

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.2464/M/2024
Assessment Year: 2013-14**

Income Tax Officer, Ward-8(1)(1) 651, 6 th Floor, Aayakar Bhawan, M.K. Road, Churchgate, Mumbai - 400020	Vs.	Saat Rasta Properties Private Limited 5 th Floor, Carmichael House, Carmichael Road, Cumballa Hill, Mumbai - 400028 PAN: AALCS7071H
(Appellant)		(Respondent)

Present for:

Assessee by : Shri H.N.Motiwala,CA
Revenue by : Shri B. P. Ramesh,Sr.DR

Date of Hearing : 22.10.2024
Date of Pronouncement : 23.10.2024

O R D E R

Per : Prabhaskar Shankar, Accountant Member:

The present appeal has been filed by the Revenue which emanates from the appellate order passed by the Ld.CIT(A)/ National Faceless Appeal Centre (NFAC), Delhi, with regard to the assessment order passed under section 143(3) of the Income Tax Act 1961, (in short 'the Act') for the A.Y. 2013-14.

2. The Revenue has raised following grounds of appeal :

"1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is correct in deleting the disallowance u/s. 40a(ia) on account of failure to deduct TDS towards payments made on account of architectural fees and construction?"

2. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is correct in deleting the disallowance u/s. 40a(ia) made by the AO on account of failure to deduct TDS towards "payments" irrespective of whether it is capital or revenue expenses?

3. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is correct in deleting the disallowance u/s. 40a(ia) made by the AO towards failure to deduct TDS towards "payments" as Legislature has used the word "payments" as per provisions of section 194C and 194J of the I.T. Act, 1961.

4. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) is correct in deleting the disallowance u/s. 40a(ia) made by the AO towards failure by the assessee, as provisions of section 40a(ia) uses the words "on which tax is deductible at source under Chapter XVIIIB and such tax has not been deducted or, after deduction, has not been paid" and accordingly, AO rightly made disallowance u/s. 40a(ia)."

3. Facts of the case are that the assessee company engaged in development of land and buildings has filed its return of income declaring total income at loss of Rs.6,04,397/-. Subsequently, assessment was completed u/s 143(3) of the Act, assessing the loss at Rs.6,04,397/- by making a disallowance u/s 40(a)(ia) of Rs.4,23,87,490/- on account of amount debited to Capital Work in Progress. Before the Id.CITA),the assessee pleaded that the Ld. Assessing Officer, invoked Section 40(a)(ia) of Act and disallowed the amounts paid to certain parties. He disallowed and reduced the Capital Work in Progress by the amount paid aggregating Rs. 4,23,87,4907/- working out the Capital WIP to be Rs. 48,03,344/- instead of Rs. 4,71,90,834/- as disclosed in the Balance Sheet.He erred in invoking Section 40(a)(ia) and disallowing the Capital WIP.

3.1 The Id.CIT(A) deleted the above addition on the ground that the assessee did not claim any deduction of the expenditure which were capitalized in the books as work-in-progress. The impugned sum was not debited to the profit and loss account.

4. Before us, the learned Sr.DR relied on the assessment order. However, it was admitted that the impugned amount was not debited to the profit and loss account and was also not claimed as expenditure. Per contra, the Id,Sr.AR pleaded that the provisions of section 40(a)(ia) were not applicable and the Id.CIT(A) rightly deleted the addition.

5. We have carefully considered the issue in hand, respective contentions as also the position of law in this regard. It would be relevant to reproduce the relevant provisions of the section which is as below:

40. Amounts not deductible.

*Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",-
(a) in the case of any assessee- (ia) "Thirty percent of any sum payable to a resident" on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139;*

5.1 Plain reading of the section makes it clear that no deduction could be made under Sections 30 to 38 while computing the profits and gains of business if TDS has not been deducted. In the present case, it is undisputed fact is that the assessee has neither debited the amount paid to the Profit & Loss Statement nor claimed the amounts paid as a deduction while computing the profits & gains of business. The above amounts have been capitalised and disclosed under long term assets in the Balance Sheet. Therefore, it is apparent that the impugned sum paid is outside the ambit of Section 40(a)(ia). The Id.CIT(A) has also examined the issue in the light of the business activity of the assessee by observing that the assessee is not engaged in business activity. The Profit & Loss statement indicates a zero operating income for the assessee. There are no expenses debited to the Profit & Loss Statement, except minimal administrative expenses. The amount spent for construction he has been capitalised by the assessee. Since the assessee does not have any business activity, it does not claim any depreciation on the fixed assets.

Hence, there is no deduction of the amounts paid within the ambit of sections 30 to 38. The amounts paid to the two parties M/s Studio Mumbai Architecture & Design Pvt. Ltd. and M/s BAP Constructions Pvt. Ltd. Besides, the amounts paid to them have been disclosed by them in their financial statements and have been offered for tax. Hence, there is no loss of revenue on account on non- deduction of TDS by the assessee. The assessee has treated the amount as a capital expenditure. Hence, the treatment given by the AO is not in line with the provisions of Section 40(a)(ia).

5.2 In the instant case, the amounts in question were not debited to P&L account and not claimed as revenue expenditure by the assessee which capitalized it the books as Work-In-Progress. Whether the assessee may be subject to any proceeding under the Act for non- deduction of tax at source, is not a subject matter of proceeding under section 143(3) or 144 of the Income Tax Act and it is altogether separate proceedings under that chapter. The provision of section 40(a) is only an additional measure to enforce the compliance of Chapter XVIIIB of the Act, by disallowing an expenditure which is otherwise allowable under the provisions of the Act. Therefore, the question of disallowance under section 40(a) arises only when an expenditure is claimed by the assessee without deducting the tax at source as per the provisions of Chapter-XVIIIB of the Act. Hence, the action of the Id.AO in disallowing the amount of Rs.4,23,87,490/- from WIP is patently incorrect application of law and was rightly deleted by the Id.CIT(A). Finding no infirmity in his decision, we uphold the deletion.

6. In the result, the appeal of the Revenue is **dismissed**.

Order pronounced in the open court on 23.10.2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Poonam Mirashi,
Stenographer

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.