

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.64/Ind/2018
Assessment Year: 2012-13**

Ramesh Anand C/o G.J. Shah & Co., 416, Manas Bhawan Main, 11, RNT Marg, Indore	बनाम/ Vs.	ITO, 4(1), Indore
(Appellant)		(Revenue)
PAN: AEAPA1661F		
Appellant by	Shri Pankaj Shah, CA	
Respondent by	Shri K.C. Selvamni Sr. DR	
Date of Hearing:	20.11.2018	
Date of Pronouncement:	27.11.2018	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal of Assessee pertaining to A.Y. 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT(A)'), dated 16.11.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on

30.03.2015 by ITO-4(1), Indore. The assessee has raised following grounds of appeal:

“On the facts and circumstances of the case and in law the Learned Commissioner of Income Tax (Appeal)-II (“CIT(A)”) erred in confirming the disallowance of interest expenses under section 40(a)(ia) of the Act.”

2. Briefly stated facts as culled out from the records are that the assessee is an individual engaged in the business of Trading of Electrical Goods & services under sole proprietorship concern of M/s Anand Electric Emporium. Income of Rs.9,92,750/- declared in the income tax return filed on 21.02.2013. Case selected for scrutiny through CASS. Notice u/s 143(2) & 142(1) of the Act were duly served upon the assessee along with questionnaire.

2. During the course of assessment proceedings Ld. Assessing Officer (in short ‘Ld. AO’) observed that the assessee has claimed the interest expenditure of Rs.16,32,559/- paid to non-banking financial companies but has not deducted the tax at source, and thus, the alleged interest is disallowable u/s 40(a)(ia) of the Act. The assessee contended before the Ld. AO that on account of the amendment brought by Finance Act 2012, by virtue of second proviso to section 40(a)(ia) which provides that no

deduction of tax at source to be made in case the alleged expenditure is offered as income by the payee in the return of income filed u/s 139 of the Act. It was also contended that above referred amendment is declaratory and curative in nature and should be given retrospective effect from 1st April, 2005. These contentions of the assessee were not sufficient to convince the assessing officer and he assessed the income at Rs.26,25,309/- after disallowing interest expenditure of Rs.16,32,559/- u/s 40(a)(ia) of the Act.

3. Aggrieved assessee preferred an appeal before the Ld. CIT(A) but failed to get any relief. Now the assessee is in appeal before the Tribunal.

4. At the outset, Ld. counsel for the assessee submitted that the issue raised in this appeal is squarely covered in favour of the assessee by the decision of the Coordinate Bench, Indore in the case of ITO vs. Shri Narayan Das Goyal, ITANo.486/Ind/2017 dated 25.09.2018. Reliance was also placed on:

b. Jasleen Educational Service Society vs. ACIT (2017) 30 ITJ 605 (Trib-Indore)

c. Dilip Suryavanshi vs. ACIT (2016) 29 ITJ 404 (Trib-Indore)

d. CIT vs. Ansal Land Mark Township (P.) Ltd. [2015] 61 taxmann.com 45 (Delhi High Court)

e. Soma TRG Joint Venture vs. CIT (2017) 398 ITR 425 (Jammu & Kashmir)

5. Ld. Authorized Representative (AR) also submitted that the alleged interest amount paid to three non-banking Finance companies have duly been offered to tax by respective payees and the certificate to this effect has been provided by the respective Chartered Accountants confirming this fact of offering the alleged interest income to tax in the income tax return.

6. Per contra Ld. Departmental Representative (DR) though supported the order of the lower authorities but failed to controvert the submissions made by the Ld. AR for the assessee.

7. We have heard the rival contentions, perused the record placed before us and gone through the judgments relied by the Ld. counsel for the assessee.

The sole grievance of the assessee is against disallowance of interest expenditure of Rs.16,32,559/- u/s 40(a)(ia) of the Act paid to following three companies:

Name	Amount
M/s Bajaj Finance Ltd.	10,79,202/-

M/s Chola Mandalam investment	25,284/-
Citi Finance consumer Finance India Ltd.	5,28,073/-
Total	<u>16,32,559/-</u>

8. The above interest expenditure was claimed/paid by the assessee without deducting tax at source. Before first appellate authority assessee placed on record the certificates issued by Chartered Accountants firm B.K. Kothari & Co., Sivakumar and Associates, and Nainesh Path & Co. confirming that the alleged interest amount referred above have been included in the respective return of income filed by each Finance Companies and have been included in the income offered to tax. This fact that each of the three payees has disclosed the respective interest receipt in their income tax return has not been disputed by the revenue authorities.

9. Insofar as the claim of the assessee that the amendment brought in section 40(a)(ia) of the Act by the Finance Act 2012, thereby inserting second provision to effective from 1st April 2013 is declaratory and curative in nature and it should be given retrospective from 1st April 2005, we find that similar issue has been decided by the Coordinate

Bench, Indore in the case of Narayan Das Goyal,(supra) observing as follows:

“8. We have heard rival contentions and perused the record before us. Revenue’s sole grievance is against the findings of Ld.CIT(A) deleting the addition of Rs.10,43,000/- made by the Ld. Assessing Officer on the interest of Rs.10,43,000/- paid to four persons. The Ld. CIT(A) deleted the impugned disallowance observed as follows;

“4.1 Ground No.1:-Through this ground of appeal the appellant has challenged the addition of Rs.10,43,000/- on account of disallowance u/s. 40(a)(ia). The appellant has paid the interest of Rs.10,43,000/- to the following persons:-

Ram Gopal	Sitaram	goyal	Prop	Gobind	Goyal
Rs.4,50,000/-					
Smt Kamla bai				Rs.2,40,000/-	
Ravishankar	Narayan	das		Goyal	HUF
Rs.1,55,000/-					
Smt	Vinita		Devi		Goyal
Rs.1,98,000/-					

The above persons has already included the above receipt in their return of income and paid the tax thereon.

4.1.1 As per amendment in section 40(a)(ia) w.e.f. 1st July, 2013. If the assessee is liable to, deduct tax at source and if he has not deducted the tax at source but payee has already declared the income and paid the tax on such sum and furnished the return, the assessee cannot be has retrospective effect from 01.04.2005 as held by Hon"ble Delhi High Court is the case of CIT Vs. Ansal Land Mark Township (2015) 61 Taxmann.com 45 (Delhi). Wherein the Hon'ble High Court has held that-

Section 40(a)(ia), read with section 194J, of the Income-tax Act, 1961-Business disallowance-interest etc. Paid to a resident without deduction of tax at source (Second Proviso)-Assessment year 2008-09 and 2009-10 -Whether second

proviso to section 40(a)(ia) is declaratory and curative and it has retrospective effect from 01.04.2005- Held, yes-whether, therefore, where assessee made payments without deducting tax at source under section 194J, since payee had filed return offered sum received from assessee to tax, impugned disallowance made under section 40(a) (ia) deserved to be deleted eld, yes [Paras 13 and 14] [in favour of assess]

Same view was followed by hon'ble ITAT Indore in the case of Shri Dilip Suryanvanshi P/o M/s Dilip Builders Bhopal Vs. ACIT 2(1) Bhopal ITA No. 84IIND/2015 AY 2015-16.

In the case of Rajeev Kumar Agrawal [2014] 45 Taxmann. Com 555 (Agra Trib) IN THE IT AT AGRA BENCH was held that _

Section 40(a)(ia), of the Income-tax Act, 1961 -Business disallowance - Interest etc. paid to a resident without deduction of tax at source (Second Proviso) - Assessment year 2006-07 -Whether insertion section proviso to section 40(a)(ia) with effect from 01.04.2013 is declaratory and curative in section 40(a) (ia) with effect from 01.04.2013 is declaratory and curative in nature and has retrospective from 01.04.2005, being date from which sub clause (ia) of section 40(a) was inserted by finance (No.2) Actm 2004-Hela Yeas [para9] [in favour of assessee]

The ratio of decision of Hon'ble Supreme Court in the case of Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. CIT, 211 CTR 545 (S.C.) held that when the assess is in default for TDS, the tax already paid by recipient of income tax payee had already paid the taxes due on payment received from it from the assessee. Therefore, the tax could not be recovered once again from the deductor assessee. This issue already stands clarified by circular No.272/201195-IT (B) dated 29.01.1997.

Keeping in view of the above judicial pronouncements, the addition made by the AO amounting to Rs.10,43,000/- is Deleted. Therefore, the appeal on this ground is Allowed.

5. In the result appeal filed by the appellant is Allowed”.

9. *The above findings of Ld.CIT(A) could not controverted by the Departmental Representative and there is no dispute to the fact that the alleged interest paid at Rs.10,43,000/- has been offered to tax by respective parties in their regular return of income and taxes have been paid thereon. We find that the I.T.A.T. Agra Bench in the case of Rajeev Kumar Agrawal (2014) 45 Taxmann.Com 555 has held that the proviso inserted to section 40(a)(ia) of the Act with effect from 01.04.2013 is declaratory and curative in nature and has retrospective effect from 01.04.2005. This judgment of the Tribunal was discussed by Hon'ble High Court of Delhi in the case of CIT Vs. Ansal Land Mark Township (2015) 61 Taxmann.com 45 (supra) and the view taken by the Tribunal was confirmed by the Hon'ble High Court.*

10. *We therefore respectfully following the judgments referred above are of the view that since the payees who received the interest of Rs.10,43,000/- shown the interest income in their income tax return filed and offered it to tax, no disallowance was called for u/s 40(a)(ia) of the Act. We uphold the findings of Ld.CIT(A) and dismiss the revenue's appeal. ”*

10. After examining the facts of the instant appeal, in the light of above decision, we are of the considered opinion that the issue raised in this appeal is squarely covered in favour of the assessee by this judgment and respectfully following the same, are of the considered opinion that no disallowance was called for u/s 40(a)(ia) of the Act for the alleged interest expenditure of Rs.16,32,559/- as the payees have disclosed the respective interest amount in revenue to be offered to tax in their respective return of income filed u/s 139 of the Act.

11. In the result, the appeal of the assessee is allowed.

Order was pronounced in the open court on 27.11.2018.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 27 /11/2018

Patel. P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar