appeal of the revenue is dismissed.

ITA No. 477/Mum/2024

9. Ground No. 1 (Restricting disallowance u/s 14A to the extent of exempt income): - Since similar issue vide ITA No. 477/Mum/2024 has been adjudicated in the ground No. 3 of appeal of the Revenue as supra in this order applying the same findings as mutatis mutandis this ground of appeal of the Revenue is dismissed.

10. Ground No. 2 (Disallowance u/s 40(a)(ia) of the Income Tax Act, 1961): - Since identical issue on same facts has been adjudicated in the ground no. 2 of the Revenue vide ITA No. 480/Mum/2024 as supra in this order, applying the same findings as mutatis mutandis this ground of appeal of the Revenue stand dismissed.

11. Ground No. 3 (Interest on delayed payment of TDS): - Similar issue on identical on same facts has been adjudicated as per ground of appeal no. 4 vide ITA No. 480/Mum/2024 as supra in the order applying the same findings as mutatis mutandis this ground of appeal of the Revenue is also dismissed.

12. In the result, the appeals of the revenue are dismissed.

Order pronounced in the open court on 11.07.2024

Sd/-

Sd/-

(Rahul Chaudhary)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 11.07.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.