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आयकरअपीलीयअधिकरण, 'ए' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवंश्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A Nos.:1654 to 1658/CHNY/2019**

Assessment Years : 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17

M/s. Selva Ganesh Constructions Private Limited, Old No.5, New No.9, Rajakrishna Road, 2nd Floor, Teynampet, Chennai – 600 018. **PAN : AAECS 8937P** (अपीलार्थी**/Appellant)**	Vs.	The Income Tax Officer, Corporate Circle – VI (2) 7th Floor, New Block, No.121, M.G. Road, Nungambakkam, Chennai – 600 034. (प्रत्यर्थी**/Respondent)**

अपीलार्थीकीओरसे/Appellant by : Mr. J. Prabhakar, F.C.A.
प्रत्यर्थीकीओरसे/Respondent by : Mr. ARV Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 07.09.2022
घोषणा की तारीख/Date of Pronouncement : 07.09.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

Out of these five appeals of the Assessee, two appeals are arising out of two different orders of the Commissioner of Income Tax (Appeals) – 15, Chennai for the Assessment Years 2012 – 2013 and 2013 – 2014 in ITA No.218 & 219/2018-19/CIT(A)-15; dated 29.03.2019. For these two assessment years, assessments were framed by the Income Tax Officer, Corporate Ward – 6(2), Chennai u/s.143(3) r.w.s.147 of the Income Tax Act, 1961

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(hereinafter "the Act") vide orders dated 28.12.2018. The other three appeals for the Assessment Years 2014 – 2015, 2015 – 2016 and 2016 – 2017 are arising out of the order of the Commissioner of Income Tax (Appeals) – 15, Chennai in ITA No.220, 213 & 222/2018-19/CIT(A)-15; dated 29.03.2019. Assessments for these three Assessment Years are made by the Income Tax Officer, Corporate Ward – 6(2), Chennai u/s.143(3) r.w.s.147 of the Act vide orders of different dates, i.e. 31.12.2018 and 26.12.2018.

2. The first common issue in these five appeals is as regards to the order of the Commissioner of Income Tax (Appeals) in confirming the action of the Assessing Officer in disallowing the expenses claimed by the Assessee without deduction of Tax Deducted at Source [TDS] and thereby the Assessing Officer invoked the provision of Section 40(a)(ia) of the Act and made a disallowance for the office rent paid to the Directors, payments made to Hypercube Architect, Directors remunerations, interest paid

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to Directors and salaries paid to employees, etc. The Assessing Officer made the following disallowance by invoking the provisions of Section 40(a)(ia) of the Act for non-deduction of TDS and in the following Assessment Years.

Assessment Years 2012 – 2013:

Sl. No.	Particulars	Amount
[1]	Office rent paid to Directors	12,00,000.00
[2]	Payment made to Hypercube Architec	2,28,970.00
[3]	Director remuneration – Mr. Ganesh	6,00,000.00
[4]	Director remuneration – Mr. Rathinavel	6,00,000.00
[5]	Interest paid to Shri Ganesh (Director)	14,27,080.00

Assessment Years 2013 – 2014:

Sl. No.	Particulars	Amount
[1]	Brokerage paid to Shri Madhavan	10,90,000.00
[2]	Director remuneration – Mr. Ganesh	9,00,000.00
[3]	Director remuneration – Mr. Rathinavel	9,00,000.00
[4]	Interest paid to Shri Ganesh (Director)	14,97,135.00

Assessment Years 2014 – 2015:

Sl. No.	Particulars	Amount
[1]	Salary Ms. Selvi	3,04,600.00
[2]	Director remuneration – Mr. Ganesh	6,00,000.00
[3]	Director remuneration – Mr. Rathinavel	6,00,000.00

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Assessment Years 2015 – 2016:

Sl. No.	Particulars	Amount
[1]	Director remuneration – Mr. Ganesh	3,00,000.00
[2]	Director remuneration – Mr. Rathinavel	3,00,000.00
[3]	Salary Mr. Giri	3,71,960.00
[4]	Salary Ms. Selvi	3,59,000.00

Assessment Years 2016 – 2017:

Sl. No.	Particulars	Amount
[1]	Director remuneration – Mr. Ganesh	3,00,000.00
[2]	Director remuneration – Mr. Rathinavel	3,00,000.00
[3]	Salary Mr. Sathish	5,58,700.00
[4]	Salary Ms. Selvi	3,84,000.00

The Commissioner of Income Tax (Appeals) also confirmed the action of the Assessing Officer. Aggrieved, the Assessee is now on appeal before the Tribunal.

3. The brief facts of the case are that the Assessee is a building contractor and is also engaged in the business of Joint Venture Agreements for developing buildings. A survey u/s.133A of the Act was conducted at the business premises of the Assessee on 02.08.2017 and accordingly a notice u/s.148 of the Act was issued to the Assessee. Consequent to the issuance of a notice u/s.148 of the Act, the Assessment was completed u/s.147 r.w.s.143(3) of the

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Act in all these assessment years and the Assessing Officer had made a disallowance of expenses claimed by the Assessee for non-deduction of TDS by invoking the provisions of Section 40(a)(ia) of the Act.

4. Now before us, during the course of hearing, the learned Counsel for the Assessee had requested that in the Assessment Year 2012 – 2013 only, there are two disallowances, i.e. he challenged regarding the Director's remuneration paid to Mr. Ganesh amounting to Rs.6,00,000/- and to Mr. Rathinavel amounting to Rs.6,00,000/- and for the rest of the disallowance, i.e. office rent paid to the Directors amounting to Rs.12,00,000/- and the payment made to the Hypercube Architect amounting to Rs.2,28,970/- and interest paid to Shri Ganesh (Director) amounting to Rs.14,27,080/-, he has instructions from the assessee not to press these disallowances. Accordingly, the Assessee is not interested to prosecute these disallowances for the reason that these are debatable issues and hence he is ready to pay the taxes

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on the same. The learned Counsel for the Assessee before us stated that the payments of remunerations to the Directors are not subject to TDS and consequentially the same are not subject to rigors of Section 201 of the Act for the reason that the Assessee had disclosed the income with respect to these two amounts received and included the same in the return of income filed by these two recipients and paid the taxes due thereon. The learned Counsel for the Assessee further stated that these two Directors, Mr. Ganesh and Mr. Rathinavel had disclosed the remuneration received from the Assessee in their individual income tax returns and discharged the taxes payable there under, except for the Assessment Year 2014 – 2015 in the case of Mr. S. Ganesh who has not filed the return of income for that particular year.

5. When these facts were confronted to the learned Senior Departmental Representative, he in principle had agreed that in case the recipient Directors have included these remuneration in their respective returns of income

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and paid taxes thereon, then in terms of the second proviso to Section 40(a)(ia) of the Act, the disallowance can be deleted by the Assessing Officer. For this, the learned Senior Departmental Representative stated that this issue can be remitted back to the file of the Assessing Officer for verification of the facts only.

6. In counter, the learned Counsel for the Assessee stated that the Assessee now in his paper-book has filed copies of the returns filed by the said Directors that are enclosed herewith with his proof of discharging of the tax liability and the payment of proof are also enclosed. The learned Counsel for the Assessee stated that once the recipients have disclosed the remunerations in their respective returns of income and discharged the payments and complies with the filing of the return of income having been completed, no disallowance can be made for the non-deduction of TDS by invoking the provisions of Section 40(a)(ia) if the Act. In view of the second proviso to this Section, we are in full agreement with the arguments of the

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learned Counsel for the Assessee, as well as the learned Senior Departmental Representative that, in case the recipients have disclosed the remunerations received from the Assessee in their individual tax returns and discharged the taxes payable there under, in those case, the disallowance should not be made in terms of the second proviso of Section 40(a)(ia) of the Act.

This will also apply to the salaries paid to the employees, namely, salary for the Assessment Years 2014 – 2015, 2015 – 2016 and 2016 – 2017 and salaries paid to Shri Sathish and Shri Giri for the Assessment Years 2016 – 2017 and 2015 – 2016 respectively. In terms of the above, in all these years, i.e. 20-12 – 2013, 2013 – 2014, 2014 – 2015, 2015 – 2016 and 2016 – 2017, the directions will apply accordingly. Thus, in principle we have decided the issue in favour of the Assessee, but subject to the verification of the facts by the Assessing Officer. Hence, this matter is restored back to the file of the Assessing Officer for limited purpose of verification of facts, as to whether the recipients have disclosed the remunerations received on the salaries

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received from the Assessee in their individual tax returns and discharged the taxes payable there under in terms of the second proviso to Section 40(a)(ia) of the Act or not? The Assessing Officer will accordingly allow the claim after verifying the same. Thus, this common issue in all these years is allowed partly as indicated above.

7. The next common issue in all these five appeals of the Assessee is as regards to the order of the Commissioner of Income Tax (Appeals) confirming the action of the Assessing Officer in disallowing the claim of depreciation and expenses on motor vehicles, i.e insurance, interest on vehicle loan, vehicle maintenance and other repairs, etc. for the reason that the aforesaid motor vehicles are registered in the name of individual Directors of the Assessee Company.

8. The brief facts are that the Assessing Officer had disallowed the following motor vehicle expenses in the following Assessment Year's-:

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Particulars	A.Y 2012-13	A.Y 2013-14	A.Y 2014-15	A.Y 2015-16	A.Y 2016-17
Depreciation	5,22,069	5,56,100	4,72,685	4,01,782	1,61,515
Insurance	14,980	36,570	1,44,533	56,688	53,943
Interest on Vehicle Loan	3,02,234	3,00,929	2,11,327	1,14,715	89,791
Vehicle Maintenance	2,56,623	3,33,391	4,93,178	5,07,096	4,54,705
Other Repair	64,946	97,482	70,296	34,670	0
Total	11,60,852	13,24,472	13,92,019	11,14,951	7,59,954

The Assessing Officer had disallowed the depreciation and the related expenses of the aforesaid motor vehicle on the ground that the registration certificate of the motor cars are held in the name of the individual Directors. The learned Counsel for the Assessee submitted that although the motor vehicle are registered in the name of the Directors, but the said motor vehicles are shown in the books of the Assessee Company and are appearing in the balance sheet as assets of the Assessee Company. It was claimed that the said motor cars are used for the purpose of the business of the Assessee Company and the payment

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towards the purchase of the said cars are made by the Assessee Company. The Assessee has now contended before us that, the entire invoices and bills although are in the name of the Directors individually, but the entire expenses, i.e. interest expenses, repair expenses and petrol expenses are borne by the Assessee Company.

9. On the other hand, the learned Senior Departmental Representative supported the orders of the lower authorities.

10. After hearing the rival contentions and on going through the facts and circumstances of the case, we noted that the cars are registered in the name of the Directors but the vehicles are used for the purpose of business of the Assessee Company and even the funds towards the purchase of the vehicles were provided by the Assessee Company and they have been shown as assets of the Assessee Company in the balance sheet and in the fixed asset chart for claiming depreciation.

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In view of these facts, we are of the view that the Assessee is entitled for the claim of depreciation and other related expenses, but subject to the verification of the Assessing Officer. This issue has been considered by the Co-ordinate Bench of this Tribunal in the case of Edwise Consultants Private Limited Vs. The Deputy Commissioner of Income Tax, [2015] 44 ITR (Trib.) 236 (ITAT [Mum]), wherein it is held as under:

> "32. We have heard the parties on this issue and perused the record. We noticed that the Hon'ble Gujarat High Court has considered identical issue in the case of the Commissioner of Income Tax Vs. Aravali Finlease Limited [2012] 341 ITR 282 (Guj) and has taken the decision that the depreciation is allowable in the hands of the company, even if it is registered in the name of its Director provided that the vehicle is used for the purpose of business of the company and income derived there from was shown as income of the company. In the instant case there is no dispute with regard to the fact that the vehicles are used for the purpose of business of the Assessee Company. In the case of the Commissioner of Income Tax Vs. Basti Sugar Mills Company Limited [2002] 257 ITR 88 (Delhi), the Hon'ble Delhi High Court approved the decision of the Tribunal in holding that since the vehicle is a movable asset, the registration as required in the case of transfer of immovable property is not a condition precedent for legal ownership. In the instant case, the funds for purchase of vehicles have been provided by the Assessee Company and they have been shown as assets of the Assessee Company. Hence, in our view, the Assessee Company should be considered as owner for all practical purposes and hence it is entitled for depreciation. In view of the direct decision

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> of the Hon'ble Gujarat High Court is available on this issue, we prefer to follow the same to that rendered by the Tribunal in the Assessee's own case for the Assessment Year 2007 – 2008. Accordingly, we set aside the order of the learned Commissioner of Income Tax (Appeals) on this issue and direct the Assessing Officer to allow depreciation on vehicles."

Respectfully following the Co-ordinate Bench's decision, we direct the Assessing Officer to allow depreciation and other related expenses claimed by the Assessee. Thus, we allow this issue accordingly. Hence, this issue in the Assessee's appeal in all the Assessment Years is allowed.

11. The next common issue for the Assessment Years 2014 – 2015 and 2015 – 2016 is as regards to the orders of the Commissioner of Income Tax (Appeals) in confirming the action of the Assessing Officer in making dual disallowance u/s.40(a)(ia) as well as 40A(3) of the Act.

The Assessing Officer during the course of the assessment proceedings made the following disallowance in these two Assessment Years:

A.Y	Particulars	Section 40(a)(ia) of the Act	Section 40A(3) of the Act
2014 – 2015	Salary to employees	3,04,600	2,85,400
2015 – 2016	Salary to employees	7,30,960	4,61,610
Total		10,35,560	7,47,010

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The Commissioner of Income Tax (Appeals) also had confirmed both the disallowances.

12. Now before us, the learned Counsel for the Assessee stated that the revenue has committed double jeopardy in respect of these disallowances made on the same set of expenses, i.e. both 40(a)(ia) of the Act for non-deduction of TDS and 40A(3) of the Act for exceeding cash payment of Rs.20,000/-. The learned Counsel for the Assessee stated that the Tribunal in the earlier ground, i.e. first issue, has already considered the disallowance u/s.40(a)(ia) of the Act and had directed to be deleted, and thus the provisions of 40A(3) of the Act cannot be invoked. We are in agreement with the learned Counsel for the Assessee that the disallowance can be made only by invoking one provision, i.e. 40(a)(ia) of the Act, but since we have deleted the addition, no disallowance can be made on this count. Hence, this ground of the Assessee is decided in favour of the Assessee in both the Assessment Years. Thus, this issue in the Assessee's appeal is allowed.

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13. The next issue for the Assessment Year 2016 – 2017 is as regards to the disallowance u/s.37(1) of the Act, confirmed by the Commissioner of Income Tax (Appeals) that is made by the Assessing Officer amounting to Rs.60.00 lakhs in respect of the payment titled "Pannallur Minister Expenses".

14. The brief facts are that the Assessing Officer on verification of the impounded books of accounts noticed that on 03.11.2015, the Assessee has made a payment of Rs.60.00 lakhs which is entered as cash paid towards the "Pannallur Minister Expenses". The Assessing Officer had brought out this in his assessment order as under:

Date		Particulars	Vch. Type	Vch. No.	Debit
03.11.2015	Cr.	**Ganesh Imprest**: Cash paid towards Panallur Minister Expenses details overleaf through Ganesh un-offi total 1,74,00,000/- already 4,00,000/- add Rs.60,00,000/- balance Rs.1,10,00,000/- (50.00 Lakhs singing of Minister and Rs.60.00 Lakh go singing tharanum)	Journal	1060	60,00,000

The Assessing Officer has then treated the Rs.60.00 lakhs as hit by Explanation 1 to Section 37(1) of the Act and stated that this expenditure incurred is clearly

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prohibited by law, because no payment can be made to Minister's expenses. There are no such expenses for the purpose of business and therefore he disallowed the payment of Rs.60.00 lakhs that was claimed as business expenses.

The Commissioner of Income Tax (Appeals) also had confirmed the same by observing in paragraph nos.6.3.1 and 6.3.2, as under:

> "6.3.1. The Assessing Officer has disallowed certain payments claimed u/s.37 of the Act by referring to Explanation 1. The Assessing Officer has observed that the cash payment to the Government officials for approvals, building corrections, etc., are not allowable as legal expenses. The Assessing Officer has further observed that there was no proof of payment and any payment prohibited by law is not an allowable expenditure u/s.37 of the Act. Before the Commissioner of Income Tax (Appeals), the Appellant's Authorized Representative has reiterated that the expenditure incurred was in line with the Appellant's business and no proof can be submitted for the said payment. The Authorized Representative has submitted that a partial disallowance may be considered.

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> 6.3.2 I have considered both the point of view. It is admitted that there was no proof for any legal payment to the Government officials in connection with the Appellant's business. If it was paid to the Government officials without any legal obligation, it is not an allowable expenditure as per the provisions of Section 37 of the Act. Therefore, the Assessing Officer's disallowance is confirmed and the Appellant's ground is dismissed."

Aggrieved, the Assessee is now in appeal before the Tribunal.

15. The Assessee claimed that the addition of Rs.64.00 lakhs pertains to Rs.60.00 lakhs on account of the "Pannallur Minister Expenses" but Rs.4.00 lakhs is a cash payment made on 23.09.2015 which forms a part of Rs.18,04,800/- that is already been disallowed as illegal payment by the Assessing Officer and this double addition of Rs.4.00 lakhs should be deleted.

16. The learned Departmental Representative vehemently opposed the arguments of the learned Counsel for the Assessee.

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17. After hearing rival contentions and going through the facts and circumstances of the case, we noted that the addition that was made of Rs.64.00 lakhs should be restricted to Rs.60.00 lakhs only for the reason that the payment of Rs.60.00 lakhs made to the Minister on 03.11.2015, i.e. "Pannallur Minister Expenses" is clearly hit by the Explanation 1 of Section 37(1) of the Act. We affirm the findings of the lower authorities and this issue in the Assessee's appeal is dismissed.

As regards to the addition of Rs.4.00 lakhs, the Assessing Officer will verify as to whether this Rs.4.00 lakhs is already considered in the payments disallowed of Rs.18,04,800/- and accordingly he will decide the claim of the Assessee after verification. Thus, this issue in the Assessee's appeal is partly allowed.

18. The next issue in these appeals for the Assessment Years 2015 – 2016 and 2016 – 2017 is as regards to the disallowance in respect of the interest payment u/s.40A(3) of the Act.

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19. The brief facts are that the Assessing Officer during the course of the assessment proceedings has made the following disallowance by invoking the provisions of Section 40A(3) of the Act being payment exceeding Rs.20,000/- as mandated under the said Section, as under:

A.Y. 2015 – 2016	:	Rs.1,15,99,772/-
A.Y. 2016 – 2017	:	Rs.8,17,500/-

20. Now before us, the learned Counsel for the Assessee stated that the Assessing Officer while culling out the alleged cash payments made from the data seized classified amounts entrusted for payment to the workers in the construction sites besides other legitimate expenses classified the imprest amount given in lumpsum to be disbursed in smaller fractions to the workers and others. Hence, these payments on any given day, which perse were below the threshold limits as prescribed u/s.40A(3) of the Act, if individual disbursals are considered.

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21. The learned Counsel for the Assessee, before us filed copies of the legitimate accounts of the Assessee Company that are at page nos.66 to 82 of the Assessee's paper-book; wherein various payments are made. He only requested that the matter be remitted back to the file of the Assessing Officer for verification, as to whether if the payment for imprest amount payments are proved by the Assessee and that the payments to individual workers are below the threshold limit as prescribed by the provisions of Section 40A(3) of the Act, then the Assessing Officer may accordingly decide the claim. In case, the payments exceed the threshold limit, he will disallow.

22. The learned Departmental Representative relied on the orders of the lower authorities.

23. After hearing the rival contentions and on going through the facts and circumstances of the case, we are inclined to remit the matter back to the file of the Assessing Officer who will verify individually the payments which are disbursed to the workers at the construction site besides

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other legitimate expenses classified as the imprest amount given in lumpsum to be disbursed in smaller fractions to the workers. Accordingly, this issue in the Assessee's appeal is remitted back to the file of the Assessing Officer and is allowed partly.

24. In the result, the appeals of the Assessee in I.T.A Nos.:1654 to 1658/CHNY/2019 are partly allowed.

Order pronounced in the court on 7th September, 2022 at Chennai.

Sd/-	***Sd/-***
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 7th September, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF