

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC/D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC/D" BENCH, AHMEDABAD

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 2371/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2012-13

M/s. Mulchandbhai & Sons, B-507, Ganesh Plaza, Opp. Navrangpura Bus Stand, Navrangpura, Ahmedabad PAN : AACFM 7364 F	Vs.	Income-tax Officer, Ward-3(2)(4), Ahmedabad
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Aseem Thakkar, AR
Revenue by :		Shri Prasoon Kabra, Sr DR

सुनवाई की तारीख/Date of Hearing : 26/10/2017

घोषणा की तारीख /Date of Pronouncement: 31/10/2017

आदेश/O R D E R

PER MANISH BORAD, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order of the Learned Commissioner of Income-Tax (Appeals)-3, Ahmedabad dated 13.07.2016 for Assessment Year 2012-13.

2. The grievances raised by the assessee are as follows:-

"1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.18,175/- made by the Assessing Officer u/s 14A of the I.T. Act, 1961 r.w.r. 8D of the I.T. Rules, 1962.

2. The learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.5,96,466/- made by the Assessing Officer u/s 40(a)(ia) of the I.T. Act, 1961."

3. The first issue raised by the assessee is against the disallowance under Section 14A of the Act of Rs.18,175/-.

4. The Id. Counsel for the assessee, at the outset, relied upon the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Corrttech Energy Pvt Ltd, reported in [2015] 372 ITR 097 (Guj), wherein it was held that where there is no exempt income, the provision of section 14A could not be made applicable. This view is further fortified by the Hon'ble Delhi High Court judgment in the case of Joint Investments Pvt Ltd vs. CIT, reported in [2015] 372 ITR 0694 (Delhi). There is nothing on record on behalf of the Revenue to suggest that the assessee has earned any exempt income for the year under consideration. We, therefore, respectfully the aforesaid judgments of the Hon'ble High Courts, delete the disallowance made by the Assessing Officer under Section 14A of the Act of Rs.18,175/-. Accordingly, this ground of appeal is allowed.

5. Second issue relates to the disallowance of Rs.5,96,466/- made by the Assessing Officer under Section 40a(ia) of the Act for non-deduction of TDS on the payment of interest to the partners.

6. The brief facts relating to the issue are the partners of the assessee-firm were having a capital account in the books along with the loans and advance account. The assessee firm paid interest to partners on the loans taken from partners. The short controversy is whether the assessee is liable to deduct tax at source under Section 194A on the payment of interest to the partners. The Id. CIT(A) has confirmed the action taken by the Assessing Officer. Section 194A(3)(iv) of the Act, however, contemplates that it will not apply to income credited or paid by a firm to a partner of the firm. There is no mention as to whether this provision will apply to the interest paid on the credit balance held by the partners in the form of capital or loan given to the firm. We are, therefore, of the view that Section 194A will not be applicable on the income

credited or paid by a firm to the partners and therefore, no disallowance was called for under Section 40(a)(ia) of the Act for the interest payment of Rs.5,96,466/-. Thus, this ground of appeal of the assessee is also allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 31st October 2017 at Ahmedabad.

Sd/-

(S.S. GODARA)
JUDICIAL MEMBER

Ahmedabad; Dated, 31/10/2017

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

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