IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No.3429/M/2024
Assessment Year: 2012-13

DCIT Central Circle 8.1, **6th Floor,** Aayakar Bhavan, Mumbai Maharashtra-400 020	Vs.	**M/s. Shivalik Ventures Pvt. Ltd.,** A-104, Parvati CHS MHADA Layout Four Bungalow, Andheri Maharasthra- 400 053 **PAN: AALCS7683R**
(Appellant)		(Respondent)

CO No.152/M/2024
(Arising out of ITA No.3429/M/2024)
Assessment Year: 2012-13

M/s. Shivalik Ventures Pvt. Ltd., A-104, Parvati CHS MHADA Layout Four Bungalow, Andheri Maharasthra- 400 053 **PAN: AALCS7683R**	Vs.	**DCIT Central Circle 8.1,** **6th Floor,** Aayakar Bhavan, Mumbai Maharashtra-400 020
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Vijay Mehta, A.R.
Revenue by : Ms. Nayana Krishnakumar, Sr. A.R.

Date of Hearing : 26. 08 .2024
Date of Pronouncement : 19. 09 .2024

O R D E R

Per: Narender Kumar Choudhry, Judicial Member:

Instant Appeal and Cross objections have been preferred by the Revenue and the Assessee respectively against the order dated 16.05.2024, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. For brevity first, we will dispose of the appeal i.e. ITA No.3429/M/2024 filed by the Revenue Department. Brief relevant facts are that the Assessee had declared its income at "Rs. Nil" by filing its return of income on 30.03.2013 which was processed under section 143(1) of the Act. Subsequently the case of the Assessee was selected for scrutiny, which resulted into passing of the assessment order dated 30.03.2014 u/s 143(3) of the Act, whereby the income of the Assessee was assessed at Rs.35,25,77,840/-.

3. Thereafter the case of the Assessee was re-opened under the provisions of section 147 of the Act by issuing a notice dated 31.03.2019 u/s 148 of the Act. The Assessee in response to the notice u/s 148 of the Act filed its return of income on 21.05.2019 declaring total income at "Rs.Nil". The Assessee vide letter dated 11.11.2019 also filed his objection against the reopening of the case, which was disposed of by passing a speaking order dated 09.11.2018 by the Assessing Officer (AO). It appears from the assessment order that the Assessee in its objection against the notice u/s 148 of the Act has accepted that it has made payment of Rs.6,87,26,000/- to the slum dwellers for enabling them to meet the expenditure incurred towards rent during the year under consideration. The said payment was purely in the nature of compensation and not in the nature of rent, therefore the Assessee did not deduct tax on such payment. However, the AO found the claim of the Assessee as unjustifiable and ultimately disallowed the claim of expenses to the tune of Rs.2,33,65,500/- under the provisions of section 40(a)(ia) of the Act by holding as under:

> *"2.1 The assessee has tried its best in his submission to justify that the TDS was not applicable on the amount paid to Slum dwellers and there is no escapement of assessment of income as the same has been duly disclosed in the return of income for the year under consideration as well as during the assessment proceedings. In this regard, it is pertinent to mention here that there is no dispute that the assessee has not shown the payment made to slum dwellers in its return of income but the matter is that the assessee failed to deduct tax on such*

payment. The assessee at para 7 on page 4 of its submission claims that it has not paid rent to the slum dwellers but it has paid to the tenants for enabling them to meet expenditure incurred by them towards rent. Thus, the assessee itself accepts that it has made payment to the tenant in lieu of rent. Further, the assessee has used the word 'tenent' which itself means renter and further, it also states that the payment has been made to compensate the rent. Thus, payment in lieu of rent cannot be something other than rent. In other words, if the assessee would be arranging the accommodation for its tenant, it would be directly paying the rent to the landlord but in the instant case of the assessee the same payment is channelized through the tenant. So, whatever payment has been made by the assessee on this account is in the rental nature only. As such the assessee has grossly failed to deduct TDS on this amount which attracts the provision of section 40(a)(ia) of the IT Act.

2.2 It is pertinent to mention here that the assessee has not submitted any explanation/justification in response to the order disposing of objection raised by assessee against reasons recorded for reopening the assessment by issuing notice u/s 148 of the IT Act. It elucidates that assessee has nothing to submit in this regard. Since, the assessee has failed to deduct tax on the payment of rent within the provision of section 1941 of the IT Act, provision of section 40(a)(ia) of the IT Act is attracted in the case of the assessee. In view of the above, the claim of expenses of 2,33,65,500 made by the assessee on account of rent paid to its tenant is disallowed within the provision of section 40(a)(ia) of the IT Act. Since the assessee has submitted that this expenditure forms part of the Work in Progress shown by the assessee, this amount is reduced from the WIP shown by the assessee as on 31-03-2012."

4. The Assessee, being aggrieved, challenged the said addition by filing first appeal before the Ld. Commissioner, who vide order dated 16.05.2024 allowed the appeal of the Assessee and consequently deleted the aforesaid addition by holding as under:

"13. In Ground no.3, the appellant has challenged the disallowance made by the AO for failure to comply with S.194-1. The appellant had paid a sum of Rs.2,33,65,500/- to the slum dwellers till they are given possession of their rehabilitated units. According to the AO, TDS ought to have been deducted u/s. 194- 1. I find that the Hon'ble ITAT has held that there is no requirement to deduct TDS and that there is no legal obligation to deduct TDS u/s. 194-1. It has been held so in M/s. Sahana Developers Pvt Ltd vs Income Tax Officer (ITA No. 5963/Mum/2013 dated 24.02.2016) and Shanish Constructions R.

Ltd. vs. ITO 8(3)(1), Mumbai (ITA Nos. 6087 & 6088/Mum/2014 dated 11.01.2017).

13.1. In a very recent case of Sarfaraz S Furniturewala vs. Afshan Sharfali Ashok Kumar & Ors. (Writ Petition 4958 of 2024) dated 15.04.2024, the Hon'ble Bombay High Court held as follows:

> "10. The ordinary meaning of Rent would be an amount which the Tenant/Licensee pays to the Landlord/Licensor. In the present proceedings the term used is "Transit Rent", which is commonly referred as Hardship Allowance / Rehabilitation Allowance / Displacement Allowance, which is paid by the Developer / Landlord to the tenant who suffers hardship due to dispossession. Hence, in my opinion 'Transit Rent' is not to be considered as revenue receipt and is not liable to be tax, as a result there will be no question of deduction of T.D.S. from the amount payable by the Developer to the tenant.".

13.2. In view of the above judicial pronouncements, it is held that the appellant is not required to deduct TDS. Accordingly, disallowance made by AO is deleted and WIP shall be restored by the extent of disallowance. Ground no.3 stands allowed."

5. The Revenue Department, being aggrieved is in appeal before us by filing the instant appeal i.e. ITA No.3429/M/2024, whereas the Assessee has preferred CO under consideration i.e. 152/M/2024 challenging the reopening of the case and issue of notice u/s 148 of the Act and consequential assessment order passed u/s 147 of the Act by the AO as bad in law, illegal, null and void.

6. We have heard the parties and perused the material available on record. The Revenue Department has raised the sole ground of appeal by challenging the impugned order to the effect that the Ld. Commissioner has erred in deleting the disallowance of expenses of Rs.2,33,65,500/- on account of non deduction of TDS qua rent paid to the tenants without considering the fact that the said payment has been made to the slum dwellers, to meet the expenditure incurred towards rent during the year under consideration. We observe from the impugned order that the Ld. Commissioner deleted the addition made on account of expenses of Rs.2,33,65,500/- on account of non-deduction of TDS, not only by

following the judgment passed by the Tribunal but in fact also followed the judgment of the Hon'ble Jurisdictional High Court in the case of Sarfaraz S Furniturewala Vs. Afshan Sharfali Ashok Kumar & ors. (Writ petition No.4958 of 2024) dated 15.04.2024 wherein the Hon'ble Jurisdictional Bombay High Court has also dealt with the identical disallowance and ultimately held that transit rent is not to be considered as "revenue receipt" and is not liable to be taxed, as a result there will be no question of deduction of TDS from the amount payable by the developer to the tenant. The conclusion drawn by the Hon'ble High Court is reproduced herein below:

> ***"10. The ordinary meaning of Rent would be an amount which the Tenant/Licensee pays to the Landlord/Licensor. In the present proceedings the term used is "Transit Rent", which is commonly referred as Hardship Allowance / Rehabilitation Allowance / Displacement Allowance, which is paid by the Developer / Landlord to the tenant who suffers hardship due to dispossession. Hence, in my opinion 'Transit Rent' is not to be considered as revenue receipt and is not liable to be tax, as a result there will be no question of deduction of T.D.S. from the amount payable by the Developer to the tenant."***

7. Respectfully following the judgment of the Hon'ble Jurisdictional High Court, we are inclined not to interfere in the impugned order, which is otherwise neither perverse nor suffer from any impropriety and/or illegality and therefore the impugned order is affirmed. Thus, the appeal filed by the Revenue Department stands dismissed.

8. Coming to the CO filed by the Assessee, as we have already upheld the impugned order whereby the addition has been deleted, the CO filed by the Assessee has become infructuous and therefore we are inclined not to dwell into the merits of the CO as decision of the same shall prove futile exercise. Consequently, the CO is dismissed being infructuous.

9. In the result, the appeal filed by the Revenue as well as CO filed by the Assessee stands dismissed.

Order pronounced in the open court on 16.09.2024.

Sd/-	**Sd/-**
(RATNESH NANDAN SAHAY)	**(NARENDER KUMAR CHOUDHRY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.