

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A No.3143 & 3144/DEL/2018

Assessment Years: 2012-13

1 .Shyam Sunder Jain, Vardhman Trading Co., 2068-H, Narela Mandi, Narela, Delhi.  TAN/PAN: 1. AAFPJ5389J	vs.	1. ITO, Ward-38(4), Delhi.
2. Rachna Jain, Vardhman Foods, G-73/4, Panna Udyan, Narela, Delhi.		2. ITO, Ward-38(4), Delhi.
TAN/PAN: AEMPJ8163P		
(Appellant)		(Respondent)

Appellant by:	Shri Shyam Sunder Jain, Assessee		
Respondent by:	Shri Surender Pal, Sr.D.R.		
Date of hearing:	25	09	2018
Date of pronouncement:	04	10	2018

**ORDER**

The aforesaid appeals have been filed by the assessee against the consolidated impugned order dated 27.02.2018, passed by Id. CIT (Appeals)-13, New Delhi, both for the quantum of assessment passed u/s.143(3) for the Assessment Year 2012-13. Since the issues involved in both the appeals are common arising out of identical set of facts, therefore, same were heard together and are being disposed off by way of this consolidated order.

2. The sole issue involved in both the appeals is that, Assessing Officer has erred in law and on facts by invoking the provisions of section 40(a)(ia) made on account of interest paid on unsecured loans raised from Bajaj Auto Finance Company. In the case of Rachna Jain, the amount of interest disallowed is Rs.1,21,516/-; and in the case of Shyam Sunder Jain, the amount disallowed is Rs.3,14,625/-.

3. The ld. Assessing Officer has made the disallowance on the ground that assessee has paid interest to NBFC, Bajaj Auto Finance Company, on which tax had not been deducted at source u/s 194A and thus, assessee have failed to comply with the provisions of Section 40(a)(ia).

4. Before the ld. CIT(A), the assessee had filed application for admission of additional evidence under Rule 46A, enclosing the certificate issued from Bajaj Finance Company wherein they have certified the receiving the interest and have included the said interest in their income and paid taxes in the impugned Assessment Year. The reason for submitting the additional evidence was that this document belongs to the third party and could not be procured within time. Ld. CIT (A) had incorporated the scanned copy of such interest certificate and copy of repayment schedule. The said additional evidence was sent to the Assessing Officer for remand report, however, the ld. Assessing Officer in his detailed report submitted that these additional evidences are afterthought and should not be accepted and Assessing Officer has given full opportunity to

the assessee. In response to the said remand report, assessee filed a detailed rejoinder on 09.05.2017 which has been incorporated in the impugned order from pages 13 to 18. Though Ld. CIT (A) has admitted the additional evidences but has rejected the assessee's contention on the ground that these interest certificates are not in 'Form 26A' and it does not state whether they have has furnished their return of income u/s.139 or not. After detail reasoning he has upheld the disallowance.

5. After hearing both the parties and on perusal of the relevant findings given in the impugned order, we find that ld. CIT (A) in his detailed order has not considered the entire issue in proper perspective but has mainly harped on the ground that out of 17 occasions before the Assessing Officer, assessee did not appear on various occasions; and secondly, certificates filed by the assessee are not in Form no.26A. The main issue involved here is, whether in view of *2<sup>nd</sup> proviso* to Section 201(1) read with *1<sup>st</sup> proviso* to Section 201(1) the conditions mentioned therein have been met or not. These conditions are as under:

- (i) The payee has furnished his return of income under section 139;
- (ii) The payee has taken into account such sum for computing income in such return of income; and
- (iii) The payee has paid the tax due on the income declared by him in such return of income, and

(iv) The payee person furnishes a certificate to this effect from an accountant in such form as may be prescribed, {vide Notification No. 37/2012 [F.No. 142/18/2012-SO(TPL)] dated 12-9-2012, the CBDT has inserted Rule 31ACB and Form No. 26A to prescribe the format in which the CA's certificate should be obtained by the payee.

5.1 The intention of the Legislature to bring such provisions was to remove the rigours of hardships on the assessee who are subjected to disallowance of otherwise genuine expenditure on account of non-deduction of TDS. Now if the payee has disclosed the sum so received as its income in his return of income then disallowance in the hands of the payer cannot be made. Here the assessee had duly claimed before the Id. CIT (A) and has filed necessary confirmation from the payee that he had acknowledged the interest paid by the assessee as its income and in support, reliance was placed upon the judgment of Hon'ble Delhi High Court in the case of ***CIT vs. Ansal Land Mark Township (P) Ltd., reported in (2015) 377 ITR 0635 (Del.)*** wherein it was held that such a *proviso* will have retrospective effect on 1<sup>st</sup> April, 2005. If the party has given the confirmation that the interest amount received has been duly accounted for as its income, then it cannot be said that the said interest income has not been returned by such a big NBFC, like, Bajaj Finance in its income tax return or has not paid taxes thereon. Though, certificate in Form 26A may not have been furnished but once such a declaration has been given, then such an artificial

disallowance of Section 40(ia) should not be made. Section 40(ia) is meant for collection of tax at source on behalf of payee and if such taxes has neither been deducted by the payer nor shown by the payee then there is loss to the exchequer which consequently entails disallowance of expenditure claimed by the assessee. However, such a provision cannot mean to call for disallowance when payer has paid the taxes on such an income as this *proviso* was brought to remove such hardship to the payer. Now such a beneficial amendment has been held to be retrospective by the Courts. Therefore, under the facts and circumstances of the case when payee has confirmed that it has accounted such an interest payment as its income, then no disallowance u/s. 40(ia) should be made. Accordingly, the addition made by the Assessing Officer is deleted.

6. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open Court on 4<sup>th</sup> October, 2018.**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 4<sup>th</sup> October, 2018

PKK:

Copy forwarded to:

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

Assistant Registrar

		Date
1.	Draft dictated on	.09.2018
2.	Draft placed before author	.09.2018
3.	Draft proposed & placed before the second member	
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5.	Approved Draft comes to the Sr.PS/PS	
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12.	Date of dispatch of Order.	