IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, NEW DELHI

Before Sh. Amit Shukla, Judicial Member

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

(Through Video Conferencing)

ITA No. 4293/Del/2018 : Asstt. Year : 2013-14

Sri Ajay Kumar Singh C/o. Ravi Maheshwari & Co. Chartered Accountants ¾ Race Course, Dehradun-248001	Vs	Income Tax Officer Ward 1 (4)(1), Income Tax Office Building IDPL, Veerbhadra, Rishikesh
(APPELLANT)		(RESPONDENT)
PAN No. AUWPS8140B		

Assessee by : Sh. Kapil Goyel, Adv.
Revenue by : Sh. N.C.Upadhyay, Sr. DR

Date of Hearing: 11.11.2021		**Date of Pronouncement: 7.12.2021**

ORDER

Per Dr. B.R.R.Kumar, AM

This appeal has been filed by the assessee against the order of the ld. CIT(A), Dehradun, dated 12/03/2018.

Channel Carriage Expenses

2. On verification of bank statement of the assessee with Axis Bank Ltd. Account No. 1560102000001465, the AO noticed that the assessee has made payments to the following persons with whom he has business-relation of channel distribution work.

Name of the Person	*Date of payment*	*Cheque No.*	*Amount*
M/s. Blue Sky Cable Network	*31.10.2012*	*320549*	*Rs. 90,000/-*
	29.01.2013	*320563*	*Rs. 1,00,000/-*
	18.03.2013	*320577*	*Rs. 1,00,000/-*
M/s. Moon Cable Network	*31.10.2012*	*320550*	*Rs. 1,50,000/-*
M/s. Hathway Cable & Da Com Ltd.	*22.01.2013*	*320560*	*Rs. 15,00,000/-*
M/s. Digi Cable Network	*29.01.2013*	*320562*	*Rs. 1,66,000/-*
	02.03.2013	*320574*	*Rs. 1,66,000/-*
	23.03.2013	*320575*	*Rs. 1,00,000/-*
	28.03.2013	*320579*	*Rs. 1,66,000/-*
			Rs. 25,38,000/-

Initially no compliance was made by the assessee for the show cause notice issued by the AO with regard to explanation whether any tax (TDS) has been deducted on the above amount of Rs.25,38,000/-, or not. If not, he was required to show cause as to why the same may not be disallowed for contravention of provisions of section 40(a)(ia) of the I.T. Act, 1961.

3. The reply of the assessee is reproduced as under:

"That your honour has proposed to disallow certain expenses claimed by the assessee under the provisions of section 40(a)(ia) as income tax was not deducted at source on the following payments:

Name of the Person	*Date of Payment*	*Cheque No.*	*Amount*
M/s. Blue Sky Cable Network	*31-10-2012*	*320549*	*90,000.00*
M/s. Blue Sky Cable Network	*29-01-2013*	*320563*	*1,00,000.00*
M/s. Blue Sky Cable Network	*18-03-2013*	*320577*	*1,00,000.00*

M/s. Moon Cable Network	*31-10-2012*	*320550*	*1,50,000.00*
M/s. Hathway Cable & Data Com. Ltd.	*22-01-2013*	*320560*	*15,00,000.00*
M/s. Digi Cable Network	*29-01-2013*	*320562*	*1,66,000.00*
M/s. Digi Cable Network	*02-03-2013*	*320574*	*1,66,000.00*
M/s. Digi Cable Network	*23-03-2013*	*320575*	*1,00,000.00*
M/s. Digi Cable Network	*28-03-2013*	*320579*	*1,66,000.00*
Total :			*25,38,000.00*

However the proviso to section 40(a)(ia) provides relief from the said disallowance if the aassessee is not deemed to be in default under the first proviso to sub-section (1) of section 201. The said proviso is quoted below:

"**Amounts not deductible.**

40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession**",—**

(a) in the case of any assessee [4]

(ia) [thirty per cent of any sum payable to a resident], on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139. [thirty per cent of] such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201. then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso. **"**

The provisions of sub-section (1) of section 201 are also quoted below :

"Consequences of failure to deduct or pay.

201. [(1) Where any person, including the principal officer of a company**,—**

a)required to deduct any sum in accordance with the provisions of this Act;or

b) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

[Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident**—**

(i) has furnished his return of income under section 139;

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed "

Rule 31ACB of the Income Tax Rules has prescribed Form 26A for furnishing certificate of accountant under the first proviso to sub-section (1) of section 201 and the assessee is in process of obtaining the said certificate from the payees so that disallowance u/s 40(a) (ia) is not attracted.

Since the offices of the payee companies were closed from 23rd March to 27th March, due to holidays for Holi and Good Friday for followed by the weekend the said certificate could not be obtained therefore it is requested that the assessee be allowed some more time to obtain the certificate in Form 26A and produce the same before your honour. However, these parties have incorporated the payments made by the assessee in their accounts which can be verified with the statement of account of these parties enclosed herewith.

4. Subsequently, The AO disallowed the addition and the ld. CIT(A) has dismissed the appeal of the assessee owing to non-production of Form AS26 and other details. Having gone through the factum on record we hold that interest of justice would be met if the assessee is given an opportunity to file the evidences with regard to offering of these amounts to tax by the recipient before the AO who would examine and allow the deduction.

The appeal of the assessee on this ground is treated as allowed for statistical purpose.

Adhoc Disallowance:

5. The revenue made adhoc disallowance of 20% under the head salaries and under the head "Travelling Expenses". Regarding these disallowance, we find that the ld. CIT(A) has not adjudicated on this issue. Hence, the matter is being referred to the file of the Ld. CIT(A) for adjudication afresh.

6. The appeal of the assessee on this ground is treated as allowed for statistical purpose.

Order Pronounced in the Open Court on 7/12/2021.

Sd/-	Sd/-
(Amit Shukla)	**(Dr. B. R. R. Kumar)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 7/12/2021

Binita

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

AR, ITAT
New Delhi