

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 1835/Ahd/2016
Assessment Year 2010-11

The ACIT, Cir. 1(1)(2), Vadodara (Appellant)	Vs	M/s. Hanumant Construction Pvt. Ltd. Ground Floor, Parwani Complex, Civil Lines, Raipur-492001 PAN: AABCH7062D (Respondent)
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Revenue by: Shri Saurabh Singh, Sr. D.R.
Assessee by: Shri Surendra Modiani, A.R.

Date of hearing : 09-04-2018
Date of pronouncement : 10-05-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This Revenue appeal for A.Y. 2010-11, arises from order of the CIT(A)-1, Vadodara dated 28-04-2016, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following grounds of appeal:-

*"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the disallowance of expenditure on interest u/s 40(a)(ia) made on account of failure to deduct Income-tax at source, in the case of M/s Sundram Finance Ltd, to whom payment of Rs. 22,71,842/- had been made during the year under consideration. Reliance is placed on the judicial pronouncement in the case of **Prudential Logistics & Transports v. ITO[2014] 51 taxmann.com 426 (Ker.)**. wherein, if these companies have paid tax on this income then this disallowance in the case of assessee still can't be avoided.*

2. Though the tax effect is below the prescribed limit as per circular 21/2015 dtd. 10.12.2015, the said appeal is covered under exception of sub clause (c) of clause 8, of the CBDT Circular No. 21/2015, dtd. 10.12.2015."

3. In this case, original assessment u/s. 143(3) of the act was completed on 8th Feb, 2013 by determining the total income at Rs. 1,62,50,004/-. Subsequently, the case was reopened u/s. 147 of the act on the ground that assessee has not deducted TDS on payment of interest components to the non-banking financial institutions. On scrutiny, the assessing officer has noticed that assessee has paid an amount of Rs. 54,47,348/- as interest to the non-banking financial institutions without deducting TDS , therefore, he disallowed interest expenses to the amount of Rs. 33,55,227/- u/s. 40(a)(ia) of the act after finding that out of interest payment of Rs. 54,47,348/- an amount of Rs. 20,92,121/- have been paid to the ICICI bank ltd.

4. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee . He has referred the amendment made in the provision of section 40(a)(ia) by the Finance Act, 2012 as per which the second proviso was introduced in the act. The Id. CIT(A) has stated that the assessee has filed certificate in form no. 26A as prescribed by the Provision of first proviso to sub-section of section 201 certifying that non-banking NBFC M/s. Sundram Finance Ltd to whom the payment of Rs. 22,71,842/- had been made has paid the taxes and made compliance with the conditions laid down in the proviso of section 201 of the act.

5. We have heard the rival contentions and perused the material on record carefully. The original assessment was completed u/s. 143(3) of the act on 08/02/2013. Subsequently, the case was reopened u/s. 147 of the act on the ground that no TDS has been made on the interest components paid to NBFCS. Consequently, the assessing officer has disallowed Rs. 54,47,348/- u/s. 40(a)(ia) of the act. The Id. CIT(A) has allowed relief to the extent of Rs. 22,71,842/- in view of the provisions of section 40(a)(ia) by the Finance Act 2012 as per which

the 2nd Proviso of its sub-section was introduced in the Act. After considering the above fact, we observe that no disallowance u/s. 40(a) should be made in case the payee has paid tax in view of the amendment of section 40(a)(ia) by the Finance Act. During the course of appellate proceedings, the assessee has furnished a certificate from M/s. Sundram Finance Ltd as prescribed by the 1st proviso to sub-section (1) of section 201 of the act demonstrating that M/s Sundram Finance Ltd had paid the taxes to whom the payment of Rs. 22,71,842/- had been made by the assessee. In view of the above we are inclined with the contention of the Id. CIT(A) that 2nd proviso of section 40(a)(ia) by the Finance act has been held to be retrospective in nature by several jurisdictional pronouncements, therefore, we do not find any reason to interfere in the decision of Id. CIT(A). Accordingly, the appeal of the revenue is dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 10-05-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad : Dated 10/05/2018

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ अधिकरण,
अहमदाबाद