

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Pawan Singh (JM)

I.T.A. No. 5509/Mum/2014
(Assessment Year 2008-09)

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| M/s. IOL Infotech (India) Ltd., Plot No.1, Mohan Mill Compound, Ghod Bunder Road, Thane (Appellant) | Vs. | ACIT, Circle-1, Thane (Respondent) |
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PAN No. AAAC 17726 G

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| Assessee by | Shri Neelkant Khandelwal |
| Department by | Shri C. W. Angolkar |
| Date of Hearing | 02.11.2016 |
| Date of Pronouncement | 02.11.2016 |

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 26-06-2014 passed by Ld CIT(A)-II, Thane and it relates to the assessment year 2008-09. The assessee is aggrieved by the decision rendered by Ld CIT(A) on the following issues:-

- (a) Disallowance of Rs.1,25,000/- u/s 40(a)(ia) of the Act
- (b) Disallowance of Rs.1,04,488/- u/s 40(a)(ia) of the Act.
- (c) Disallowance of expenses claimed by the assessee.

2. The assessee is engaged in the business of running a call centre, web content development etc. The AO noticed that the assessee has leased out its premises and did not carry on any business activities during the year under consideration. Hence he disallowed the expenses claimed by the assessee,

since the assessee did not carry on any business activity. The AO also noticed that the assessee did not furnish the details of tax deducted at source from the payments of Rs.1,25,000/- and Rs.1,04,488/- made by the assessee. Hence the AO disallowed both the expenses u/s 40(a)(ia) of the Act. The Ld CIT(A) confirmed all the additions and hence the assessee has filed this appeal before us.

3. The first issue relates to the disallowance of Rs.1,25,000/- made u/s 40(a)(ia) of the Act. The Ld A.R submitted that the assessee has actually deducted TDS from this payment and it could not furnish the relevant details before the tax authorities for the reasons beyond its control. The Ld A.R furnished a copy of Form No.16A issued to the payee and submitted that the said TDS certificate gives all the details. Alternatively the Ld A.R submitted that the disallowance is not required to be made if the payee has accounted the same and filed income tax return offering the same. In this regard, he placed reliance on the second proviso to sec. 40(a)(ia) and also on the decision rendered by Hon'ble Delhi High Court in the case of *Cit Vs. Ansal Land Mark Township P Ltd (2015)(377 ITR 635)*.

4. The Ld D.R submitted that the factual details submitted by the assessee requires verification.

5. Having heard rival submissions, we are of the view that this issue requires to be set aside to the file of the AO, since factual details submitted by the assessee require verification. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine the details of TDS deducted by the assessee. The AO may also consider the alternative contentions of the assessee, if required, in accordance with the decision rendered by Hon'ble Delhi High Court in the case of *Ansal Land Mark Township P Ltd (supra)*.

6. The next issue relates to the disallowance of contract payments of Rs.1,04,488/-. The Ld A.R submitted that the assessee did not deduct TDS from the above said payment. However, he contended that the disallowance is not required to be made u/s 40(a)(ia), if the payee has accounted and filed income tax return offering the same.

7. We have heard Ld D.R on this issue. Since the facts relating to the payees require verification, in the interest of natural justice, we restore this issue also to the file of the AO with the direction to examine the claim of the assessee and decide the same in accordance with the decision rendered by Hon'ble Delhi High Court in the case of Ansal Land Mark Township P Ltd (supra).

8. The next issue relates to the disallowance of expenses. The AO initially disallowed expenses aggregating to Rs.20,23,912/- for want of evidences. Before Ld CIT(A), the assessee furnished various details and hence a remand report was called by Ld CIT(A) from the AO. In the remand report, the AO reported that expenses have been incurred by way of cash and further they are supported by self made vouchers. In reply to the remand report, the assessee pointed that it has incurred various expenses through cheque also. After considering the remand report and reply, the Ld CIT(A) took the view that the assessee has rented out its premises and did not carry on any business activity and hence the expenses are not allowable. The assessee is aggrieved by the said decision.

9. We heard the parties on this issue and perused the record. The Ld A.R submitted that the assessee has closed down its business operations temporarily and did not close the business activities at all. He submitted that this factual position has been appreciated by the AO in the assessment order passed u/s 143(3) of the Act for AY 2007-08 and all expenses claimed by the assessee has been allowed. He submitted that the expenses have been

allowed in AY 2011-12 also by the AO in the order passed u/s 143(3) of the Act. On the contrary, the Ld D.R strongly supported the order passed by Ld CIT(A).

10. Having heard rival submissions, we are of the view that there is merit in the submissions of the assessee. The fact that the assessee has not closed down its business activities has not been disputed by the revenue. The expenses claimed by the assessee have been allowed in the preceding assessment year 2007-08 and also in succeeding AY 2010-11. It is stated that the assessee has closed down the business activities only temporarily due to temporary lull in the business. It is a settled proposition that the expenses should be allowed when the activities have been suspended due to temporary lull in the business. Accordingly we are not able to agree with the view taken by Ld CIT(A). Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the expenses.

11. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 02.11.2016

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER
Mumbai; Dated : 02/11/2016
Copy of the Order forwarded to :

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai