



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

**BEFORE SHRI SAKTIJIT DEY, V.P.
AND
SHRI AMARJIT SINGH, AM**

ITA No.4065/MUM/2023		A.Y. 2017-18
Mahaonline Ltd. Directorate of Information Technology, Mantralaya Annex 7 th Floor, Nariman Point, Mumbai 400032	Vs.	Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Room No. 640, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai
(Appellant)		(Respondent)
PAN		AAGCM 6746G
Assessee by		Shri Manish Kant
Revenue by		Shri R.R. Makwana, Sr. DR
Date of hearing		18.11.2024
Date of pronouncement		22.11.2024

ORDER

PER SAKTIJIT DEY, V.P.:

The Captioned Appeal has been filed by the assessee assailing the order dated 25.09.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi pertaining to the Assessment Year (A.Y.) 2017-18.



2. In the memorandum of appeal, the assessee has raised two grounds. Ground No.2, being a general ground, does not require any adjudication.

3. In Ground No.1, the assessee has challenged the disallowance of Rs.31,34,633/- made under Section (u/s.) 40(a)(ia) of the Income Tax Act, 1961 (in short 'the Act').

4. Requisite facts relating to this issue are, the assessee is a resident corporate entity. As stated by the Assessing Officer, the assessee is engaged in the business of development, maintenance of Mahaonline portal for providing web-based services by the Government to Citizens, Government to Business and other portal services of the Government of Maharashtra. For the assessment year under dispute, assessee filed its return of income on 13.10.2017 declaring income of Rs.8,11,25,270/- under the Normal Provisions and book loss of Rs.6,79,22,328/- u/s.115JB of the Act. In the course of assessment proceedings, the Assessing Officer, while verifying the details of various expenditures debited to the P&L account, observed that certain amount has been paid by the assessee during the year without deducting tax at source, though, such payments are subject to TDS provisions. The details of such expenses are as under:



Sr.	Particulars	Vendor Name	Amount
1.	Setu Maharashtra	Government of Maharashtra	4,320,000
2.	UID-Commission	VLE (Village Level Entrepreneurs)	1,985,969
3.	Project Expense- Outsourcing Cost DOP	Unity Telecom Infrastructure Ltd.	672,210
4.	Aaple Sarkar Cost	Rajya Setu Jilha Setu (Government of Maharashtra)	3,455,000
5.	Other Expenses		15,596
		Total	10,448,775
		30% disallowed	3,134,633

5. Being of the view that the assessee has failed to comply with the TDS provisions qua the aforesaid payments made, the Assessing Officer invoked the provisions of Section 40(a)(ia) of the Act and disallowed an amount of Rs.31,34,633/-, being 30% of the total payment made of Rs.1,04,48,775/- without deduction of tax at source. Though, the assessee contested the aforesaid disallowances before learned First Appellate Authority, however it was unsuccessful.

6. Before us, learned counsel appearing for the assessee submitted that payments amounting to Rs.43,20,000/- and



Rs.3,455,000/- are not subject to TDS Provisions as payments have been made to Government of Maharashtra. He submitted, an identical issue came up for consideration before the Tribunal in the case of TATA Consultancy Services. He submitted while deciding the issue the Coordinate Bench has held that since payments were made to Government, TDS Provisions would not get attracted. Thus, he submitted, the issue is squarely covered in favour of the assessee. He submitted, as regards the payment of Rs.19,85,969/- to Village Level Entrepreneurs, in the year under consideration, the amount in dispute was neither paid nor credited to the payee. He submitted, when invoices were received from the concerned vendors and actual payment was made in subsequent years, assessee did comply with TDS Provisions. In this context, he drew our attention to the sample copies of TDS Certificates issued in Form No. 16A. In so far as alleged payment of Rs.6,72,210/- towards project expenses-outsourcing cost DOP, he submitted, the amount was never paid as the provision created was reversed subsequently. Therefore, there was no question of deducting tax at source. So far as payment of other expenses of Rs.15,596/- is concerned, learned counsel submitted that the amount is aggregate of three payments alleged to have been made by the assessee without deduction of tax. Explaining further, he submitted that actual payment made towards repairs and maintenance was to the extent of Rs.1,37,147/- on which the assessee had duly deducted tax at source. He submitted, balance amount of Rs.5,721/- was never paid. He



submitted, the assessee had incurred travel expenses of Rs.60,125/- on which tax was duly deducted at source. The excess of amount of Rs.4,875/- was never paid. He submitted, the payment of Rs.5,000/- alleged to be in the nature of fees to external consultants is actually payment towards telephone bill. In this context, he drew our attention to Page No.32 of the Paper Book, wherein, the copy of invoice of *Idea* is placed. Thus, he submitted, there was no requirement of deduction of tax at source.

7. The learned D.R. strongly relied upon the observations of the Assessing Officer and learned CIT(A).

8. We have considered rival submissions and perused the material on record. Having factually examined the issue relating to the disallowance made u/s. 40(a)(ia) of the Act, we find that the amounts of Rs.43,20,000/- and Rs.34,55,000/-, part of which have been disallowed by the Assessing Officer u/s. 40(a)(ia) of the Act, have actually been paid by the assessee to the Maharashtra Government. Therefore, such payment would not get covered under the TDS Provisions. In so far as payment of Rs.19,85,969/- to Village Level Entrepreneurs is concerned, the assessee has furnished before us documentary evidence to demonstrate that in the year under consideration neither the amount in dispute was paid nor credited to the concerned vendors. The assessee has further demonstrated that as and when, the amount was paid in subsequent years, TDS provisions have been fully complied



with. In so far as the amount of Rs.6,72,200/- alleged to have been paid towards various expenses/outsourcing of cost DOP. The assessee has demonstrated before us that though the provision was made for the amount in dispute, however, it was never paid or credited. On the contrary, the provision made was subsequently reversed. No contrary evidence has been brought on record by the Revenue to controvert the aforesaid factual position. In view of the aforesaid, we have no hesitation in holding that the payments made do not attract the TDS provisions in the year under consideration. Therefore, the disallowance made u/s. 40(a)(ia) of the Act is unsustainable.

9. In so far as alleged non deduction of tax at source on payments alleged to have been made of Rs.15,596/-, on factual verification it is observed that out of the said amount, the assessee has made payment of Rs.5,000/- only towards payment of telephone bill, whereas, the balance amount was never paid. Thus, in our view, no disallowance even in respect of payment made of Rs.15,596/- can be made u/s. 40(a)(ia) of the Act. Thus, the Assessing Officer is directed to delete the disallowance at Rs.31,34,633/-. This ground is allowed.

10. In addition to aforesaid ground, in letter dated 26.09.2024, the assessee has raised an additional ground on the issue of double disallowance of provision made of Rs.15,596/-. Since the additional ground raised by the assessee can be decided based on the facts available on record



and arises out of the assessment order, we are inclined to admit the additional ground.

11. Drawing our attention to the computation part of the assessment order, learned counsel for the assessee submitted that the amount of Rs.15,596/- has been disallowed twice as it has already been included in the disallowance made u/s. 40(a)(ia) of the Act.

12. Having considered rival submissions, we find that out of the amount of Rs.15,596/-, the assessee has actually paid an amount of Rs.5,000/- towards telephone bill. Therefore, no further disallowance of the amount can be made. However, in so far as the balance amount of Rs.10,596/- is concerned, since before us the assessee has asserted that this amount has never been paid, the Assessing Officer is directed to factually verify whether the assessee has reversed the provision subsequently or not. In case the provision has been reversed, the amount should not be added again.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 22/11/2024.

Sd/-

(AMARJIT SINGH)
(ACCOUNTANT MEMBER)

Sd/-

(SAKTIJIT DEY)
(VICE PRESIDENT)

Mumbai, Dated: 22.11.2024

Aks/-



Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard
File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai