

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'H' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.9067/Del./2019  
(ASSESSMENT YEAR : 2014-15)**

Umaxe Projects Pvt. Ltd.,  
S-524/205, Neelkanth House,  
School Block, Shakarpur,  
New Delhi – 110 092.

vs. ACIT, Circle 27 (1),  
New Delhi.

**(PAN : AAACU9250F)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.K. Kapoor, CA  
REVENUE BY : Shri Sunil Kumar Yadav, Sr. DR

Date of Hearing : 15.12.2022  
Date of Order : 20.12.2022

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id.  
CIT (Appeals)-9, New Delhi dated 23.09.2019 for the assessment year  
2014-15.

2. The grounds of appeal taken by the assessee read as under :-

“1. That the learned CIT (A) has grossly erred in law and on facts of the assessee’s case in upholding the disallowance on account of PF/ESI amounting to Rs.1,98,616/- u/s 36(1)(va) of the Income Tax Act. The disallowance is prayed to be deleted.

2. That the learned CIT (A) has grossly erred in not accepting the contention of the assessee that disallowance u/s 40(a)(ia) of the Income Tax Act should have been restricted to 30% as against the whole amount made by the Assessing Officer.

3. That the learned CIT (A) has failed to appreciate that any clarificatory amendment for removing unintended hardship is required to be treated as retrospective in nature and thus the disallowance u/s 40(a)(ia) should have been restricted to 30% of the gross amount.

4. That each ground is independent of and without prejudice to the other grounds raised herein.

5. That on fact and in the circumstances of the case and in law, assessee is not liable to be charged with interest u/s 234B and 234C of the Income Tax Act.”

3. The assessee has also filed an additional ground by way of which it emphasis ground no.5 above.

4. At the outset, ld. Counsel for the assessee stated that Ground No.1 is not pressed, hence the same is dismissed as not pressed.

5. As regards Grounds No.2, 3 & 4, ld. Counsel of the assessee submitted that the issue has been decided against the assessee by the decision of Hon'ble Supreme Court in the case of Shree Choudhary Transport Company [TS-370-SC-2020]. However, ld. Counsel for the assessee went on to state that the said decision is *per incuriam* as it does not refer to earlier judgments of Hon'ble Supreme Court. We note that Hon'ble Apex Court in the aforesaid case of Shree Choudhary Transport

Company (supra) has held that amendment made to the provisions of section 40(1)(ia) of the Income-tax Act, 1961 (for short 'the Act') vide Finance Act, 2014 is substantive and not having retrospective application. Unequivocally the decision of Hon'ble Apex Court is binding on all subordinate courts and Tribunals in the country, hence we follow the aforesaid decision and decide the issue against the assessee.

6. As regards ground no.5 which has also been highlighted by raising additional ground that assessee is not liable to charge with interest u/s 234B and 234C of the Act. In this regard, ld. Counsel of the assessee submitted that Hon'ble Courts have held that when whole income of the assessee is subject to TDS then the provisions of payment of advance tax u/s 234B are not applicable and the issue has been accepted in principle in assessee's own case in ITA No.206/Del/2019 pertaining to assessment year 2013-14.

7. Per contra, ld. DR for the Revenue relied upon the orders of authorities below.

8. We note that ITAT in assessee's own case in ITA No.206/Del/2019 for AY 2013-14 vide order dated 22.11.2019 has held as under :-

“ We have heard the rival submissions and perused the material available on record. The assessee has claimed that whole of its income is subjected to TDS, therefore, the payer who was obliged to deduct tax at

source and therefore, the assessee was not liable to pay tax and to what extent and require to tax deduct at source as per provisions of the Act, the assessee was not required to pay advance tax. In such circumstances, the assessee was entitled to claim the credit of TDS deducted by the payer. If the legitimate tax has not been deducted by the payee, then the payee would be treated as the assessee in default according to section 201 and the payee/assessee would not be permitted tax credit under the proviso in section 209(1)(d). The Id.Counsel has placed reliance on the decision in the case of DIT(IT) Vs. G.E.Packaged Power Ink, wherein it was held that where the assessee were non-resident companies, entire tax was to be deducted at source of payments made by payer to it then there was no question of payment of advance tax by the assessee, therefore, Revenue could not charge any interest u/s.234B from the assessee. We are therefore of the opinion that the interest u/s.234B/C is not chargeable, if the entire income of the assessee was subjected to TDS. However, this issue has not been examined by the AO as to whether payer was to deduct TDS or assessee's income was subjected to TDS. Therefore, we deem it fit to remit back this issue to the file of the AO to verify where the entire income of the assessee was liable to TDS on the payments made from the payer, if so then there was no question of payment of advance tax by the assessee and the Revenue could not charge the interest u/s.234B of the Act. In view of this, additional ground is set-aside for limited purpose to the file of the AO."

9. We find that the facts in the present case are identical. Hence following the aforesaid precedent, we set aside this issue to the file of AO with similar directions as above.

10. In the result, this appeal of the assessee is partly allowed for statistical purposes.

**Order pronounced in the open court on this 20<sup>th</sup> day of December, 2022.**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 20<sup>th</sup> day of December, 2022  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-9, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.