

आयकर अपीलीय अधिकरण , ' डी ' न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्यएवंश्री एस जयरामन, लेखा सदस्य केसमक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 1553 & 1554/Chny/2018

निर्धारण वर्ष/Assessment Years : 2012-13 & 2013-14

Smt. Rekha Musaddy,
Flat G-1, Sri Rams, No 6,
Fourth Street,
Nandanam Extension,
Chennai - 600 035.

The Income Tax Officer,
Vs. Non Corporate Ward 2(3),
Chennai – 34.

[PAN: ADBPR 6907R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by
Revenue by

: Shri. M. Karunakaran, Advocate
: Shri. Srinivasa Rao Vana, JCIT

सुनवाईकीतारीख/Date of Hearing

: 30.10.2018

घोषणाकीतारीख/Date of Pronouncement

: 30.10.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

The assessee filed these appeals against the consolidated orders of Commissioner of Income Tax (Appeals)-2, Chennai in ITA Nos. 154/15-16 & 112/16-17 dated 20.02.2018 for assessment years 2012-13 & 2013-14, respectively.

2. Smt. Rekha Musaddy, the assessee, a proprietor and carrying on business in trading and importing of earthmoving spares in the name and style of "Ayush Earthmovers". While making the assessments for assessment year 2012-13 & 2013-14, the Assessing Officer noticed, inter alia, that the assessee did not deduct TDS on the interest paid to Reliance Capital Ltd., and Reliance Home Finance Ltd., during the relevant assessment years 2012-13 & 2013-14, respectively. When the AO proposed to disallow such sum, the assessee contended that according to provision of section 201(1), as the payees have paid the taxes due on them. However, the AO held that in the assessment for assessment year 2012-13, provisions of section 201(1) has been inserted in the Finance Act, 2012 only w.e.f. 01.07.2012, therefore it is prospective in nature and hence section 40a(ia) gets attracted and accordingly, he disallowed Rs. 15,65,563/-. For assessment year 2013-14, the AO held that since, the assessee could not produce the required certificate, disallowance u/s. 40a(ia) is warranted and hence disallowed. Aggrieved, the assessee filed appeals before the CIT(A) and the Ld. CIT(A) dismissed the appeals.

3. Aggrieved, the assessee filed these appeals with the following common grounds:

"1. The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowance of Rs.15,65,560/- made under section 40(a)(ia) of the Act.

2. The learned Commissioner of Income-tax (Appeals) erred in holding that the first proviso to section 201(1) was prospective in nature and effective only from 1/7/2012 and hence the same is not applicable to the assessment year 2012-13.

3. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that there are various decisions of the Tribunals and High Courts to the effect that the amendment made by Finance Act, 2012 to sections 201(1) and 40(a)(ia) are only curative in nature and will have retrospective effect from 1/4/2005.

4. The authorities below ought to have appreciated the fact that the payees have discharged their tax obligations including the amount paid by the appellant as interest and therefore there is no obligation on the part of the appellant to deduct TDS in the light of the decision of the Supreme Court in the case of Hindustan Coco Cola (293 ITR 226) and also in the light of the amendments made by Finance Act, 2012.

5. The appellant therefore prays that the disallowance of Rs. 15,65,560/- made u/s 40(a)(ia) may be deleted."

4. The AR inviting our attention to the copies of letter issued by Reliance Capital Ltd. (Commercial Finance) dated 19.02.2016 and its enclosures issued by Jitendra Sanghavi & Co., dated 04.04.2016 and Reliance Home Finance Ltd., dated 19.02.2016 and its enclosures issued by Jitendra Sanghavi & Co., dated 05.04.2016, and submitted that the interest paid to both the companies were admitted by them in their returns for assessment years 2012-13 & 2013-14, respectively. Further, the AR relied on this tribunal decision in the case of Udayakumar Rudrakumar vs ACIT in ITA No. 2756/Mds/2016, dated 10.10.2017 and

pleaded that the above disallowances may be deleted. Per contra, the Ld. DR supported the orders of the lower authorities.

5. We heard the rival submissions and gone through the relevant material. In view of the decisions relied on by the assessee, we consider it appropriate that the matter to be re-examined by the AO to the extent the assessee is able to adduce evidence, which may at his option be verified by the AO, of the impugned payments as forming part of the income of the payees, duly returned and tax paid thereon, the assessee cannot be treated as an assessee in default and accordingly, section 40(a)(ia) would stand excluded to that extent. The appeals are treated as partly allowed for statistical purposes.

6. In the result, the assessee's appeals are treated as partly allowed for statistical purposes.

Order pronounced in the open court on 30th October, 2018 at Chennai.

Sd/-
(जॉर्जमाथन)
(GEORGE MATHAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एसजयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 30th October, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF