

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 6370/DEL/2019 [A.Y. 2015-16]

M/s Oravel Stays Pvt Ltd
Delhi Rectangle Regus, Level - 4
Rectangle -1, Commercial Complex
D - 4, Saket, Delhi

Vs. The A.C.I.T
Special Range - 7
New Delhi

PAN - AABCO 6063 D

(Applicant)

(Respondent)

Assessee By : Shri Ajay Vohra, Sr. Adv
Ms. Deepashree Rao, CA
Shri Hardeep Singh Chawla, Adv
Shri Samarth Singh Chawla, Adv

Department By : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing : 14.02.2024
Date of Pronouncement : 15.02.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 38, Delhi dated 30.05.2019 pertaining to A.Y 2015-16.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs. 1,08,59,584/- u/s 40(a)(ia) of the Income-tax Act, 1961 [the Act, for short] in respect of minimum guarantee expense of Rs. 3,61,98,948/-.

3. Briefly stated, the facts of the case are that the assessee electronically filed its Return of Income on 29.09.2015 declaring loss of Rs. 29,82,76,660/-. Return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has not deducted tax at source on minimum guarantee expense of Rs. 3,61,98,948/-. The assessee was asked to show cause why this expense should not be disallowed u/s 40(a)(ia) of the Act.

5. The assessee, in its submissions dated 04.12.2017, explained that these payments are not governed by provisions of Chapter XVII-B of the Act and therefore, no TDS has been deducted.

6. The contention of the assessee did not find any favour with the Assessing Officer who was of the firm belief that the assessee has violated the provisions of section 194-I of the Act and, alternatively, section 194-C of the Act by not deducting tax at source and invoking provisions of section 40(a)(ia) of the Act, he made disallowance of Rs. 1,08,59,584/-.

7. When the matter was agitated before the Id. CIT(A), the assessee strongly contended that the payments made by the assessee towards minimum guarantee expense cannot be considered as payment of rent, liable for TDS u/s 194-I of the Act.

8. After considering the facts and submissions and drawing support from the CBDT Circular No. 5/2002 dated 30.07.2002 and referring to question No. 20 therein, the Id. CIT(A) was convinced that the impugned payment was not rent liable for TDS u/s 194-I of the Act.

9. Since the Revenue is not in appeal before us, this issue has attained finality. However, the Id. CIT(A) confirmed the assessment holding that provisions of section 194C squarely apply.

10. Before us, the ld. counsel for the assessee vehemently stated that minimum guarantee expense is not any payment towards any contract but it is in the nature of compensatory payment for shortfall in room occupancy. It is the say of the ld. counsel for the assessee that the assessee guarantees the hotels for certain minimum occupancy of the rooms and if the occupancy is not achieved, the assessee would compensate the shortfall.

11. The ld. counsel for the assessee vehemently stated that no work was carried out so as to invoke provisions of section 194C of the Act.

12. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and stated that the assessee is in fact providing service towards minimum occupancy of the rooms in the hotels and, therefore, ought to have deducted tax at source.

13. We have carefully considered the orders of the authorities below. Facts on record show that the assessee for the purpose of carrying on its business operations enters into merchant agreement with various hotels for facilitating reservation/booking of hotel rooms through the platform of the assessee. As per the terms of the said agreement, the

hotel conducts its operations in terms of providing lodging and accommodation services whereas the assessee provides technology, sales and marketing services to the hotels relating to provision of lodging and accommodation services through its platform.

14. The assessee being a service provider assures the minimum benchmarks which the service recipient will receive or expect to receive from service provider. In case such benchmarks is exceeded, then the service fee is payable by the service recipient to service provider and in case of shortfall, the service provider is required to meet the same.

15. On such business model, provisions of section 194C of the Act provides that any person responsible for paying any sum to any resident for carrying out any work in pursuance of a contract between the contractor and a specified person shall deduct tax on the sum paid or credited to the account of the contractor, *sine qua non* for applicability of this provision is ***“Carrying out any Work”***.

16. Facts on record show that no work has been carried out. Therefore, in our considered opinion, provisions of section 194C of the Act have no application. The assessee is merely compensating the shortfall pursuant to the agreement.

17. The contention of the ld. DR that in furtherance of its business objectives/model, the assessee is providing service, cannot be accepted as neither the Assessing Officer nor the ld. CIT(A) have invoked the relevant provisions of the Act applicable for provisions of service. On the facts of the case, we hold that section 194C of the Act is not applicable. The Assessing Officer is directed to delete the impugned addition.

18. In the result, the appeal of the assessee in ITA No. 6370/DEL/2019 is allowed.

The order is pronounced in the open court on 15.02.2024.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 15th FEBRUARY, 2024

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
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