

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH, MUMBAI**

**Before Shri B.R. Baskaran, Accountant Member &
Shri Narender Kumar Choudhry, Judicial Member**

ITA No. 1570/Mum/2023
(Assessment Year: 2017-18)

Shri Vishnu Dattatraya Ponkshe
21, Krishnakunj Apartment
Plot 16, Road 4, Jay Prakash
Nagar, Goregaon East
Mumbai 400063
PAN – AADPP3230G

Central Processing Centre
Bengaluru

Vs.

Appellant

Respondent

Appellant by : Sh. Jitendra Singh, Ld. CA
Respondent by : Sh. Naganath B. Pasale, Ld.DR

Date of Hearing : 27.07.2023
Date of Pronouncement: 29.08.2023

ORDER

Per: N.K. Choudhry, JM

This appeal has been preferred by the Assessee against the order dated 07.03.2023 impugned herein passed by the learned Commissioner of Income Tax/National Faceless Appeal Centre, Delhi (NFAC) (in short Id. Commissioner) under section 250 of the Income Tax Act, 1961 (in short the Act) for AY 2017-18.

2. In the instant case, the Assessee by filing its of income u/s 44AD of the Act shown its income @8% on receipts of Rs.8,30,800/- from the business of consultancy qua stamp duty and registration. The amount of Rs.8,30,800/- included the receipt of Rs.4,81,280/- on which TDS was deducted under section 94J of the Act (fees for professional and technical services) and therefore the AO/CPC added the income @50% under section 44 ADA of the Act, which resulted into making the addition of Rs. 2,40,640/-.

3. The Assessee being aggrieved challenged the said addition before the learned Commissioner, who by taking into consideration that all the deductors are big corporates and deducted tax under section 194J of the Act, construed that the receipts of Rs.4,81,280/- related to professional and technical services and is covered under section 44ADA of the Act and therefore taxable @50%. The Ld. Commissioner ultimately computed the total income of the Assessee to the tune of Rs.2,68,640/- (2,40,640/- + 27,982/- @8% of Rs.3,49,500/-) and restricted the income of Rs. 3,49,500/- u/s 139(1) of the Act to the tune of Rs.2,68,602/- only.

4. The Assessee being aggrieved is in appeal before us.

5. We having heard the parties and perusing the material available on record and giving thoughtful consideration to the peculiar facts and circumstances of the case, observe that the amount of Rs.4,81,280/- on which TDS was deducted under section 194J of the Act, in fact is part of the total receipt of Rs.8,30,800/- on which the Assessee has declared income @8% under section 44AD. However, both the authorities below applied the provisions of section 44ADA of the Act, which in fact deals with persons carrying on legal, medical, engineering or architectural profession or profession of accountancy, technical consultancy or interior decoration or any other profession as is notified by the Board in the official gazette. Admittedly the Assessee is just a 10th/matriculation passed and do not have any qualification to act as a legal, medical, engineering or architectural professional or professional accountancy or technical consultancy of interior decoration or any other profession as is notified by the Board in the official gazette, as prescribed under section 44AA of the Act. As the Assessee's case does not fall under the provisions of section 44ADA of the Act and therefore the addition sustained by the learned Commissioner to the extent of Rs.2,40,640/- is liable to be deleted.

6. In the result, the appeal filed by the Assessee stands allowed.

Pronounced in the open Court on 29th August, 2023.

**Sd/-
(B.R. Baskaran)
Accountant Member**

**Sd/-
(Narender Kumar Choudhry)
Judicial Member**

Mumbai
Shubham P. Lohar

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT concerned*
4. *The DR, ITAT, Mumbai*
5. *Guard File*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai*

n.p.