

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 76/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2018-2019

Shubh Infra JV, 502, Shail Square, Nr. Radha Raman Complex, Khodiyarnagar, Ahmedabad-382350. PAN: AAPAS2819H	Vs.	D.C.I.T, Circle-2(1)(1), Ahmedabad.
--	-----	---

(Applicant)		(Respondent)
-------------	--	--------------

Assessee by :	Shri Bandish Soparkar, with Shri Parin Shah, A.Rs
Revenue by :	Shri Ashok Kumar, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **19/07/2023**

घोषणा की तारीख /**Date of Pronouncement**: **16/10/2023**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2018-2019.

2. The only effective issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance made by the AO of contract expenses on account of non-deduction of tax at source by invoking the provision of section 40(a)(ia) of the Act.

3. The facts in brief are that the assessee is an AOP and engaged in the construction business. The case of the assessee has been selected for complete scrutiny under CASS. The AO during the assessment proceedings found that the assessee in the profit & loss account has claimed expense amounting to Rs. 15,50,74,744/- under the head contract expenses. The AO on verification of schedule of "contract expenses" found that the contract expenses include an amount of Rs. 12,22,13,475/- under the sub-head namely "labour sub-contract" which are subject to TDS but tax at source was not deducted on the payment of such expense.

4. However, the assessee claimed that the impugned amount of Rs. 12,22,13,475/- relates to purchase of materials and therefore the same cannot be made subject to the provision of Tax Deducted at source. The assessee, in response to the query raised by the AO, submitted ledger copies of all the parties covered under the contract expenses (Rs. 15,50,74,744/-), bank statement and copies of 65 bills on sample basis aggregating to Rs. 2,82,52,953/- only.

5. But the AO found that the assessee was asked to furnish the bills/vouchers, ledger account and bank statement showing payment in relation to expenses claim under the head "labour sub-contract" amounting to Rs. Rs. 12,22,13,475/- and substantiate how the same is in relation to purchase of material. But the assessee failed to furnish the relevant corroborative details. Thus, the AO in the absence of corroborative materials held that the expenses claimed are in relation to supply of labour on which tax at source was required to be deducted but the assessee failed to do so. Hence, the AO invoked the provisions of section 40(a)(ia) of the Act and

disallowed the 30% of impugned expenses i.e. Rs. 3,66,64,042/- and added to the total income of the assessee.

6. The aggrieved assessee preferred an appeal before the learned CIT(A). the assessee before the learned CIT(A) reiterated that the expenses claimed under the head contract expenses are in relation to purchase of materials only. As per the assessee, all the necessary supporting documents in the form of ledger copies of all 95 creditors along with bank statements showing payment to them were furnished during the assessment proceedings. The supporting documents also included copies of bills on sample basis as it was not possible to upload all the bills on income tax portal. However, the AO misunderstood and failed to consider the documentary evidence uploaded on portal. Thus, the AO held that the assessee failed to substantiate its claim.

7. However, the learned CIT(A) confirmed the disallowance made by the AO by observing as under:

6. I have carefully considered the grounds of appeal, statement of facts, contents of assessment order and written submission made by the appellant.

6.1 Vide hearing notice dated 02/01/2023 issued by this office, the appellant was asked to file the following:

Please furnish the audited financial accounts i.e. profit and loss account, balance sheet and tax audit report along with documents filed before the AO."

6.2 However, the appellant on 07/01/2022 uploaded the written submission dated 14/04/2022 again which was filed earlier and which has been reproduced in the preceding paragraphs. Therefore, I do not have any evidence filed by the appellant in support of its claim in grounds of appeal, statement of facts and written submission that the payments were made for purchase of raw materials. The basic issue in this appeal is related to examination of the nature of payments as to whether the same was for purchase of raw materials or on account of contractual expenses. The AO has clearly mentioned that on verification of profit and loss account, it is seen that assessee has claimed expenses under the head contract expenses at Rs.15,50,74,744/-. On verification of schedule of contract expenses, it is seen that assessee has paid an amount of Rs.12,22,13,475/- under the head labour sub- contract on which assessee has not deducted TDS. During

the appellate proceedings, the assessee has merely claimed that amounts were paid for purchase of raw materials and list of purchase bills in case of 62 suppliers for total amount of Rs.2,82,52,953/- was filed before the AO. However, even those bills were not submitted in this office even after asking the assessee to file the same vide hearing notice dated 02.01.2023. The appellant has not furnished any justification as to why the expenses of Rs.12,22,13,475/- was debited under the head 'labour sub-contract' under the head 'contract expenses'. In absence of any contrary evidence filed by the appellant against the findings of the AO, I do not have any material to interfere with the findings of the AO and the disallowance of Rs.3,66,64,042/- made u/s.40(a)(ia) is hereby upheld. All grounds of appeal are dismissed. Accordingly, the appeal is hereby treated as 'dismissed'.

8. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

9. The learned AR before us filed a paper book running from pages 1 to 286 and contended that expenses in dispute represent the material purchases which is outside the purview of the TDS under the provisions of section 194C of the Act and therefore the same cannot be made subject to the disallowance on account of non-deduction of TDS. The learned AR in support of his contention has invited our attention on the copies of the ledgers of the parties, purchase bills on sample basis and the bank statement demonstrating the payment to the parties which are placed on pages 71 to 276 of the paper book.

10. On the other hand, the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the AO made the disallowance of the labour expense on account of non-deduction of TDS. However, it was contended by the assessee that such labour expenses in fact represent material purchases and therefore the same cannot be made subject to the provisions of TDS. However, the contention of the assessee was disbelieved by the AO on the reasoning that the assessee has not furnished the ledger of labour expenses to establish the nexus of the material purchase bills reproduced by him. As such, the

AO did not find any nexus between the labour expenses viz a viz material purchase. Hence, the AO confirmed the disallowance on account of non-deduction of TDS.

11.1 On appeal, the learned CIT-A confirmed the order of the AO on the reasoning that the assessee has not furnished any supporting evidence except filing the written submission stating that the labour expenses represent the material purchases. Thus, the learned CIT-A in the absence of the supporting documents upheld the finding of the learned CIT-A.

11.2 On perusal of the paper book filed by the assessee before us, we note that the assessee has not filed any documentary evidence so as to demonstrate that the labour expenses shown in the financial statements were representing the material purchases during the appellate proceedings. The assessee has only filed the written submission before the learned CIT-A, running from pages 77 to 226 of the paper book, which is not supported based on the evidence.

11.3 It is the settled provisions of law that the purchases cannot be made subject to the provisions of TDS under section 194C of the Act. However, the onus lies upon the assessee to establish that it has classified material purchase expenses under the head labour expenses inadvertently. As such, the assessee failed to discharge the onus before the learned CIT-A based on the documentary evidence. Be that as it may be, in the interest of justice and fair play, we are inclined to extend one more opportunity to the assessee to raise its contention before the learned CIT-A along with the supporting documents. Accordingly, we are setting aside impugned issue to the file of the learned CIT-A for fresh/de novo adjudication as per the provisions of law. It is also directed to the assessee to provide all the sufficient materials during the appellate proceedings as required by Id. CIT-A. Hence, the ground of appeal of the assessee is hereby allowed for statistical purposes.

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

Order pronounced in the Court on 16/10/2023 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad: Dated **(True Copy)**
16/10/2023
Manish