

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no. 1827/Mum./2024

(Assessment Year : 2013-14)

Inspire Films Ltd.,
15, Shree Kamdhenu Estd Euro
House Lane,
Behind Inorbit Mall,
MindSpace, Malad (West),
Mumbai – 400 064
PAN : AACCC18324A

..... Appellant

v/s

Income Tax Officer
Mumbai

..... Respondent

Assessee by : Shri Rahul K. Hakani

Revenue by : Shri Virabhadra S. Mahajan, Sr.DR

Date of Hearing – 03/10/2024

Date of Order – 17/12/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 12/02/2024, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds: –

1. *The Learned Commissioner of Income Tax (Appeals) [Ld CIT (A)] erred in law and in facts of the case in upholding the Learned Assessing Officer's (Ld*

AO's) order of disallowing and adding to the total income, the sum of Rs 32,28,387/- after holding the same as cash expenses disallowable u/s 40A(3) of the Income Tax Act, 1961 (IT Act) although the nature of such payment was advance to cashiers and not the cash expenses.

2. The Ld CIT (A) erred in law and in facts of the case in upholding the AO's action of disallowing and making addition to total income, the sum of Rs 8,10,150/- u/s 40(a)(ia) of the IT Act after holding that TDS has not been made although the fact remains that TDS was duly made on the payments made as hire charges of the generator and on its attendant, and there is no provision to make TDS on the purchase of fuel/diesel purchased.
3. The Ld CIT (A) erred in law and in facts of the case upholding the AO's order of making an addition of Rs 97,250/- u/s 40(a)(ia) of the IT Act on the ground that no TDS has been made on such payment made to Annu Pathak on account of professional charges, despite the fact that the appellant has very much made the TDS, first by debiting the party's account and crediting the TDS payable a/c, and thereafter by debiting the TDS payable a/c once it is paid to the treasury of Government; and thus there is no violation of sec 40(a)(ia) of the IT Act.
4. The Ld CIT (A) erred in law and in facts of the case in confirming the AO's order of adding an amount of Rs 5,84,000/- u/s 40 (a)(ia) of the IT Act despite the fact that such payment made was not on account of hire charges paid but actually it was the purchase price/consideration of furniture and shooting set, from Kathasis Studio Pvt Ltd and therefore the same did not attract the provisions to make TDS.
5. The Ld AO erred in law & in facts of the case in initiating penalty proceeding u/s 271(1)(c) of the IT Act and the Ld CIT (A) has not given any relief on that value.

3. The issue arising in ground no.1, raised in assessee's appeal, pertains to disallowance under section 40A(3) of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a private limited company mainly engaged in producing television serials in Hindi for various channels in India. For the year under consideration, the assessee filed its return of income on 30/09/2013 declaring a total income of INR 27,71,780. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, on perusal of the cash book

of the assessee, it was observed that the assessee made cash payments in excess of INR 20,000 to a person in a day. Accordingly, the assessee was asked to show cause why the payments made be not disallowed under section 40A(3) of the Act. In response, the assessee submitted that the cash payments appearing in its cash book were made to its employees, who are also cashiers. The payment was made as advance to them for petty expenses to be incurred during shooting at different studios and locations. The assessee further submitted that at the place of shooting, various petty expenses are incurred towards conveyance, tea, coffee, snacks, transportation, repairs, maintenance, etc. It was submitted that from the advance received, the cashiers incur the expenditure as and when required and give account to the accountant for advance received and expenses incurred against the same. By referring to the ledger account, the assessee submitted that the nature of payments is advance for production/production shoots and expenses are debited in respective heads of expenditure incurred. The Assessing Officer ("AO") vide order dated 15/03/2016 passed under section 143(3) of the Act disagreed with the submissions of the assessee and held that it is seen from the ledger that the assessee has made payment to various parties of more than INR 20,000, which is in violation of the provisions of section 40A(3) of the Act. Accordingly, the AO disallowed the amount of INR 32,28,387 under section 40A(3) of the Act and added the same to the assessee.

5. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the assessee has not proved that no payment has been made in contravention of the provisions of section

40A(3) of the Act especially when a huge amount of INR 32,28,387 has been incurred by the assessee through cashiers as no record of having incurred these petty expenses has been reproduced. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, there is no dispute regarding the business profile of the assessee that it is engaged in the business of producing television serials for various television channels. Since in the cash book of the assessee, certain payments were found to have been made in excess of INR 20,000 to a person in a day, the AO disallowed the entire expenditure of INR 32,28,387 under section 40A(3) of the Act. As per the assessee, the nature of business of the assessee is that of production of television serials at various locations/studios and in this process, the assessee also has to incur various petty expenses in the nature of conveyance, tea, coffee, snacks, transportation, repairs, maintenance, etc. It is further the plea of the assessee that during the year under consideration, it made cash payments to four of its employees, who are also working as cashiers. From the advance so received, the cashiers incur the expenditure as and when required and give the account to the accountant for advance received and expenses incurred against the same. Thereafter, the accountant accounts for the expense debiting the respective heads of the expenditure incurred. As per the assessee, as against the expenditure incurred against the advance received by the cashier, each individual expenditure is less than INR 20,000 and therefore the assessee company has not incurred any expenditure in cash at any time in excess of INR

20,000. In this regard, the assessee placed reliance upon the ledger account of its cashiers in its books, in order to substantiate the plea that payment was made for petty expenditure during the shooting of television serials. As per the assessee, cash paid to the cashier is debited to his individual account as an advance in the books of the assessee and as against these advances, when accounts are given the expenditure head is debited and the cashier's account is credited. During the hearing, the learned AR submitted that an individual expense ledger account is also maintained day-wise, wherein the cashier account is reversed. The learned AR also furnished the sample copy of such ledger. Further, the assessee has also placed on record sample invoices/vouchers in respect of the expenditure incurred in cash to show that the expenditure incurred in cash at any time is not more than INR 20,000. It is evident from the record that none of these evidences were examined by the authorities and merely on the basis that the total amount of cash paid to each cashier is more than INR 20,000, the addition was made under section 40A(3) of the Act. Therefore, we are of the considered view that it is relevant to examine the accounting treatment of these expenditures in the books of the assessee and also it is necessary to examine and verify all the ledger accounts in respect of these expenditures. Thus, we deem it appropriate to restore this issue to the file of the AO for *de novo* adjudication after due examination/verification of the details submitted by the assessee. The assessee is directed to furnish all the details in support of its plea and also furnish the details as may be called for by the AO without any default. Needless to mention, no order shall be passed without affording reasonable opportunity of hearing to the assessee. With the above

directions, the impugned order on this issue is set aside and grounds no.1 raised in assessee's appeal is allowed for statistical purposes.

7. The issue arising in ground No. 2, raised in assessee's appeal, pertains to the disallowance made under section 40(a)(ia) on account of non-deduction of tax under section 194C of the Act on payment made for generator/hire and fuel charges.

8. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, upon perusal of the ledger of expenses debited to the profit and loss account of the assessee, it was observed that the assessee has not deducted TDS in respect of payment made to J.K. Films Power. Accordingly, the assessee was asked to show cause why the expenditure claimed to be not disallowed under section 40(a)(ia) of the Act. In response, the assessee submitted that J.K. Films Power supplies generator on hire to the assessee. As per the standard terms, the generator is given on hire at a fixed rate per day/hour basis along with diesel/oil as per the consumption. As per the assessee, separate invoices are issued for the sale of diesel/oil, in which the quantity of diesel, rate, etc. are separately mentioned. Thus, it was submitted that in respect of generator hire charges TDS has been deducted at source, while in respect of diesel/fuel purchased from J.K. Films Power, TDS has not been deducted as the provision of TDS does not attract. The AO disagreed with the submissions of the assessee and held that provisions of section 194C of the Act are attracted in the present case. Accordingly, the AO disallowed the

entire expenditure of INR 8,10,150 under section 40(a)(ia) of the Act and added the same to the total income of the assessee.

9. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the assessee has failed to deduct TDS in accordance with the provisions of section 194C of the Act. Being aggrieved, the assessee is in appeal before us.

10. We have considered the submissions of both sides and perused the material available on record. As per the assessee, J.K. Films Power supplies generator on hire to the assessee as and when required. Further, as per the standard practice, the generator is given on hire at a fixed rate per day/hour basis. Along with the generator, J.K. Films Power also supplied/sold diesel and oil as per the consumption and a separate invoice has been issued in respect of the same. It is the plea of the assessee that in respect of generator hire charges/attendant charges TDS was deducted at source. However, with respect to diesel/fuel purchased from J.K. Films Power, the provisions of TDS are not attracted and therefore TDS was not deducted on the same. In this regard, during the hearing, the learned AR placed reliance upon the ledger account of J.K. Films Power in the books of the assessee, forming part of the paper book from pages 295-297, in order to support the submission that generator/attendant hire charges were paid after deduction of TDS. Further, the assessee has also placed on record the invoices raised by J.K. Films Power, forming part of the paper book from pages 298-321, in respect of generator and attendant hire charges, which separately mention the quantity of fuel consumed and the amount charged for the fuel. Thus, it

has been submitted that on hiring charges TDS has been deducted as per the applicable provisions, however, on fuel charges no TDS has been deducted as the payment was simply in the nature of reimbursement of the cost of fuel incurred by J.K. Films Power on behalf of the assessee while providing the same along with the generator. From the perusal of the aforesaid invoices, we also find that in certain invoices no fuel charges were charged by J.K. Films Power. As per the assessee, when the generator is on standby then no fuel charges are paid by the assessee and the same is based on fuel consumed and the rate of diesel on that day. Thus, it is the plea of the assessee that the payment made in respect of fuel charges is in the nature of reimbursement of expenditure on fuel incurred by J.K. Films Power.

11. Having considered the submissions and perused the matter available on record, we find merit in the submission of the assessee that no TDS is applicable on fuel charges paid by the assessee as the same was reimbursed on a cost-to-cost basis to J.K. Films Power. Further, we are also of the considered opinion that the provisions of section 194C of the Act cannot apply to the charges paid for fuel as the payment is not in nature envisaged under section 194C of the Act, particularly the same is not for the "work" as defined in Explanation to the section. Accordingly, the AO is directed to delete the disallowance in respect of payment made in respect of fuel charges under section 40(a)(ia) of the Act. As regards the payment made for generator/attendant hire charges, as per the assessee on generator hire charges no TDS was deducted as it was below the threshold limit provided under section 194I of the Act. However, on attendant charges TDS at the

rate of 1% was deducted by the assessee. We find that apart from the ledger account of J.K. Films Power in the books of the assessee no other document, such as Form 16A, has been placed on record by the assessee to support the aforesaid plea. Accordingly, we restore this issue to the file of the AO limited to the extent of verification of the plea of the assessee that TDS as per applicable provisions was deducted on generator hire charges and attendant charges. If upon verification of the necessary documents, it is found that the TDS as per applicable provisions was deducted, then the AO is directed to delete the disallowance made under section 40(a)(ia) of the Act with respect to the generator hire charges and attendant charges. With the above directions, the impugned order on this issue is set aside and ground no.2 raised in assessee's appeal is allowed for statistical purposes.

12. The issue arising in ground no.3, raised in assessee's appeal, pertains to the disallowance made under section 40(a)(ia) of the Act on account of the non-deduction of tax on payment of professional charges.

13. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee made a payment of professional charges to Ms. Annu Pathak which was claimed by the assessee in its profit and loss account. Accordingly, the assessee was asked to furnish a copy of the challan with respect to the TDS deducted. In response, the assessee submitted that the TDS was duly deducted while crediting the professional fees to the accounts of the party. The AO, vide assessment order, disagreed with the submissions of the assessee and held that ongoing through the ledger account of

professional fees in the case of Ms. Annu Pathak, it is seen that an amount of INR 97,250 where the assessee has not deducted TDS under section 194J of the Act. On the basis that the assessee has failed to deduct TDS, the AO disallowed the entire sum of INR 97,250 under section 40(a)(ia) of the Act and added the same to the total income of the assessee. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the disallowance made under section 40(a)(ia) of the Act. Being aggrieved, the assessee is in appeal before us.

14. We have considered the submissions of both sides and perused the material available on record. During the year under consideration, the assessee availed professional services of Ms. Annu Pathak, who was the production manager. As per the assessee, at the time of booking of the invoice, the professional fees account was debited and party's account was credited. Further, TDS entry was passed in party's account by debiting party's account and crediting the TDS payable account. As per the assessee, subsequently, when the TDS was paid, the TDS payable account was debited. Therefore, it is the plea of the assessee that in the individual party's account, the TDS was deducted as applicable as per the provisions of the Act. In this regard, reference was made to the ledger account of Ms. Annu Pathak in the books of the assessee, forming part of the paper book from pages 251-252. The assessee has also placed on record the copy of Form 16A from the period 01/10/2012 till 31/12/2012 and from 01/01/2013 till 31/03/2013, which forms part of the paper book from pages 253-257. On the basis of aforesaid documents, it is the plea of the assessee that during the year under consideration, an amount of INR 1,33,796 was paid to Ms.

Annu Pathak and on the same TDS was deducted under section 194J of the Act. No material contrary to the aforesaid evidence was placed on record by the Revenue.

15. Having considered the submissions of both sides and perused the material available on the record, we find no basis in the disallowance of INR 97,250 made by the AO under section 40(a)(ia) of the Act as the total payment made to Ms. Annu Pathak was INR 1,33,796 and as is evident from the Form 16A, the TDS was also deduction under section 194J of the Act on the aforesaid payment of professional fees. Accordingly, the addition under section 40(a)(ia) of the Act on account of payment made to Ms. Annu Pathak is deleted. As a result, the impugned order on this issue is set aside and ground no.3 raised in assessee's appeal is allowed.

16. The issue arising in ground no.4, raised in assessee's appeal, pertains to disallowance made under section 40(a)(ia) of the Act on account of the non-deduction of tax on payment for a film set.

17. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the perusal of the ledger of expenses debited to the profit and loss account, it was observed that the assessee has debited expenses in respect of payment made for a film set. Accordingly, the assessee was asked to produce the copies of challan with respect to TDS deducted if any. In response, the assessee submitted that the assessee purchased a ready-made set from M/s Kathasis Studio Private Limited, which was readily available in the studio and was used by them for some of the serials. It was further submitted that the asset

was purchased and the ownership was acquired and therefore there was no question of deduction of TDS on the payment made. The assessee submitted that M/s Kathasis Studio Private Limited neither carried out any work nor provided any services to the assessee company. The AO, vide impugned order, disagreed with the submissions of the assessee and held that the assessee is not in the business of purchasing of set and selling it. It was further held that the studios are in the business of renting ready-made sets with little modification. Since the assessee did not deduct TDS under section 194J, the entire sum of INR 5,84,000 paid by the assessee was disallowed under section 40(a)(ia) of the Act and added to the total income of the assessee. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the disallowance made under section 40(a)(ia) of the Act.

18. We have considered the submissions of both sides and perused the material available on record. As per the assessee, it hires the studio as and when required and in the studio taken on rent, sets are made by the assessee as per its requirements. However, on certain occasions, sets are also taken on rent. As per the assessee, during the year under consideration, it purchased the ready-made set from M/s Kathasis Studio Private Limited, which was used by them for some of the serials and was readily available in the studio. As per the assessee, the set was purchased and ownership was acquired, hence question of any TDS thereon does not arise as it was a sale transaction. During the hearing, in support of the aforesaid submission, reference was also made to the ledger account of M/s Kathasis Studio Private Limited in the books of the assessee, which forms

part of the paper book on page 270. From the perusal of the aforesaid ledger account, we find that it is specifically mentioned that the amount of INR 5,50,000 was paid towards the purchase of said property at M/s Kathasis Studio Private Limited. Thus, we find no merits in the findings of the AO that as per the ledger account, the amount was paid for site rental charges. Further, the assessee has also placed on record the invoice raised by M/s Kathasis Studio Private Limited for the sale of set furniture and shooting properties, which forms part of the paper book on page 258. No material contrary to the aforesaid evidence was placed on record by the Revenue. Therefore, from the perusal of the aforesaid documents, we find merits in the submission of the assessee that the amount was paid for the sale of the set and thus no TDS is liable to be deducted on same. Accordingly, the disallowance made under section 40(a)(ia) of the Act is deleted and the impugned order on this issue is set aside. As a result, ground no.4 raised in assessee's appeal is allowed.

19. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 17/12/2024.

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER
MUMBAI, DATED: 17/12/2024

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai