IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'A', NEW DELHI

BEFORE SH. H. S. SIDHU, JUDICIAL MEMBER
AND, SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.6173/Del/2016 (for Assessment Year 2012-13)

DCIT Circle – 1(2), New Delhi – 110 002 PAN No. AACCA 4087 E	Vs.	Ackruti Safeguard Systems Pvt. Ltd., D-89/3, TTC Industrial Area, MIDC, Turbhe, Navi Mumbai – 400 705
(APPELLANT)		**(RESPONDENT)**

Assessee by	-None-
Revenue by	Sh. Prakash Dubey, Sr. DR

Date of hearing:	14/12/2020
Date of Pronouncement:	17/12/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 26.09.2016 of the Commissioner of Income Tax (A)-I, New Delhi relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of Manufacturing/ Trading / Exporting /Distributing of all kinds of High Security Number Plates and other connecting activities. AO has noted that the business of the assessee had not commenced till the end of the year under consideration. Assessee filed its return of income for A.Y. 2012-13 on 29.09.2012 showing loss of Rs.69,05,408/-. Subsequently, it revised the return of income on 29.03.2014 declaring loss of Rs.1,88,21,050/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) vide order dated 30.03.2015 and the total loss was determined at Rs.35,61,712/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 26.09.2016 in Appeal No.170/15-16 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), revenue carried the matter before the Tribunal. The Tribunal vide order dated 05.09.2018 in a group cases, dismissed the appeal of the Revenue on account of low tax effect. Subsequently, Revenue filed Miscellaneous Application (MA) wherein it was *inter alia* contended that the tax effect in appeal is more than 20 lacs and hence prayed for the recalling of the Tribunal order. The Tribunal vide order dated 13.08.2019 in MA No.199/Del/2019 recalled the order in ITA No.6173/Del/2016 for A.Y. 2012-13 thus the appeal of the Revenue is now before us and the grounds raised therein reads as under:

1.1.1 The Ld. CIT(A) erred in law and on facts in deleting disallowance u/s 40(a)(ia) of the Act for non-deduction of tax at source while making payment of interest.

1.1.2 The Ld. CIT(A) failed to take into consideration the provisions of section 40(a)(ia) which is attracted when the assessee fails to deduct tax at source which was deductible u/s 194 of the I.T. Act and is a substantive provision casting liability on the assessessee.

2. The Ld CIT(A) erred in allowing short term loss of Rs.28,95,598/- on account of demolition of building.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

5. The case file reveals that in the past and on the date of hearing none appeared on behalf of the assessee nor any adjournment application was filed on its behalf. In such a situation we proceed to dispose of the appeal *ex parte* qua the assessee after considering the material on record and after hearing the DR.

6. First ground is with respect to the disallowance u/s 40(a)(ia) of the Act.

7. During the course of assessment proceedings, AO noticed that assessee had claimed interest of Rs.1,48,94,552/- of which Rs.29,78,910/- was transferred on Capital Work in progress and the balance amount debited in the P&L account was Rs.1,19,15,642/-. The assessee was asked to furnish the details and justify of interest debited to P&L A/c. The submissions made

by the assessee of the claim of expenses was not found acceptable to AO. AO also noted that on the interest payment, TDS was not deposited till the due date of filing of return u/s 139(4) of the Act. AO was of the view that assessee was liable to deduct TDS and deposit the TDS with the appropriate authorities before the due date of filing the return of income. In the case of the assessee since the TDS has not been deposited with the appropriate authorities within the due date, the claim of the assessee was disallowed by invoking the provisions of section 40(a)(ia) of the Act. He accordingly made addition of Rs.1,19,15,642/-.

8. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) after relying on the decision of Hon'ble Delhi Tribunal in the case of ITO vs. Jaydeep Kumar Sharma 52 Taxmann.com 422 and the decision of ITAT Agra Bench in the case of Rajeev Agarwal vs. ACIT 149 ITD 363, noted that since the payee has paid tax/ included the interest income in its total income and has filed the return of income, no disallowance could be made in the hands of the assessee under the provision of Section 40(a)(ia) of the Act for failure to deduct tax at source. He also noted that the 2nd proviso to said section to be clarificatory in nature and applicable retrospectively. He thus allowed the claim of the assessee. Aggrieved by the order of CIT(A), Revenue is now before us.

9. Before us, Learned DR supported the order of AO.

10. We have heard the Learned DR and perused the material on record. The issue in the present ground is with respect to deletion of disallowance of interest by invoking the provision of section 40(a)(ia) of the Act. We find that while allowing the claim of the assessee, CIT(A) has given a finding that payee has included the interest income in its total income and has also filed the return of income and therefore no disallowance can be made in the hands of the assessee in view of the fact that the 2nd proviso to said section has been held to be clarificatory in nature. CIT(A) had also relied on the decision in the case of Rajeev Agarwal (supra) while deciding the issue. We find that Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township Pvt. Ltd. (2015) has also held that second proviso to Section 40(a)(ia) of the Act to be declaratory and curative and it has retrospective effect from 01.04.2005. Before us, Revenue has not pointed any fallacy in the findings of the CIT(A) nor has placed any contrary binding decision in its support. In view of these fact, we find no reason to interfere with the order of CIT(A) and thus **the ground of Revenue is dismissed.**

11. 2nd ground is with respect to deleting the disallowance of short-term capital gain.

12. During the course of assessment proceedings, AO noticed that assessee has claimed short-term capital loss of

Rs.28,95,598/-. Assessee was asked to furnish the details of short-term capital loss which the assessee furnished. On the basis of the details furnished by the assessee, AO noted that it had demolished the existing building and since the building was demolished and it was the only asset in the "block of asset", the written down value as appearing in the fixed scheduled for Income Tax working was claimed as Short Term Capital loss u/s 50(2) of the Act. The AO was of the view that as per the provision of Section 50(2) of the Act, short term capital loss can arise only in case of transfer of any asset of any block of asset but in the present case since there has not been any transfer of asset, but it was the case where the part of an asset has been demolished with the intention to create an altogether a new structure, the provisions of Section 50(2) are not applicable. He therefore held that the short- term capital loss is not allowable to assessee. He also noted that the short-term capital loss was not properly substantiated with supporting evidence. He accordingly denied the claim of the assessee.

13. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who decided the issue in favour of the assessee by observing as under:

> *"I have considered the submission of the appellant and observation of the AO made in the assessment order on the issue. It is seen that appellant has purchased a plot of lease hold land alongwith building structure standing thereon for setting up of its factory at D-89/3, TTC Industrial Area, MIDC, Turbhe, Nai Mumbai-400705 in FY 2007-08. The said leasehold land was*

purchased from Sh. Ashwin M Shah for Rs.1.20 crore. The appellant company further paid amount towards stamp duty registration, brokerage etc. which was included in the cost of said lease hold land. The cost of the said land included a building structure was at Rs. 1,37,95,452/-. Subsequently, the appellant company bifurcated the land cost and building cost proportionately. The land cost was taken at Rs. 1,03,04,642/- whereas the building cost was taken at Rs.34,90,810/-. The cost of the building was shown under fixed assets whereas cost of land was shown under the head Non-current Investment, since the appellant company was not claiming depreciation but amortising the cost of leasehold land for a period of 10 years.

The company demolished the existing structure of building which was situated on the leasehold land for setting up of its factory in FY 11-12. Since the building was demolished it has written of the said asset from its books of accounts and the written down value of the building which was appearing in the fixed assets/books of account was debited to the P&L A/c for the year ended 31.03.2012. It is submitted by the appellant that since building was only asset in the said block of asset, therefore, the written down value as appearing in the fixed asset schedule of the income tax working has been shown as short term capital loss u/s 50(2) of the IT Act. The AO has rejected the claim of the appellant on the ground that the building was never had any usability for the appellant and the amount so paid by the appellant was solely for the land.

The AO has also held that without prejudice to the above, the provisions of section 50(2) of the Act is applicable in the case of transfer of any block of assets whereas in the instant case there is no such transfer, therefore, the AO disallowed the claim of short term capital loss.

It is seen that appellant had purchased said building alongwith the land and cost of the building and land was apportioned proportionately. The appellant has shown the cost of building under the head Fixed Assets whereas the cost of land was shown under the head Non-current Investment. In its return of income the appellant has claimed depreciation on the said building and the cost of the land was claimed 1/10th every year as it was a

leasehold land. During the year the building was demolished for constructing a new factory building on the said land, therefore, the WDV of the earlier building shown in the books of account has been claimed as short term capital loss. Since there was no other asset in the said block, therefore, the WDV has to be claimed as short term capital loss. The AO has stated that there is no transfer, therefore, short term capital loss cannot be claimed. In this regard provisions of section 50 needs to be referred wherein special provision for computing of capital gains in case of depreciable assets have been defined which states as under: -

> *"50. Notwithstanding anything contained in clause (42A) of Section 2, where the capital asset is an asset*
> *.....*
>
> *the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short term capital assets."*

It is defined in the said section that if there is a transfer of depreciable asset or such assets cesses the exits, then the short term capital gain or loss has to be calculated as per the special provisions of section 50. The appellant has followed the right method for calculating the short term capital loss on the building which was demolished during the year. Since there was no other asset in the said block, the appellant has claimed the WDV of the said asset as short term capital loss as per the above provisions. The AO was not justified in disallowing the short term capital loss of Rs.28,95,598/- on account of demolition of building. The disallowance is therefore, deleted and AO is directed to allow carry forward of such loss."

14. Aggrieved by the order of CIT(A), Revenue is now before us. Before us, Learned DR supported the order of AO.

15. We have heard Learned DR and perused the material on record. We find that CIT(A) while deciding the issue in favour of the assesse has given a finding that assessee had followed the right method of calculating the short term capital loss on the building which was demolished during the year and since there was no other asset in the said block, assessee had claimed the WDV of the said asset as short term capital loss as per the provision of Section 50(2) of the Act. Before us, no fallacy in the findings of the CIT(A) has been pointed out by Revenue nor Revenue has placed any contrary binding decision in its support. In view of these fact, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

16. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on 17.12.2020

Sd/-	**Sd/-**
(H. S. SIDHU)	**(ANIL CHATURVEDI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Priti Yadav, Sr.PS

Date:- 17.12.2020

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI