

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “C” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.1421/Kol/2016**  
Assessment Year :2013-14

DCIT, Circle-10(1), P-7, Chowringhee Square, 3 <sup>rd</sup> Floor, Kolkata-69	<b>V/s.</b>	M/s Champion Commercial Co. Ltd., P-15, CIT Road, Kolkata-73 <b>[PAN No.AABCC 2373 G]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Saurabh Kumar, Addl. CIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Manoj Kataruka, Advocate
सुनवाई की तारीख/Date of Hearing	26-02-2018
घोषणा की तारीख/Date of Pronouncement	27-04-2018

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-4, Kolkata dated 04.04.2016. Assessment was framed by DCIT, Circle-10(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 10.02.2016 for assessment year 2013-14. The Revenue has raised the following grounds:-

- “i. That on the facts of the case Ld. CIT(A) has erred in deleting the addition of Rs.2,50,938/- on a wrong appreciation of facts ignoring the provisions of section 37(1) overrule the judicial pronouncement of CIT vs. Calcutta Agency Limited (1951) (191) ITR (SC)*
- ii. That on the facts and circumstances of the case Ld. CIT(A) has erred in deleting the addition of Rs.13,91,404/- on a wrong appreciation of facts ignoring the provisions of section 37 of the IT Act, 1961.*
- iii. That on the facts of the case Ld. CIT(A) has erred in deleting the addition of Rs.20,25,329/- on wrong appreciation of facts ignoring the*

*provision of section 14 read with rule 8D and overrule the judicial pronouncement of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg Co. Ltd. vs. DCIT, Range 10(2), Mumbai (2010) 194 taxman 203 Bombay.*

*iv. That on the facts of the case Ld. CIT(A) has erred in deleting the addition of Rs.58,121/- on wrong appreciation of facts ignoring the provision of section 2(24)(x) read with section 36(1)(va) in the case of employees contribution and overrule the judicial pronouncement of the Hon'ble Gujarat High Court in the case of CIT vs. GRTC which was concluded after consider the ratio judgment in the case of Alom Extrusion Ltd.*

*v. That on the facts of the case Ld. CIT(A) has erred in deleting the addition of Rs.3,33,789/- on a wrong appreciation of facts ignoring the provisions laid down in section 195 in the I Act, 1961 w.r.t. 194A.*

*vi. That on the facts of the case Ld. CIT(A) has erred in deleting the addition of Rs.8,28,655/- on a wrong appreciation of facts ignoring the provisions laid down in section 194J in the It Act, 1961.*

*vii. That the appellatant craves to add, delete or modify any of the grounds of appeal before or at the time of hearing.”*

Shri Saurabh Kumar, Ld. Departmental Representative appeared on behalf of Revenue and Shri Manoj Kataruka, Ld. Advocate appeared on behalf of assessee.

2. First issue raised by Revenue in ground No. i is that Ld. CIT(A) erred in deleting the addition made by the Assessing Officer for ₹2,50,938/- on account of staff welfare expenses.

3. Briefly stated facts are that assessee is a limited company and engaged in business of trading in chemical and investment. The assessee during the year has claimed an expenses of ₹5,01,876/- towards tea, coffee, water and snacks for the staffs and all the expenses were supported by self-made vouchers wherein the name of the payee was not mentioned. The AO during the course of assessment proceedings observed that verification of the expenses are not possible in the absence of the details of the payee in such self-made vouchers maintained by assessee. Accordingly, the AO disallowed 50% of the total expenses under the provision of Section 37(1) of the Act and added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that all expenses were incurred in connection with business of assessee. For the aforesaid expenses, the external documents were not possible therefore these were supported on the basis of self-made vouchers. The assessee also submitted that the amounts of expenses on account of staff welfare are negligible / meager and incommensurate with the business of assessee. The assessee also submitted that no expense can be disallowed on the basis of estimation. Ld. CIT(A) after considering the submissions of assessee deleted the addition made by the AO by observing as under:-

*“4.2 I have considered the submission of the appellant in light of the assessment order by the AO to make the impugned disallowance. The accounts of the appellant are audited and subject to Tax Audit u/s. 44AB of the Act and there is no adverse remark by the AO in respect of the claim of the expenses. The turnover of the appellant during the year was ₹74,62,58,745/- trading in chemicals against which it has declared income of ₹1,99,28,630/- and paid tax of ₹86,17,933/-. The expenses on staff tea, water, snacks expenses cannot be expected to be supported with external vouchers. The genesis of such expenditure is mainly by cash through slips and internal vouchers. The quantum of the expenditure in comparison to the business is meager and an important ingredient of a business. Similar of expenses have been incurred in the previous year's and therefore the expenses were part and parcel of the business. In view of the overall facts and circumstances of the case the addition made by the AO was uncalled for and is directed to be deleted. This ground of appeal is disposed off as allowed.”*

The Revenue, being aggrieved is in appeal before us.

5. Before us Ld. DR vehemently relied on the order of AO whereas Ld. AR for the assessee filed paper book which is running pages from 1 to 140 and drew our attention on pages 56 of the paper book, where the month-wise of details of such expenses were placed. He reiterated the same submissions that were made before Ld. CIT(A). He supported the order of Ld. CIT(A).

6. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, we find that disallowance was made to the extent of 50% of the staff welfare expenses by the AO on the

ground that expenses are supported with the self-made vouchers and the details of payee are not mentioned, however, Ld. CIT(A) reversed the order of AO by observing that the accounts of assessee was duly audited and the amount of such expenses claimed by assessee are reasonable in comparison the volume of the business of assessee. From the foregoing discussion, we note that there is no allegation from the Assessing Officer that the expenses claimed by assessee are unreasonable. We also observe that external documents in such kind of expenses are not normally available. Accordingly, we uphold the order of Ld. CIT(A) and this ground of Revenue is dismissed.

7. Next issue raised by Revenue in ground No. ii is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹13,91,404/- on account of foreign travel expenses.

8. The assessee in its profit and loss account has claimed foreign travel expenses for ₹13,91,404/- only and assessee in support of above expense has given the details of the persons who travelled foreign countries. However, AO observed that assessee failed to provide the documentary evidence such as, air tickets, boarding passes of travelling expenses, purpose of visit, place of visit and persons with whom assessee met during his visit. Accordingly, AO disallowed the same and added to the total income of assessee.

9. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that all necessary details as desired by AO were duly produced before him at the time of assessment proceedings though the copy of boarding pass could not be furnished to AO. Ld. CIT(A) after considering the submissions of assessee deleted the addition made by AO by observing as under:-

*“5.2 I have considered the submissions of the appellant in light of the assessment order by the AO to make the impugned disallowance. The accounts of the appellant are audited and subject to Tax Audit u/s. 44AB of the Act and there is no adverse remark by the AO in respect of the claim of the foreign travel expenses. The turnover of the appellant during the year was ₹74,62,58,745/- trading in chemicals against which they have declare income of ₹1,99,28,630/- and paid tax of*

*₹86,17,933/-. The business of the appellant is trading in chemicals for which the majority of the materials purchased are imported. The appellant had furnished before the AO details of foreign travel along with breakup of the travel and purpose of visit and the persons who have visited. From the details it is seen that the total expenditure incurred by the appellant was of ₹13,91,404/- on foreign tour and travels visited by the Directors and Employees for Exhibitions, sales meetings with suppliers, trade related shows. The expenses in comparison to the previous years have reduced from around 20 laksh to around 13 lakhs in the year. Further the appellant is importing it materials and selling them in India and the client and dealer visit is important part the business of the appellant without which the appellant would not be able to continue increase of its turnover as well as profits and its business. The expenditure on foreign travel is directly related the appellants business of import of chemicals and therefore inextricable linked to the business. In view of the overall facts and circumstances of the case the addition made by the AO was uncalled for and is directed to be deleted. This ground of appeal is disposed off as allowed.”*

The Revenue, being aggrieved by this order of Ld. CIT(A) is in appeal before us.

10. Before us Ld. DR for the Revenue vehemently relied on the order of AO whereas Ld. AR for the assessee drew our attention on the details of foreign travel expenses which is placed on page 57 of the paper book, where the foreign travel expenses contained the name of the person and there designation, purpose of visit, place of visit and the corresponding expenses. All the bills in respect of foreign travel expenses are placed on pages 58 to 99 of the paper book. Ld. AR also submitted the details of countries where from goods were imported which are placed on pages 100 of the paper book. He relied on the order of Ld. CIT(A).

11. We have heard the rival contentions of both the parties and perused the material available on record. In the instant issue, the disallowance was made by the AO on the ground that details of boarding passes were not available during assessment proceedings. However, we note that assessee has furnished all details of bills in respect of foreign travel expenses, purpose of such visit, place of visit etc., which have been duly filed in the paper book filed before us. The AO during the course of assessment proceedings has not

brought anything on record pointing out any defect in such documents. In this regard, Ld. DR has also not brought anything on record contrary to the finding of Ld. CIT(A). In view of above proposition, we find no reason to interfere with the finding arrived by the Ld. CIT(A). Under the circumstances, this issue of Revenue's appeal is dismissed.

12. Next issue raised by Revenue in ground No. iii is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹20,25,329/- under the provision of Section 14A r.w.r 8D of the Income Tax Rule, 1962.

13. The assessee during the year has earned dividend income of ₹9,54,295/- and Long Term Capital Gains (LTCG) of ₹44,33,565/- which was claimed as exempted from the payment of tax. The assessee has also disallowed the expenses as per the Rule 8D of IT Rules, 1962 as detailed under:-

Sl.No.	Section	Particulars	Amount
1	Rule 8D(2)(i)	Direct expense	17,076
2	Rule 8D(2)(ii)	Interest expense	Nil
3	Rule 8D(2)(iii)	Administrative expense	2,91,508

However, AO was of the view that the assessee has claimed interest expenses in its profit and loss account but no disallowance on account of interest has been made under Rule 8D(2)(ii) of IT Rules. Accordingly, AO made the disallowance of ₹22,47,060/- under Rule 8D(2)(ii) of IT Rules, 1962 and added to the total income of assessee.

14. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that its own capital and free reserve of exceeds the amount of investment. Therefore, an inference can be drawn that no interest expense has been incurred claim by the assessee in relation to such exempted income. The assessee also submitted that investment which has yielded dividend income during the year only be considered for the purpose of Section 14A r.w.s 8D of IT Rules, 1962. Ld. CIT(A) after

considering the submission of assessee partly deleted the addition made by the AO by observing as under:-

*“6.2 I have considered the submission of the appellant in light of the assessment order by the AO to make the impugned disallowance. From the audited accounts it is seen that the appellant was having capital including reserves of ₹17.30 crores. The total secured borrowed funds amounted to ₹5.48 crores. The interest taken into consideration for making disallowance was on account of interest on cash credit loan for ₹57,00,428/- and interest on term loan for ₹68,90,871/- aggregating to total of ₹1,41,16,439/-. The investments in shares, debentures as on 31.3.2013 was ₹5,59,44,974/- and as on 31.3.2012 was ₹6,06,58,124/-. In view of the settled position of law where the appellant was having sufficient capital it shall be presumed that the investments have been made from its own funds and therefore no part of the borrowed funds were utilized for investments in shares. It is further observed that the borrowed funds were secured against hypothecation of stocks and used for appellants business.*

*6.3 The appellant has filed details of the investments on 31.3.2012 and 31.3.2013 on which the exempted income in the form of dividend income was earned. In view of the decision of the Kolkata ITAT REI Agro Ltd. Vs. DCIT reported in 144 ITD 141 only those investments which give rise to exempt income can be taken into consideration for working out the disallowance in the formula laid down as per Rule 8D read with sec 14A of the IT Act. therefore as per the details furnished of the investments as on 31.3.2012 and 31.3.2013 on which dividend income was earned during the year the disallowance is worked out at .5% of such average investments calculated at ₹1,73,823 (.5% of ₹3,47,64,653). The appellant in the computation of income has sum-moto added back an amount of ₹2,91,508/- which is more than the calculation made hereinabove and therefore the disallowance made by the appellant in the return shall be considered as the expenses in relation to earning of exempt income u/s 14A of the Act. In view of the foregone discussion the disallowance made by the AO u/s 14A at ₹22,64,136/- is deleted. The disallowance u/s. 14A in relation to the calculation of MAT u/s. 115JB shall be restricted to ₹2,91,508/-. This ground of the appellant is partly allowed.”*

The Revenue, being aggrieved by this order of Ld. CIT(A) is in appeal before us.

15. Before us Ld. DR for the Revenue has relied on the order of AO whereas Ld. AR for the assessee before us submitted that none of the loan take by assessee has been used for the purpose of investment. Ld. AR for the

assessee in support of assessee's claim drew our attention on pages 103 and 104 of the paper book wherein the details of loan and interest paid thereon were placed. As per the Ld. AR the interest have been paid on the car loan, term loan and interest on buyers credit and similarly interest was paid on cash credit facility taken from ICICI Bank. Ld. AR also relied on the order of Ld. CIT(A).

16. We have heard the rival contentions of both the parties and perused the material available on record and case law cited by the parties. From the foregoing details we note that there is no ambiguity with regard to own fund available with the assessee. In such facts and circumstances a presumption can be drawn that investment has been made out of own fund of assessee. Therefore no disallowance on account of interest expense should be made under Rule 8D(2)(ii) of IT Rules. In holding so, we draw our support and guidance from the judgment of Hon'ble Bombay High Court in the case of *Reliance Utilities and Power Ltd.* reported in 313 ITR 340 wherein it was held as under:-

*"The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT(A) and Tribunal"*

Similarly the Id. AR also relied on the order of the Hon'ble Bombay High Court in the case of *CIT vs HDFC Bank Ltd* reported in 366 ITR 505 (Bom). The relevant extract of the order is reproduced below :-

*"Where assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in tax-free securities, it would have to be presumed that investment made by the Assessee would be out of the interest-free funds available with Assessee and no disallowance was warranted u/s 14A."*

In view of above proposition, we hold that no disallowance of interest expense claimed by the assessee can be made under the provision of Section 14A of the Act r.w.r. 8D of IT Rules. Hence the issue raised by the Revenue is dismissed.

17. Next issue raised by Revenue in Ground No. iv is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹58,181/- on account of contribution to the employees P.F.

18. The AO during the course of assessment proceedings observed that assessee failed to deposit the employee's contribution within the due date specified under the Provident Fund Act. Therefore, the AO made the disallowance of ₹58,121/- and added to the total income of assessee.

19. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that amount of employees PF has been deposited within the financial year and before filing of Income Tax Return as specified u/s 139 of the Act. The Ld. CIT(A) after considering the submission of assessee deleted the addition made by the AO by observing as under:-

*"7.2 I have considered the submission of the appellant in light of the assessment order by the AO to make the impugned disallowance. The issue is covered in favour of the assessee by the decision of the jurisdictional Calcutta High Court in the case of CIT v. Shree Vijayshree Ltd. in ITA No.245 of 2011 wherein the Calcutta High Court has allowed the contribution to be deposited before the date of filing of return. Respectfully following the decision of the Hon'ble Calcutta High Court the disallowance made by the AO on account of contribution to employees provident fund for ₹58,181/- stands deleted. This ground of appeal is disposed off as allowed."*

The Revenue, being aggrieved by this order of Ld. CIT(A) is in appeal before us.

20. Before us both parties relied on the order of Authorities Below as favorable to them.

21. We have heard rival contentions of both the parties and perused the material available on record. We find that the AO has made the addition of the amount of the employee contribution as there was a delay in payment of employee provident fund to PF authorities. However from the assessment order we find that all the payment of employees contribution were made before the due date of filing of Income Tax Return as specified u/s 139(1) of the Act. Now, this issue stands covered in favour of assessee and against the

Revenue by the decision of Hon'ble jurisdictional High Court in the case of *CIT v. M/s Vijay Shree Limited* vide ITAT No.245 of 2011 in **GA No.2607 of 2011** dated 7<sup>th</sup> September, 2011, wherein it has been held as under:-

*“After hearing Mr. Sinha, learned advocate, appearing on behalf of the appellant and after going through the decision of the Supreme Court in the case of Commissioner of Income Tax vs. Alom Extrusion Ltd., we find that the Supreme Court in the aforesaid case has held that the amendment to the second proviso to the Sec. 43(B) of the income Tax Act, as introduced by Finance Act, 2003, was curative in nature and is required to be applied retrospectively with effect from 1<sup>st</sup> April, 1988.*

*Such being the position, the deletion of the amount paid by the Employees' contribution beyond due date was deductible by invoking the aforesaid amended provisions of Section 43(B) of the Act.*

*We, therefore, find that no substantial question of law is involved in this appeal and consequently, we dismiss this appeal.”*

From the above, we find that the issue is squarely covered in favour of assessee by the jurisdictional High Court in the case of *M/s Vijay Shree Limited* (supra). As the issue is covered in favor of assessee, we uphold the order of Ld. CIT(A). Hence, this ground of Revenue's appeal is dismissed.

22. Next issue raised by Revenue in ground No.v is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹3,33,789/- on account of non deduction of tax deducted at source (TDS) u/s. 195 w.r.t.194A of the Act.

23. During the course of assessment proceedings, AO found on the basis of Form 15CA certificate issued by the Chartered Accountant that the payment on account of interest to certain parties based outside India have been made without deducting TDS u/s 195 of the Act. The necessary details of the interest expense stands as under:-

Nature of payment	Amount	TDS	Currency	Country
Interest payment	85076.34	0	US dollar	Singapore
Interest payment	70123.37	0	US dollar	Japan
Interest payment	64508.51	0	US dollar	Singapore
Interest payment	114080.62	0	US dollar	Hong Kong

The AO also observed that the interest payments in respect of certain parties based in US, UK and Thailand and Singapore were made after deduction of TDS u/s 195 of the Act. However, assessee contended that there was no TDS liability on the part of the assessee on the payment of above interest expenses. However the AO disregard the contention of assessee and made the addition of interest expenses for ₹3,33,789/- on account of Non deduction of TDS.

24. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that there is no liability of deducting the tax on the payment of interest on the basis of Form 15CA. In fact, the Form 15CA issued by CA certificate justifies that the assessee is not liable for the deduction of TDS on the payment of such interest. The assessee also submitted that interest was paid to the bank and therefore there was no liability for the deduction of TDS u/s 194A of the Act. Ld. CIT(A) after considering the submission of assessee deleted the addition made by the AO by observing as under:-

*“9.2 I have considered the submission of the appellant in the backdrop of the assessment order passed by the AO in making the impugned disallowance. The Form No.15CA filed by the appellant in respect of the payment of interest nowhere suggests the applicability of TDS provisions of the Act. The appellant also filed certificate of accountant in Form 15CB in respect of all the payments on which the impugned disallowances have been made and the auditor has not attached any liability for deduction of tax at source. The payments of interest without deduction of tax at source have been approved by the auditor in the Form 15CA and Form 15CB otherwise the Chartered Accountant would not have certified the approval of remittance. It is also seen the at the payments have been remitted to Bank of India for ₹85076/-,m, Indian Overseas Bank for ₹64508/-, State Bank of India for ₹70123/- and Union Bank of India for ₹1,14,080/- and all the payments/remittance are to Indian banks and under section 194A no liability of tax deduction is attracted here as payments are made to banks to which the Banking Regulation Act 1949 applies. In view of the overall facts and circumstances of the case, the addition was uncalled for and is, therefore, directed to be deleted. This ground of appeal is disposed off as allowed.”*

The Revenue, being aggrieved, is in appeal before us.

25. Before us Ld. DR for the Revenue vehemently relied on the order of AO whereas Ld. AR for the assessee submitted that assessee was not liable for deduction of TDS for the payment of interest as discussed above. Ld. AR further submitted that CA in Form 15CA/15CB has certified that the impugned interest expenses are not subject to TDS. Ld. AR in support of assessee's claim filed copy of 15CA/15CB which are placed on pages 106 to 123 of the paper book and he relied on the order of Ld. CIT(A).

26. We have heard rival contentions of both the parties and perused the material available on record. In the present case, the AO has observed that assessee has not deducted TDS on payment of interest to the parties who are residing outside India. As per the Assessing Officer, assessee was liable for deduction of TDS as per certificate in Form 15CA/15CB issued by CA. However, LD. CIT reversed the order of AO by observing that assessee was not liable for deduction of TDS u/s 195 / 194A of the Act and this fact was certified by the CA in certificate issued in Form 15CA/15C. From the foregoing discussion, we observe that Assessing Officer misunderstood the certificate issued in Form 15CA. As per Form 15CA the assessee was not liable for the deduction of TDS on the expense of interest. The AO has not brought anything on record suggesting that assessee has incurred expenses without the deduction of TDS as per the provision of the Act. The AO has just relied on the Form 15CA/15CB issued by the CA and treated the assessee in default. As such, in our considered view the basis of disallowance of interest expenses made by AO does not hold good. In the backdrop of the above discussion we do not find any infirmity in the order of Ld. CIT(A) and accordingly we uphold the same. This ground of Revenue's appeal is dismissed.

27. Last issue raised by Revenue in ground No. vi is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹8,28,655- on account of non deduction of TDS u/s. 194J of the Act.

28. The assessee during the year has claimed an expense of ₹8,28,655/- under the head legal and profession charges. These charges were paid by

assessee to ICICI Bank Ltd on account of loan processing fees. As such the bank has deducted the aforesaid loan processing charges from the balance of assessee available with the bank. Therefore, assessee did not deduct the TDS. However, AO opined that assessee was liable to deduct the TDS u/s. 194J of the Act on loan processing charges paid to the bank. As per the provision of Section 194J the TDS is required to be deducted at the time of credit of such amount to the account of payee by any mode, cash or by issue of cheque or draft whichever is earlier. Accordingly, the AO disallowed the same by invoking the provision of Section 40(a)(ia) r.w.s. 194J of the Act and added to the total income of assessee.

29. Aggrieved, assessee preferred an appeal before Ld. CIT(A) . The assessee before Ld. CIT(A) submitted that the amount of loan processing charge is not in the nature of professional charges. Therefore, there is no question of deducting the TDS u/s 194J of the Act. Ld. CIT(A) after considering the submission of assessee deleted the addition made by the AO by observing as under:-

*“10.2 I have considered the submission of the appellant in light of the assessment order by the AO to make the impugned disallowance. The point of contention is whether on the processing fees paid to banks, tax is required to be deducted. The answer would be in the affirmative in favour of the appellant and against the revenue. The charges being the processing fees is not in nature of commission or interest and, therefore, cannot be brought under the purview of the TDS provisions of the Act. It is not that the Government has provided for tax deduction on all types of expense. There are many expenses on which no tax is required to be deducted. The nature of the expenses does not constitute commission or interest and as correctly pointed by the appellant's AR, these charges are for easing of the process of loan taking. Therefore, there is no liability for tax deduction at source on account of payment of processing fees and consequentially the expenses cannot be added back u/s. 40(a)(ia) of the Act. I find that the AO's action on the matter is based on a misplaced conception which ultimately does not warrant any sustenance at the appellate stage. Consequently, thus ground of appeal is disposed off as allowed.”*

The Revenue, being aggrieved, is in appeal before us.

30. Before us both parties relied on the order of Authorities Below as favourable to them.

31. We have heard the rival contentions of both the parties and perused the material available on record. At this juncture, we find important to reproduce the Section 2(28A) of the Act. The relevant provision is reproduced below:-

“(28A) *“interest”<sup>52a</sup> means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised ;”*

As per the above provision the interest include the service fee charge by the bank in respect of money borrowed. Therefore, the impugned processing fee will be treated as payment to the bank in the nature of interest expense. As per the Section 194A of the Act there is no liability to deduct the TDS on the interest payment made to banking company to which the Banking Regulation Act, 1949 applies. The relevant extract of provision of Section 194A is reproduced below:-

<sup>14</sup>**[Interest other than "Interest on securities".**

<sup>15</sup>**194A.** <sup>16</sup>(1) *Any person, not being an individual or a Hindu undivided family, who is responsible for paying<sup>17</sup> to a resident any income by way of interest<sup>17</sup> other than income <sup>18</sup>[by way of interest on securities], shall, at the time of credit of such income to the account of the payee<sup>19</sup> or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :*

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(2) <sup>22</sup>[Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.]

(3) *The provisions of sub-section (1) shall not apply—*

<sup>23</sup>(i)

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XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(ii) <sup>30</sup>[\*\*\*]

(iii) *to such income credited or paid to—*

(a) *any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or”*

A plain look at the above statutory provision makes it clear that assessee was not under obligation to deduct the TDS on account of loan processing charges paid to the bank. We find no reason to interfere with the finding arrived by the Ld. CIT(A). Under the circumstances, this issue of Revenue's appeal is dismissed.

**32. In the result, Revenue's appeal stands dismissed.**

Order pronounced in the open court 27/04/2018

Sd/-  
(न्यायिक सदस्य)  
(N.V.Vasudevan)  
(Judicial Member)  
Kolkata,  
\*Dkp, Sr.P.S

दिनांक:- 27/04/2018 कोलकाता ।

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
(Accountant Member)

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-DCIT, Circle-10(1), P-7 Chowringhee Square, 3<sup>rd</sup> Fl, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Champion Commercial Co. Ltd. P-15, CIT Road, Kolkata-73
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of  
Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता ।