

| आयकरअपीलीयअधिकरणन्यायपीठ,मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No.2880/Mum/2024
Assessment Year: 2012-13

SVC Co-operative Bank Ltd. SVC Tower, Nehru Road Santacruz (East) Mumbai - 400055 [PAN: AAAAT0177C]	Vs	Deputy Commissioner of Income Tax, Circle -1(3)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Rajeev Waglay, A/R
Revenue by :	Shri Ajay Kumar Singh, Sr. D/R

सुनवाईकीतारीख/**Date of Hearing** : 19/09/2024

घोषणाकीतारीख/**Date of Pronouncement**: 25/09/2024

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 19/09/2024 by NFAC Delhi [in short 'ld. CIT(A)] pertaining to AY 2012-13.

2. The grievance of the assessee reads as under :-

"On the facts and the circumstances of the case, the Ld. CIT (A), NFAC, Delhi erred in -

1. *confirming the disallowance of expenses to the tune of Rs. 3,21,31,971 on the ground that tax was not deducted at source on these amounts in accordance with law and hence, the disallowance made by the Assessing officer u/s. 40(a)(ia) of I. T. Act, 1961 was justified.*

2. *confirming the above disallowance without appreciating the fact that tax was properly deducted at source on these payments in view of certificate of lower deduction of tax at source issued to the parties by their respective assessing officers.*

3. *confirming the above disallowance without appreciating the fact that in respect of certain expenses tax at source was not deductible at all since those payments did not attract the provisions applicable to tax deductible at source.*

And hence, the disallowance of expenses of Rs. 3,21,31,971 u/s. 40(a)(ia) deserves to be deleted in toto.

Your Appellant craves leave to add, alter, modify or delete all or any of the grounds of appeal."

3. Briefly stated the facts of the case are that the assessee filed its return of income on 28/09/2012 declaring total income at Rs.102,79,65,520/-. The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee. During the course of scrutiny assessment proceedings, the AO noticed that the assessee has debited to the profit and loss account, a sum of Rs.4,09,91,945/- being legal and professional charges, of Rs.3,27,49,392/- being Advertisement and Rs.1,44,44,127/- being networking expenses. The AO found that the assessee has not deducted tax at source on the impugned payments, therefore, invoking provisions of Section 40(a)(ia) of the Act, the AO disallowed Rs.8,81,85,464/-.

3.1. The assessee carried the matter before the Id. CIT(A) and pointed out that it is not the case of non-deduction of tax but it is a case of short deduction of tax at source to which provisions of Section 40(a)(ia) of the Act, do not apply. After considering the facts and submissions, the Id. CIT(A) restricted the disallowance to Rs.3,21,31,971/-.

4. Before us, the Id. Counsel for the assessee drew our attention to a chart containing details of the impugned payments along with remarks for non-deduction/short deduction of tax at source. It is the say of the Id. Counsel that because of inability to furnish necessary evidence before the lower authorities, the assessee could not defend its case properly and since now full details are available with the assessee, the same should be considered.

4.1. The Id. D/R fairly stated that if the assessee can satisfy the AO by documentary evidence then, the matter may be sent back to the AO for verification.

5. We have given a thoughtful consideration to the orders of the authorities below. We have carefully perused the chart exhibited at pages 36 to 38 of the paper book. We find that now, the assessee is prepared with supporting evidence to show, why the provisions of Section 40(a)(ia) of the Act would not be applicable on the impugned payments of professional charges, advertisement and networking expenses.

6. Considering the nature of expenses *qua* the business of the assessee, we are of the considered opinion that the details now available with the assessee should be verified thoroughly by the AO. We, therefore, restore the issues to the file of the AO with a direction to the assessee to furnish all the necessary supporting evidence in claim of non-applicability of provisions of Section 40(a)(ia) of the Act and the AO is directed to decide the issues afresh as per the provisions of law after affording reasonable and adequate opportunity of being heard to the assessee.

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

Order pronounced in the Court on 25th September, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRAKUMARBILLAIYA)
ACCOUNTANTMEMBER

Mumbai, Dated 25/09/2024

**SC S.P.*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. संबंधितआयकरआयुक्त/ Concerned Pr. CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)-
5. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्डफाई/Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकरअपीलीयअधिकरण
ITAT, Mumbai