

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA
BEFORE SHRI N.V.VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.2327/KoI/2013

(निर्धारण वर्ष /Assessment Year:2009-2010)

Liladhar Joshi, Prop. L.D.Joshi & Co., F-3, Chinhat Industrial Area, Chinhat, Lucknow-226019(UP)	Vs.	ITO, Ward-2(2), Durgapur-713216(WB)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACZPJ 3538 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri K.K.Khemka, Advocate

राजस्व की ओर से /Revenue by : Shri Rajat Kumar Kureel, JCIT

सुनवाई की तारीख / **Date of Hearing** : **24/11/2016**

घोषणा की तारीख/**Date of Pronouncement** **30/11/2016**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to the assessment year 2009-2010, is directed against an order passed by Id. Commissioner of Income Tax (Appeals), Durgapur in Appeal No.223/CIT(A)/DGP/2011-12, dated 23.04.2013, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section.143(3) of the Income Tax Act 1961, (in short the 'Act'), dated 30.12.2011.

2. Brief facts of the case qua the assessee are that the assessee had filed his return of income on 29.09.2009 declaring total income of Rs.10,24,717/-. Later on the assessee's case was selected for scrutiny u/s.143(3) of the Income Tax Act. During the year under consideration, the assessee has derived the income by manufacturing and trading. The AO made addition u/s.40(a)(ia) of the Act observing the followings :-

“The assessee has shown un-secured loan of Rs.11,40,518/- from Indiabull Financial Services Ltd., Lucknow as well as Rs.29,82,108/- from Barclays Bank PLC, New Delhi in the balance sheet during the year under consideration. During the course of assessment proceedings, the AR of the assessee filed the repayment schedule wherein it has been noticed that the assessee had paid total interest of Rs.8,65,300/- [Rs.2,80,291/- Plus Rs. 5,85,009/-] on interest account. As both the loan providers being Non Banking Financial Institutions, it was mandatory on the part of the assessee to deduct tax at source on the interest component of the E.M.Is as paid in both the cases. But the assessee has failed to deduct tax on EMI payment which clearly contravenes the provisions of Section 40(a)(ia) of the I.T.Act, 1961 read with section 194A. Hence, the entire amount of Rs.8,65,300/- is added back to the total income of the assessee.”

3. Aggrieved from the order of Id. AO, the assessee filed an appeal before the Id. CIT(A), who has also confirmed the addition made by the AO, by observing the followings :-

“3. Ground No.1.:

In this ground the appellant is disputing the A.O's action in disallowing interest paid by him on the ground that no TDS had been deducted on such payments. The interest is seen to have been paid to two entities. These are M/s. India Bulls Financial Services Ltd and M/s. Barclays Bank PLC. The A.O. is seen to have made this disallowance as he has treated these two entities as non banking financial corporations. In course of appellate proceedings no submission has been made regarding the status of M/s India Bulls Financial Services Ltd. The appellant has contended that M/s. Barclays Bank PLC is not a non-banking financial institution. He has also submitted copy of order u/s.195(3) of the IT.Act. 1961, issued by DCIT(International Taxation) 3(2), Mumbai, dated 24.03.2011 whereby, M/s. Barclays Bank PLC has been allowed to receive, without deduction of Income tax, interests and, any other sum, not being interests or dividends. The status of M/s. Barclays bank in India has not been amplified in the appellant's submission. However, the issue of the certificate u/s.195(3) raises a question regarding the claim made by the appellant that the said institution is not a non-banking financial corporation. If that was indeed the case then I do not see the need for the said certificate. This is an issue which has not been clarified by the appellant. The certificate as such is valid for the F.Yr.2011-12 and not for the year ender appeal. In view of that, the disallowance made by the A.O. is confirmed. This ground of appeal is dismissed.”

4. Not being satisfied with the order of Id. CIT(A), the assessee is in further appeal before us and has taken the following grounds of appeal :-

1) *For that the Id. Commissioner of Income Tax(Appeals) erred in law as well as on facts in invoking provisions of sec.40(a)(ia) for interest paid to the following parties :-*

(a) India Bulls	-	Rs.2,80,291/-
(b) Barclays Bank	-	<u>Rs.5,85,009/-</u>
Total:		Rs.8,66,300/-

Although the assessee has challenged in this appeal the disallowance u/s.40(a)(ia) of the Act in respect of (a) India Bulls and (b) Barclays Bank, but the at time of hearing the main grievance of the assessee has been confined to the disallowance u/s.40(a)(ia) of the Act in respect of Barclays Bank only and the ground of appeal relating to India Bulls has not been pressed.

5. Ld. AR for the assessee has submitted that the assessee could not produce the TDS certificate in relation to Barclays Bank before the AO, at the time of assessment proceedings as well as during the appellate proceedings before the CIT(A), because the TDS certificate was not available with the assessee, therefore, he could not produce. Ld. AR for the assessee has requested us that now the assessee has got TDS certificate from Barclays Bank in respect of interest payment of Rs.5,85,009/-, which the assessee can produce before the AO for his necessary examination and verification. Therefore, the Id AR requested the us to remit the case back to the Assessing Officer for his verification.

6. Ld. DR for the revenue even agreed on the propositions canvassed by the ld. AR to remit the case back to the AO, so that, the assessee can file the TDS certificate before the AO for his necessary verification.

7. Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by the ld. AR for the assessee are supported by the facts narrated by him above. Ld. AR for the assessee has pointed out that at assessment stage and at appellate proceedings before the CIT(A), he could not produce the TDS certificate because the assessee did not get the TDS certificate from concerned party. In the interest of justice, we are of the view that AO should examine the TDS certificates and give the necessary relief to the assessee. Therefore, we remit the case back to the file of the AO to examine the TDS certificate and give necessary relief, if any. We also direct the assessee to produce the TDS certificate in respect of Barclays Bank Ltd. before the AO.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 30/ 11/2016.

Sd/-

(N.V.VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 30/11/2016

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-Liladhar Joshi
2. प्रत्यर्थी / The Respondent.-ITO Ward-2(2),Durgapur
3. आयकर आयुक्त(अपील) / The CIT(A), Durgapur
4. आयकर आयुक्त / CIT , Durgapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता