

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'B', NEW DELHI**

Before Smt Diva Singh, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 9367/Del/2019 : Asstt. Year: 2012-13

ACIT, Circle-9(2), New Delhi-110002	Vs.	Four Star Constructions Pvt. Ltd., 21, Furniture Block, Kirti Nagar, New Delhi-110015
(APPELLANT)		(RESPONDENT)
PAN No. AAACF8278L		

**Assessee by : Sh. Sanjay Agarwal, CA &
Sh. Rajat Vaishnaw, Adv.**

Revenue by : Sh. Ram Krishna Meena, Sr. DR

Date of Hearing: 05.04.2023

Date of Pronouncement: 11.04.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of the Id CIT(A)-34, New Delhi dated 20.09.2019.

2. The revenue has raised the following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,89,34,949/- made u/s 2(22)(e) of the Act, by the Assessing Officer.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.79,49,392/- made by the Assessing Officer on account of Maintenance Expense."

Addition u/s 2(22)(e):

3. Suffice to say, the AO made addition of Rs. 2,89,34,949/- u/s 2(22)(e) of the Income Tax Act, 1961.

4. The undisputed fact before us is that the assessee has indeed paid to M/s. Sewa International Fashions Ltd. a related entity. Thus, the assessee is not a recipient but payer of the loan.

5. Hence, as per the provisions of Section 2(22)(e) of Income Tax Act, the assessee was not liable to tax.

6. When enquired by the Bench as to whether any action has been taken by the revenue in the case of M/s. Sewa International Fashions Ltd., it was submitted by the Id. AR that such loan received by M/s. Sewa International Fashions Ltd has already been assessed in the case of M/s. Sewa International Fashions Ltd. also u/s 2(22)(e) of the Act.

7. Hence, we hold that the Id. CIT(A) has rightly deleted the addition.

Disallowance-Maintenance Expenditure:

8. During the year, the assessee has entered into an agreement with M/s A B Multiples Pvt. Ltd. to jointly maintain the building. Both the parties have agreed to open joint account for meeting the maintenance expenses. The auditor has pointed out in the audit report that in the absence of records and books of account we are unable to comment of the deduction and deposit of TDS on account of maintenance expenses amounting

to Rs.79,49,392/-. The AO has asked the assessee to furnish detail of the same alongwith bills / invoices in respect of above expenses. The assessee has not furnished any detail and bills & vouches for expenses, therefore, the AO has disallowed the expenses of Rs.79,49,392/- claimed by the assessee under the head "maintenance expenses" and added it to the taxable income of the assessee.

9. Aggrieved, the assessee filed appeal before the Id. CIT(A).

10. The Id. CIT(A) called for the following details from the assessee:

- (i) Nature of maintenance expenses & copy of agreement if any between you and M/s. AB Multiplex Pvt. Ltd. regarding sharing of maintenance charges.
- (ii) Ledger account copy in your book of maintenance expenses in your book and books of M/s. AB Multiplex Pvt. Ltd.
- (iii) Copies of quarterly e-TDS returns filed by M/s. AB Multiplex Pvt. Ltd. pertaining to F.Y. 2011-12, clearly highlighting the entries pertaining to the expenses on account of maintenance charges jointly incurred by you and M/s. AB Multiplex Pvt. Ltd. as observed by the tax auditor in the tax audit report.
- (iv) Complete financial statements of your company and M/s AB Multiplex Pvt. Ltd. for F.Y. 2010-11 to F.Y. 2012-13, including Profit & Loss Account, Balance Sheet, Schedules, Notes to Accounts alongwith copy of ITR and computation of total income.
- (v) The management details of your company and M/s. AB Multiplex Pvt. Ltd. including the shareholding pattern of you and M/s AB Multiplex Pvt. Ltd.

(vi) Any other document on which you may rely including copies of bills/vouchers/invoices and the break up and party-wise details of maintenance expenses including name, address & PAN No. and amount of expenses paid to each such party.

(vii) Copies of your bank statement and bank statement of M/s. AB Multiplex Pvt. Ltd. for the period from 01.04.2011 to 31.03.2012.

11. In response to the above, the assessee had furnished the details which are as under:

"(1) Nature of maintenance expenses & copy of agreement if any between you and M/s. AB Multiplex Pvt. Ltd. regarding sharing of maintenance charges:-

In this regard, it is submitted that the appellant had jointly developed a property alongwith M/s. AB Multiplex Pvt. Ltd. And the above expenses, so claimed represents 50% share of the appellant in the total common area maintenance expenses incurred by the corresponding partner being M/s. AB Multiplex Pvt. Ltd. As desired copy of agreement for Joint Development, Ownership & Maintenance between the appellant and M/s AB Multiplex Private Limited (Refer Point 16(a) & 16(b) at Page 10 of the agreement i.e. back side of Pb 5) may kindly be referred at pages 01 to 08 of the paper book.

We have been informed that the expenses for the maintenance of the common area are firstly incurred directly by M/s AB Multiplex Pvt. Ltd. and thereafter a claim is being made on the appellant by way of a debit note. It is also submitted that the expenses incurred towards the maintenance of the common area includes expenses towards security charges, mall maintenance charges, electricity charges, diesel expenses, as well as towards general repair and maintenance and are being paid directly by M/s AB Multiplex Pvt. Ltd. after making the relevant statutory compliances such as towards TDS etc. It is further submitted that the payments so made towards

the maintenance expenses are made out of a joint bank account of the appellant and M/s AB Multiplex Pvt. Ltd. A copy of bank account statement of the joint bank account of M/s. AB Multiplex Pvt. Ltd. & Appellant Company reflecting individual payments made to each of the party may kindly be referred at pages 22 to 32 of the paperbook.

It is explained that an estimated amount representing the share of the appellant is being paid the appellant out of its bank account into the joint bank account of the appellant and M/s AB Multiplex Pvt. Ltd a copy whereof may kindly be referred at pages 09 to 21 of the paper book. A perusal of the same, it is submitted would reveal that the entire payments have been made in this regard out of the bank accounts and are based on proper documentary evidences as well as requisite deduction of TDS at source by M/s AB Multiplex Pvt. Ltd.

- (ii) Ledger account copy in your book of maintenance expenses in your book and books of M/s. AB Multiplex Pvt. Ltd. :- As desired a confirmation from M/s AB Multiplex Pvt. Ltd. is already attached per page 179 of the paperbook. A perusal of the same would reveal that while M/s AB Multiplex Pvt. Ltd. have claimed a total amount of Rs. 90,49,035/- as 50% share of the appellant, the appellant has only considered Rs. 79,49,392/- as its share since there were certain issues and disputes qua certain claims made by M/s AB Multiplex Pvt. Ltd. Furthermore, a copy of the relevant ledger accounts may kindly be referred at pages 180-196 of the paperbook.*
- (iii) Copies of quarterly e-TDS returns filed by M/s. AB Multiplex Pvt Ltd. pertaining to F.Y. 2011-12, clearly highlighting the entries pertaining to the expenses on account of maintenance charges jointly incurred by you and M/s. AB Multiplex Pvt Ltd as observed by the tax auditor in the tax audit report*

In this regard, it is submitted that as explained earlier the TDS (wherever applicable) was directly deducted by M/S AB Multiplex Pvt. Ltd. Owing to the privity of third party information we have been denied the copies of their quarterly e-TDS returns by them since that would be containing the details of their transactions with other parties also.

However, since per pages 68-158 the copies of the corresponding bills as also the TDS certificates issued by M/s AB Multiplex Pvt. Ltd. to these parties (wherever applicable) have already been attached, it is requested to kindly dispense off the above requirement more so when the purported TDS certificates are the ones which have not been issued manually but have downloaded from the portal of the Income Tax Department and thus there could not be any iota of doubt qua their genuineness. Not prejudice, in case your goodself still intends to examine the quarterly e-TDS returns filed by M/s. AB Multiplex Pvt. Ltd. pertaining to F.Y. 2011-12, it is submitted that the same may be called directly from them or alternatively from the AO-TDS having jurisdiction over their TAN - DELA18408F and their PAN - AAACE1424H.

- (iv) Complete financial statements of your company and M/s AB Multiplex Pvt. Ltd. for F.Y. 2010-11 to F.Y. 2012-13, including Profit & Loss Account, Balance Sheet, Schedules, Notes to Accounts alongwith copy of ITR and computation of total income. Owing to the privity of third party information we have been denied the copies of the audited annual accounts of M/s AB Multiplex Pvt. Ltd. by them for the reason best known to them. Regarding the above details of the appellant for the captioned assessment year the same may kindly be referred at pages 33- 65 of the paper book.*
- (v) The management details of your company and M/s. AB Multiplex Pvt. Ltd. including the shareholding pattern of you and M/s AB Multiplex Pvt. Ltd.*

The same may be referred at pages 159-160 of the paper book for the appellant's shareholding pattern (though the same is also duly appearing in the audited annual accounts of the appellant at page 41 of the paper book.

Further regarding the shareholding pattern of M/s AB Multiplex Pvt. Ltd, the same may be referred at page 161 and 162 of the paper book which may also be referred from the copy of Form 20B (Annual Return required to be furnished in pursuance of The Companies Act as downloaded from the Website of The Ministry of the Corporate Affairs) showing the list of directors in the list of

shareholders. Refer Page 174 for list of Shareholders as per Annual Return.

A perusal of the above would reveal that both i.e the appellant as well as M/s AB Multiplex Pvt. Ltd. are neither under the same management nor have common directors or shareholders.

- (vi) *Any other document on which you may rely including copies of bills/vouchers/invoices and the break up and party-wise details of maintenance expenses including name, address & PAN No. and amount of expenses paid to each such party. In this regard, it is submitted the detailed copies of bills/vouchers/invoices and the break up and party-wise details of maintenance expenses including name, address & PAN No. and amount of expenses paid to each such party may be referred as under :-*

<i>Expense Head</i>	<i>Amount</i>	<i>Summary</i>	<i>Bills /Tds Certificates Etc.</i>
<i>Security Expense</i>	<i>870316</i>	<i>69</i>	<i>70-87</i>
<i>Facility Management Service Charges</i>	<i>1705937</i>	<i>88</i>	<i>89-106</i>
<i>Electricity Expenses</i>	<i>3609337</i>	<i>107</i>	<i>108-118</i>
<i>Diesel Expense</i>	<i>1127804</i>	<i>119</i>	<i>120-138</i>
<i>Glass & Glazing Charges</i>	<i>134712</i>	<i>139</i>	<i>140-141</i>
<i>Electrical Installation Expense</i>	<i>22779</i>	<i>142</i>	<i>143</i>
<i>Misc Purchases</i>	<i>10688</i>	<i>144</i>	<i>145</i>
<i>Pollution Charges</i>	<i>12000</i>	<i>146</i>	<i>146</i>
<i>Repair & Maintenance Expense</i>	<i>455819</i>	<i>147</i>	<i>148-158</i>
<i>Total</i>	<i>79,49,392/-</i>		

- ii) Copies of your bank statement and bank statement of M/s. AB Multiplex Pvt. Ltd. for the period from 01.04.2011 to 31.03.2012.*

The same may be referred at para (i) supra and at pages 09-21 for appellant's relevant bank statement and pages 22 to 32 for the statement of the joint bank account of the appellant and M/s AB Multiplex Pvt. Ltd wherefrom payments were made to the respective parties."

12. After receiving the replies from the assessee, the Id. CIT(A) deleted the addition holding that the Appellant and M/s AB Multiplex Pvt. has entered into an agreement for Joint Development, Ownership & maintenance between the appellant

and M/s AB Multiplex Private Limited on 25/05/2006 for the development of a plot of land at haul Srihaul, Tehsil and District Haryana. Based on the aforesaid agreement joint maintenance, upon the completion of the construction, the aforesaid commercial property was being jointly maintained by the appellant, i.e. M/s. Four Start constructions Pvt. Ltd and M/s. AB Multiplex Pvt. Ltd whereby the incomes as well as expenses incurred on maintenance were being jointly and equally shared by both these companies. For the instant Assessment Year, the Appellant's share in total maintenance of the aforesaid joint maintenance was arrived at Rs. 79,49,392/-. That out of the aforesaid amount of Rs. 79,49,392/-, an aggregate amount of Rs. 75,32,500/- was reimbursed by the Appellant from its bank account no. 044202000004082 with Indian Overseas Bank, Rajendra Place (PB09 to 22). The appellant, i.e. M/s Four Star Constructions Private Limited and M/s AB Multiplex Pvt. Ltd were also maintaining a joint account with Corporation Bank Vasant Lok, with account no. CBCA/01/000036. All the expenses incurred on the maintenance of the mall were being paid/incurred out of the said bank account. At the same time, the respective shares in expenses of the maintenance were being reimbursed by the appellant as well as M/s AB Multiplex Pvt. Ltd in the said bank account. It is noted that all the payments made by the Appellant out of its bank account as referred above have been duly reflected in the joint bank account. The details of the expenses on maintenance are as under:-

SI No.	EXPENSE HEAD	AMOUNT	PAGE NO. OF PAPER BOOK
1	Security Expense	870316	69-87
2	Facility Management Service Charges	1705937	88-106
3	Electricity Expenses	3609337	107-118
4	Diesel Expense	1127804	119-138
5	Glass & Glazing Charges	134712	139-141
6	Electrical Installation Expense	22779	142-143
7	Misc Purchases	10688	144-145
8	Pollution Charges	12000	146
9	Repair & Maintenance Expense	455819	147-158

13. The respective summary of each of the above expenses as well as the copies of relevant bills, invoices as well as TDS certificates have been enclosed in the paper book. Wherever applicable, TDS has been duly deducted and deposited by M/s AB Multiplex Pvt. Ltd on the entire amounts incurred. Thus, TDS on these payments have been deducted by M/s AB Multiplex Pvt. Ltd on its own behalf as well as on behalf of the Appellant, i.e. M/s Four Star Constructions Private Limited. Confirmation from M/s AB Multiplex Pvt. Ltd. with respect of maintenance charges debited as well as reimbursement received by it from the Appellant has been examined.

14. Thus, we find that the entire amount of Rs. 79,49,392/- do not pertain to payments eligible to TDS and in fact a substantial part of this amount pertained to expenses on which TDS is not required to be deducted. On the remaining payments, TDS has been deducted by M/s AB Multiplex Pvt. Ltd. and the appellant is merely reimbursing the expenses incurred on its behalf to M/s AB Multiples Ltd which payment are not income in the hands of M/s AB Multiplex Put Ltd. Hence, we hold that no disallowance is called for on account of non-eligibility of the expenses u/s 37 or

on non-deduction of tax u/s 40(a)(ia). The order of the Id. CIT(A) is hereby affirmed.

15. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 11/04/2023.

Sd/-

(Diva Singh)
Judicial Member

Dated: 11/04/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR