

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : SMC : NEW DELHI  
BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.1219/Del/2018  
Assessment Year : 2014-15

Rajeshwar Garg,  
FD-18, Pitampura,  
New Delhi -110 013.

Vs. ITO,  
Ward-40(1),  
New Delhi.

PAN: AAHPG2886R

(Appellant)

(Respondent)

Assessee By : Shri S.R. Gupta, CA  
Department By : Shri Atiq Ahmed, Sr. DR

Date of Hearing : 24.07.2018  
Date of Pronouncement : 25.07.2018

ORDER

This appeal filed by the assessee arises out of the order passed by the CIT(A) on 15.01.2018 in relation to the assessment year 2014-15.

2. The only issue raised in this appeal is against the confirmation of disallowance u/s 40(a)(ia) of the Income-tax Act, 1961.

3. The assessee is engaged in the business of trading of yarn and cloth and is also acting as a commission agent. Interest of Rs.3.24 crore on unsecured loans was debited to the Profit & Loss Account. On being called upon to furnish the details of tax deduction at source from such interest payments, the assessee filed relevant documents. The Assessing Officer got satisfied with the explanation of the assessee in respect of the interest payments except of Rs.2,52,000/- paid to M/s Dara Singh, HUF. He observed that the assessee failed to deduct tax at source as the receipt of Form No.15H can immune the assessee from non-deduction of tax at source only if the income of the payee is below the taxable limit. As the assessee paid interest to M/s Dara Singh, HUF amounting to Rs.2,52,000/-, the Assessing Officer held that it was liable to withhold tax at source from such payment of interest. Invoking the provisions of section 40(a)(ia) of the Act, the Assessing Officer made disallowance for the same, which came to be countenanced in the first appeal.

4. I have heard both the sides and perused the relevant material on record. The ld. AR contended that the authorities below have failed to take note of second proviso to section 40(a)(ia) which has been inserted by the

Finance Act, 2012 w.e.f. 01.04.2013. It was contended that the assessee has not been treated as assessee in default in terms of section 201(1) and, hence, no disallowance could be made u/s 40(a)(ia) in respect of the payment of interest made to M/s Dara Singh, HUF. I find that there is no discussion in the impugned order about the applicability or otherwise of the second proviso to section 40(a)(ia). In the given circumstances, I set aside the impugned order and remit the matter to the file of the AO to re-examine the issue in the light of the second proviso to section 40(a)(ia), after giving an opportunity of being heard to the assessee.

5. In the result, the appeal is allowed for statistical purposes.

The decision was pronounced in the open court on 25<sup>th</sup> July, 2018.

Sd/-

[R.S. SYAL]  
VICE PRESIDENT

Dated, 25<sup>th</sup> July, 2018.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.