

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI SANDEEP SINGH KARHAIL, JM**

**I.T.A. No. 1445/Mum/2025
(Assessment Year: 2021-22)**

Shivalik Ventures Pvt. Ltd. A-104, Shiv Parvati Co. HSC. Soc. Ltd., Mahada Layout, Four Bungalow, Andheri (West), Maharashtra-400053. PAN: AALCS7683R	Vs.	ACIT, CC-8(1), 656, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant)	:	Respondent)

**I.T.A. No. 1477/Mum/2025
(Assessment Year: 2016-17)**

DCIT, CC-8(1), 656, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	Shivalik Ventures Pvt. Ltd. A-104, Shiv Parvati Co. HSC. Soc. Ltd., Mahada Layout, Four Bungalow, Andheri (West), Maharashtra-400053. PAN: AALCS7683R
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Vijay Mehta, AR
Revenue / Respondent by : Shri Arun Kanti Datta, CIT-DR
Date of Hearing : 12.06.2025
Date of Pronouncement : 20.06.2025

ORDER

Per Padmavathy S, AM:

These appeals by the assessee and the revenue are against the separate orders of the Commissioner of Income Tax (Appeals)-50, Mumbai [In short 'CIT(A)']

passed under section 250 of the Income Tax Act, 1961 (the Act) dated 31.12.2024 for both AY 2016-17 & 2021-22.

ITA No. 1477/Mum/2025- AY-2016-17 Revenue

2. The assessee is a company engaged in the business of development of commercial complexes and rehabilitation under Slum Rehabilitation Authority (SRA Scheme). The assessee filed the return of income for AY 2016-17 on 17.10.2015 declaring total income at Rs. 3,29,56,720/-. The Assessing Officer (AO) issued an information that the assessee has received a sum of Rs. 130,80,41,280/- as consideration from SRA for a project in the name of Aashiyana CHS and that there was no agreement or MOU or JV entered into at any stage of development with any other developer for AY 2016-17. Based on the said information the AO re-opened the assessment by issue of notice under section 148 dated 23.06.2021. Subsequently in view of the decision of the Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal the notice under section 148 was deemed as notice issued under section 148A(b) and after considering the submissions the AO passed an order under section 148A(d) on 27.07.2022. Thereafter notice under section 148 was issued on 29.07.2022 and in response the assessee vide letter dated 10.02.2023 submitted the computation of total income. During the assessment proceedings after verification of details from SRA and from the assessee the AO found that the receipt of Rs. 130,80,41,280/- was a consideration received from sale of TDR and the same has been offered under the head "Capital Gain" in the return of income. The SRA has also clarified that no consideration has been paid to the assessee against any redevelopment. Therefore, the AO while completing the assessment under section 148 did not make any addition towards the reason for which the reopening was done. However, during the assessment proceedings, the AO found that a survey

under section 133A of the Act was conducted on the assessee wherein it was found that the assessee has not deducted tax as per the provisions of section 194I on the amount of compensation paid to the slum dwellers. The assessee submitted that as per SRA Scheme the slum dwellers are required to vacate their slum for the execution of the SRA project for which the builder has to provide temporary transit accommodation with requisite amenities or compensation for getting alternate accommodation, till the permanent tenements are allotted and possession is given. The assessee further submitted that since it was unable to provide the alternate accommodation payments were made to the slum dwellers for enabling them to meet the expenditure incurred by them towards rent. Accordingly, the assessee submitted that the nature of payment is purely compensation and that the assessee has no relationship of lessor / owner and lessee / tenant with the slum dwellers. The AO did not accept the submissions of the assessee by holding that

“7.4.2 The assessee has also submitted that as per Explanation 1 to section 194-I of the Act, ‘rent’ inter alia included payment for use of land or building. The Assessee had not made the payment for use of any land or building. Hence, the payment is not in the nature of ‘rent’ but is in the nature of compensation. The Assessee has further submitted that it has not entered into any agreement with the individual slum dwellers for use/rent/lease of their slums for its business purpose. Therefore, there is no relationship of lessor/owner and lessee/tenant between the Assessee and the slum dwellers

In this regard, it is to state that the slum dwellers become eligible to receive the rent by the virtue of their right in the slum property, which they surrender in favor of the developer. The developer uses said land for his business i.e., for construction of building and ultimately to sale the units. This is to say that for developing a project under SRA, developers enter into a deemed agreement, if not explicit, with tenants for the usage of the land/slum property undertaking the responsibility to compensate such tenants, for payment of rentals, in case he fails to provide alternate accommodation/transit accommodation to the tenants. Therefore, it is not out of place here to hold that any payments made by the developer to the tenants for usage of their rights in slum property in the nature of rent only.

