

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No. 1605/Kol/2016
Assessment Year: 2011-12

M/s. Vibgyor Estate (P) Ltd.
(PAN: AACCV9803B)
(Appellant)

Vs. Income-tax Officer, Wd-1(3), Kolkata

(Respondent)

Date of hearing: 24.11.2016
Date of pronouncement: 02.12.2016

For the Appellant: Shri Anil Kochar, Advocate
For the Respondent: Shri P. K. Chakraborty, JCIT

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-1, Kolkata vide Appeal No. 357/CIT(A)-1/Wd-1(3)/2014-15 dated 09.06.2016. Assessment was framed by ITO, Ward-1(3), Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2011-12 vide his order dated 27.03.2014.

2. The only issue to be decided in this appeal is as to whether the disallowance u/s. 40(a)(ia) of the Act could be made in the facts and circumstances of the case apart from ex parte order passed by the Ld. CIT(A).

3. Brief facts of this issue are that the assessee is a real estate developer and had made the following payments during the year under review:

Sl. No.	Name of the party	Amount paid	Remarks
1	Deepak Construction	Rs.6,31,305	Amount paid to the contractor for civil work and TDS was deductible u/s. 194C of the Act
2	Rita Prakash	Rs.4,80,000	Rent paid to Rita Prakash, TDS was deductible u/s. 194I of the Act
3	Best Security & Services	Rs. 96,000	Payment made to security service provider; TDS deductible u/s. 194C of the Act

4	G4 Security Services (P) Ltd.	Rs. 80,780	Payment made to security service provider; TDS deductible u/s. 194C of the Act
	Total payment made	Rs.12,88,085	The expenses is disallowable u/s. 40(a)(ia) of the Act.

The Id AO for violation of the provisions of section 194C and 194-I of the Act proceeded to invoke the provisions of section 40(a)(ia) of the Act and disallowed the same. Before the Ld. CIT(A) none appeared on behalf of the assessee and the appeal was dismissed ex parte for non appearance without giving any specific finding and by upholding the order of Id AO. Aggrieved, assessee is in appeal before us on the following grounds:

“1. For that the Ld. CIT (A) has passed an ex parte order dismissing the appeal of the appellant giving reasonings which are entirely wrong & uncalled for and in this view of the matter, the impugned order deserves to be vacated .

2. For that the observations made by the Ld. CIT (A) that there was no compliance in respect of the appeal fixed on 13.05.2016 and also on 24.05.2016 are totally incorrect observations as the Ld. CIT (A) failed to take note of the records which would show that the appellant had made compliances and had submitted petitions in respect of the aforesaid dates of hearing which have totally been not considered by the Ld. CIT (A) and thus ex parte order framed is arbitrary.

3. For that the Ld. CIT(A) ought to have referred to the grounds of appeal and with reference to the records of the appellant the Ld.CIT (A) is expected to discuss the case on merits even while disposing of the appeal ex parte and in this view of the matter, the grounds raised by the appellant ought to have been accepted and appeal allowed.

4. For that the issue involved in the appeal before the Ld. CIT (A) relating to disallowance u/s 40 (a)(ia) ought to have been decided with reference to calling for the records to give adequate and necessary relief to the appellant and that the dismissal of the appeal proceeds on non-consideration of the grounds properly.”

4. The Ld. AR fairly admitted that having sent the adjournment request before the Ld. CIT(A) for hearing scheduled on 24.05.2016 the assessee did not bother to ascertain the next date of hearing from the Ld. CIT(A) and accordingly, the case was dismissed ex parte. However, on merits he placed the copy of a certificate from M/s. Deepak Construction to whom a sum of Rs.6,31,305/- was paid by the assessee towards labour charges which clearly mentioned that the said party (payee) had duly reflected the said sum in its return of income and paid taxes thereon. Similarly, the assessee also placed copies of income tax return together with income tax computation statement for AY 2011-12 in respect of Rita Prakash wherein rent of Rs.4,80,000/- paid by the assessee has been duly disclosed by the said party and taxes paid thereon. He also prayed for setting aside the entire issue to the file

of the AO to ascertain whether the payees had disclosed the entire amounts paid by the assessee in their returns and paid taxes thereon in the light of the second proviso to section 40(a)(ia) of the Act which has been held to be retrospective in operation by the decision of Ansal Land Mark Township (P) Ltd., reported in 377 ITR 635 (Del) and which was also recently followed by the Hon'ble Calcutta High Court in the case of Principal CIT Vs. M/s. Tirupati Construction, GA No. 2146 of 2016 with ITAT No. 287 of 2016 dated 23.08.2016. In response to this, the Ld. DR fairly agreed for setting aside of this issue to the file of the Id AO for examination.

5. We have heard rival submissions and gone through facts and circumstances of the case. We find that in the light of the arguments advanced by the Ld. AR, the issue requires to be set aside to the file of the Id AO to decide the same afresh in accordance with law in the light of evidence to be submitted by the assessee in respect of payees disclosing the subject mentioned receipts in their respective returns and if it is so done, as per the second proviso to section 40(a)(ia) of the Act, the assessee should not be treated as assessee in default and in the light of such amendment being held to be retrospective in operation by the decisions relied on by the Ld. AR, cited supra, no disallowance u/s. 40(a)(ia) of the Act is to be made in the hands of the assessee. The grounds of appeal raised by the assessee are disposed of accordingly.

6. In the result, the appeal of assessee is allowed for statistical purposes.

Order is pronounced in the open court on 02.12.2016

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

Sd/-

(M. Balaganesh)
Accountant Member

Dated :2nd December, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Vibgyor Estate (P) Ltd., 4, Gangadhar Babu Lane, Kolkata-700 012.
2. Respondent –ITO, Ward-1(3), Kolkata
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.