

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

BEFORE
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
&
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

M.A.27/Hyd/2024

Arising out of आ.अपी.सं / ITA No.537/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2021-22)

Sheladia Associates,INC Vs. Asst.Director of Income Tax
Secunderabad (International Taxation)-2
[PAN : AAFCS7792F] Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Ms.Aluru V Sai Sudha, Ld.AR
राजस्व द्वारा/Revenue by: Sri Srinath Sadanala, DR

सुनवाई की तारीख/Date of hearing: 16 /08/2024
घोषणा की तारीख/Pronouncement on: 27/08/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

This M.A. is filed with a prayer to modify the order in so far as disallowance of expense u/s 44C of the Income tax Act, 1961 ("the Act") is concerned, dealt with by the Tribunal in paragraph 12 to 18 of the order.

2. It is submitted by the Ld.AR that at paragraph 19, the Bench observed that the addition of Rs.1,60,78,394/- was made not only u/s 44C of the Act, but also u/s 40(a)(i) of the Act, since the assessee challenged in appeal the applicability of section 44C of the Act, but not 44(a)(i) of the Act, the said addition cannot be deleted. The Ld.AR, however, further

submitted that neither in the DRP directions nor in the final assessment order, any reference to disallowance u/s 40(a)(i) was made and it was only in the draft assessment order, such a mention was made, but by mistakenly, due to such a reference in the draft assessment order, the Bench thought that it was made in the final assessment order also.

3. Per contra, the Ld.DR submitted that the Revenue argued about the addition made u/s 40(a)(i) of the Act also, which the Bench accepted and therefore, the present M.A. does not have any merits.

4. We have gone through the record in the light of the submissions made on either side. It is a fact that neither the DRP nor the final assessment order made any reference to the disallowance u/s 40(a)(i) of the Act. It is only in the draft assessment order, such a reference could be found. It also remains to be a fact that the Revenue did not agitate the applicability of provisions u/s 40(a)(i) to the facts of the case by filing any cross objections, but only a passing remark was made during the arguments that the disallowance u/s 40(a)(i) could also be made. However, the DRP did not uphold such reference made in the draft assessment order also. The Learned Assessing Officer did not disallow the same in the final assessment order. We are satisfied that it is only a mistake that has crept in the order of the Tribunal and the same cannot be perpetuated when it is brought to our notice. Recording the said fact, we direct the deletion of paragraph No.19 from the order. Observations from paragraph nos. 12 to 18 holds good. Consequently, the addition of Rs.1,60,78,394/- made u/s 44C of the Act stands deleted.

5. In the result, miscellaneous application of the assessee is allowed in the above terms.

Order pronounced in the open court on this the 27th day of August, 2024.

Sd/-
(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad, Dated: 27/08/2024

LR/SPS

Copy forwarded to:

- 1.M/s Sheladia Associates Inc., D.No.9-1-127/4 & 127/4/1, 4th Floor,
Amsri Classic, SD Road, Secunderabad
- 2.The ADIT (INT TAXN)-2, Hyderabad
- 3.The Dispute Resolution Panel (DRP), Bengaluru
4. The Director of Income Tax (IT &TP), Hyderabad
5. The Addl.Commissioner of Income Tax (Transfer Pricing), Hyderabad
6. DR, ITAT, Hyderabad
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