7.4.3 In furtherance to the above, it is essential to mention here that it is held by the judicial forums that sum of money for the payments of rentals during the redevelopment work would not be taxed only to the extent it was actually utilized for rent payments. Thus, it cannot be said that the receipts in the hands of deductees are not taxable, hence not liable for TDS. Since, any non-utilized money in the hands of recipients shall be taxable, the onus lies on payer to deduct the TDS u/s 194I of the Act.

7.4.4 To conclude, the provisions of section 194I as well as various judicial pronouncements cast responsibility on the developer to deduct TDS so as to enable proper tracking of the utilization of the amounts paid to the tenants.

7.4.5 In view of the above discussion, it can be safely held that the claim of the assessee that it has paid compensation to the dwellers for the intervening period till they are given the possession of their Rehabilitation units cannot nullify the findings of Survey Action that the payments made by the assessee are in the nature of rent and the same is liable to TDS.”

3. The AO therefore disallowed 30% of the amount paid under section 40(a)(ia) of the Act for the reason that the assessee failed to deduct tax at sources from the impugned payment. Aggrieved the assessee further filed appeal before he CIT(A). Besides contending the issue on merits the assessee also submitted that the identical issue has been considered by the Co-ordinate Bench in assessee's own case for Ay 2012-13 (ITA No. 3429/Mum/2024 dated 19.09.2024) and the addition made by the AO was held as unsustainable by the Tribunal. The CIT(A) by placing reliance on the above decision of the Co-ordinate Bench deleted the addition. The revenue is in appeal before the Tribunal against the order of the CIT(A).

4. We heard the parties and perused the material on record. The assessee during the year under consideration has made payments to the slum dwellers for enabling them to meet the expenditure incurred towards rent for the alternate accommodation since the slum dwellers have to vacate the property for the purpose of development. The AO held the payment to be in the nature of rent and accordingly called on the assessee to submit whether TDS under section 194I is deducted on the said

payments. Since the assessee did not deduct the tax at source the AO disallowed 30% of the amount under section 40(a)(ia) of the Act. In this regard we notice that the Co-ordinate Bench has been consistently holding in various cases including assessee's own case that the payments made towards alternate accommodation is not liable for TDS under section 194I. We further notice that the Co-ordinate Bench in this regard has placed reliance on the decision of the Jurisdictional High Court in the case of Sarfaraz S Furniturewala Vs. Afshan Sharfali Ashok Kumar & Ors. (W.P. No. 4958 of 2024 dated 15.04.2024). The relevant observations of the Co-ordinate Bench in assessee's case for AY 2012-13 (supra) are extracted as under:

“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."

5. The Hon'ble High Court in the above decision has held that the transit rent which is paid to the tenant who suffers hardship due to dispossession does not fall within the definition "rent" under section 194I. As already stated, in assessee's case the payment is made towards compensation for handing over the vacant possession of the property and towards rent if any payable by the tenants in the alternate accommodation until the completion of the re-development. Therefore applying the ratio of the decision of the Hon'ble High Court we hold that the payment made by the assessee towards "Alternate accommodation charges / rent" is not liable for tax deduction under section 194I and accordingly we see no reason to interfere with the decision of the CIT(A) in deleting the disallowance made by the AO under section 40(a)(ia) of the Act.

6. In result, the appeal of the revenue is dismissed.

ITA No. 1445/Mum/2025-AY 2021-22 Assessee

7. The assessee filed the return of income for AY 2021-22 on 31.03.2022 declaring a total income of Rs. 94,71,760/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The assessment under section 143(3) of the Act was completed on 27.12.2022 determining the total income of the assessee at Rs. 1,56,52,460/-. The AO while completing the assessment has made the following disallowance:

- (i) Disallowance under section 40(a)(ia) of the Act. - Rs. 51,08,825/-
- (ii) Disallowance of delayed payment of PF/ESI - Rs. 10,72,180/-

8. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) deleted the disallowance under section 40(a)(ia) made towards non-deduction of tax at source under section 194I on the payments made to slum dwellers towards alternate accommodation. The CIT(A) in this regard placed reliance on the decision of the Co-ordinate Bench in assessee's own case for AY 2012-13 (supra). The CIT(A) confirmed the disallowance made by the AO by placing reliance on the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs. CIT ([2022] 143 taxmann.com 178 (SC)). The relevant observations of the CIT(A) in this regard are extracted below:

“15. I have considered the assessment order, submission of the appellant and facts available on record. During the assessment proceedings, the AO found from the Schedule No. 20(b) of the tax audit report that the amount of Rs.10,17,799/- and Rs.54,381/- on account of employees’ contribution to PF and ESIC, respectively has not been paid within the due date as prescribed in the relevant Acts. Therefore, this amount will not be eligible for deduction u/s 36(1)(va) of the I.T Act. Relying on the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs CIT (Appeal No. 2833 of 2016), the AO disallowed the deduction claimed of Rs.10,72,180/- as per the provisions of section 36(1)(va), as the payment of employees' contribution to PF and ESIC has not been made within the due dates as prescribed in the respective Acts.

16. During the appeal proceedings, the appellant mainly relied on the decision of the Hon'ble Supreme Court in the case of CIT vs Vinay Cements Ltd. and the decision of the Hon'ble Bombay High Court in the case of CIT vs Ghatge Patil Transports Ltd. (368 ITR 749) and contended that the deduction on payment of employees’ contribution to PF and ESIC is allowable as per the provisions of section 43B, as the payment is made before the due date of filing of return u/s 139(1) of the I.T Act.

17. This issue of allowability of deduction of employees’ contribution to PF and ESIC has been settled by the decision of the Hon'ble Supreme Court in the

case of Checkmate Services Pvt. Ltd. vs CIT (Appeal No. 2833 of 2016). In this decision, the Hon'ble Supreme Court has held as under-

“53. The distinction between an employer's contribution which is its primary liability under law - in terms of section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (Section 36(1)(va) is, thus crucial. The former forms part of the employers' income, and the later retains its character as an income (albeit deemed), by virtue of section 2(24)(x) - unless the conditions spelt by Explanation to section 36(1)(va) are satisfied i.e., depositing such amount received or deducted from the employee on or before the due date. In other words, there is a marked distinction between the nature and character of the two amounts - the employer's liability is to be paid out of its income whereas the second is deemed an income, by definition, since it is the deduction from the employees' income and held in trust by the employer. This marked distinction has to be borne while interpreting the obligation of every assessee under section 43B.

54. In the opinion of this Court, the reasoning in the impugned judgment that the nonobstante clause would not in any manner dilute or override the employer's obligation to deposit the amounts retained by it or deducted by it from the employee's income, unless the condition that it is deposited on or before the due date, is correct and justified. The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, the assessee are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non-obstante clause under

section 43B or anything contained in that provision would not absolve the assessee from its liability to deposit the employee's contribution on or before the due date as a condition for deduction. 55. In the light of the above reasoning, this court is of the opinion that there is no infirmity in the approach of the impugned judgment. The decisions of the other High Courts, holding to the contrary, do not lay down the correct law. For these reasons, this court does not find any reason to interfere with the impugned judgment. The appeals are accordingly dismissed.”

In view of the decision of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. vs CIT, the disallowance made by the AO is confirmed. The AO is directed to verify the factual details of amount and dates of payments of the same and disallow the correct amount. The appeal on this ground is thus DISMISSED”

9. We heard the parties and perused the material on record. The issue of disallowance towards delayed payments of PF/ESI is settled by the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. (supra). Respectfully following the judicial precedents as laid down by the Hon'ble Supreme Court, we see no reason to interfere with the decision of the CIT(A) in confirming the disallowance made by the AO.

10. In result, the appeals of both the assessee and the revenue are dismissed.

Order pronounced in the open court on 20-06-2025.

Sd/-
(SANDEEP SINGH KARHAIL)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,
(Dy./Asstt. Registrar)
ITAT, Mumbai