

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

BEFORE SHRI N.K. BILLAIYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 218/RPR/2016
Assessment Year: 2012-13**

Shri Biharilal Patel, Prop. M/s Biharilal Constructions, P.O. Dongamahua, Raigarh (C.G.) PAN: ARMPP2841H	Vs.	The Income Tax Officer-(1), Aaykar Bhawan, Chakradhar Nagar, Raigarh (CG)
(Appellant)		(Respondent)

Assessee by : Shri S.R. Rao (Advocate)
Revenue by : Shri Sanjay Kumar (DR)

Date of Hearing: 09/03/2018
Date of Pronouncement: 04/06/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 28.03.2016 passed by the Ld. Commissioner of Income Tax (Appeals), Bilaspur, for the assessment year 2012-13, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed by the AO u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee filed its return of income for the assessment year under consideration declaring the total income of Rs. 9,63,610/- and agriculture income of Rs. 81,400/-. Since, the case was selected for scrutiny the AO issued notice u/s 143 (2). In response to the said notice, the authorized representative of the assessee appeared before the AO and also submitted the details called for by the

AO. After hearing the AR, the AO inter alia made addition of Rs. 85,27,962/- u/s 40(a)(ia) of the Act and determined the total income of the assessee at Rs. 95,98,990/-. The AO made the addition on the ground that the assessee had paid the finance charges of the said amount to various non banking finance companies such as Cholamandalam DVS Finance Ltd., Magma Fincorp Ltd., Relegere Finvest Ltd., SERI Infrastructure Finance Ltd., SERI Equipment Finance Pvt. Ltd. and debited the P&L account without deducting tax at source under the provisions of section 194A of the Act. The assessee challenged the assessment order before the Ld.CIT (A). However, the Ld. CIT (A) upheld the disallowance and dismissed this ground of appeal. The assessee is in appeal against the impugned order passed by the Ld. CIT (A).

3. The assessee has preferred this appeal before the Tribunal on the following grounds:-

1. *“In the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeals) has erred in confirming the order of the learned Assessing Officer disallowing Rs. 85,27,962/- u/s 40(a)(ia) of the Income Tax Act, 1961 by overlooking the law laid down in various cases including that rendered by the Hon’ble jurisdictional Bench of Income Tax Appellate Tribunal.*
2. *The order of the ld. Commissioner of Income Tax (Appeals) is bad in law and on facts.”*

4. At the outset, the Ld. counsel for the assessee submitted that the Raipur Bench of ITAT has dealt with the identical issue in the assessee’s own case ITA No. 42/RPR/2015 A.Y. 2010-11 and sent the issue back to

the Assessing Officer for limited verification on the aspect as to whether the recipients of the payment have included the amount in their computation of business income offered to tax and if found to be so delete the disallowance in question by following the judgment of Hon'ble Bombay High Court in the case of *CIT vs. Godavari Devi Saraf (1978) 113 ITR 589 (Bom)* and the decision rendered by the *Pune Bench of the Tribunal in the case of ACIT vs. Aurangabad Holiday Resort Pvt. Ltd. (2009) 118 ITD 1 (Pune)*.

5. On the other hand, the Ld. Departmental Representative (DR) relied on the order passed by the Ld. CIT (A).

6. We have heard the rival submissions and also perused the material on record. The only grievance of the assessee is that the Ld. CIT (A) has wrongly made the disallowance u/s 40(a)(ia) of the Act on the ground that the assessee has failed to deduct the tax at source while making payments towards finance charges to various non banking financial companies. We further notice that the assessee's case is covered by the order of the Raipur Bench of the ITAT aforesaid and the Tribunal has remitted the issue back to the file of AO to ascertain as to whether the payees have included the same in their income offered to tax.

7. Since, the issue involved in this case is covered by the assessee's own case pertaining to the assessment year 2011-12, respectfully following the said decisions, we restore the sole ground of the appeal to the file of the AO for limited verification on the aspect as to whether recipient of payment has included the same in their computation of

business income offered to tax and if found so, to delete the disallowance made u/s 40(a)(ia) of the Act.

In the result, appeal filed by the assessee for assessment year 2012-2013 is allowed for statistical purposes.

Order pronounced in the open court on 4th June, 2018.

Sd/-

(N.K. BILLAIYA)

ACCOUNTANT MEMBER

Raipur, दिनांक Dated: 04/06/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)/PS
आयकर अपीलीय अधिकरण, Raipur / ITAT, Raipur