

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASSEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 3488/Ahd/2014

(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Unison Insurance Broking Services Pvt. Ltd. 206-213, Glacier Complex, Jetalpur Road, Vadodara - 390007	बनाम/ Vs.	ITO Ward-4(1) Vadodara
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAA CU2 865 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Manish J. Shah, AR
प्रत्यर्थी की ओर से / Respondent by :	Lalit P. Jain, Sr. DR

सुनवाई की तारीख / Date of Hearing	04/03/2019
घोषणा की तारीख /Date of Pronouncement	11 /03/2019

आदेश/ORDER

PER MAHAVIR PRASAD - JM:

This appeal has been preferred by the assessee against the order of Ld. CIT(A) Appeal No. CAB/III-285/2012-13 dated 12.09.2014 arising from assessment order dated 30.01.2013 and following grounds have been taken:-

"1. On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT (A) has erred in confirming disallowance of interest expense of Rs. 6,29,771/-, on the two grounds viz. (a) that the amendment made by inserting second proviso to sec. 40(a)(ia) of the Act by the Finance Act, 2012 has not been given retrospective effect and is effective from 01.04.2013 and thus is not applicable to the Asst. Year 2010-11 and also (b) that the appellant has not filed any evidence that the payee has filed its return of income and interest paid by appellant has been taken into account in the return of income filed by the said payee.

Appellant submits that the aforesaid amendment is the beneficial amendment and hence it will have retrospective effect and therefore, the Ld. CIT(A) should have directed the AO to allow the appellant reasonable opportunity to comply with the requirements of the second proviso to sec. 40(a)(ia) r.w. the first proviso to sec. 201(1) of the Act and thereafter delete the impugned disallowance. Your appellant, therefore, prays Your Honour to hold so now and kindly direct the Ld. AO to delete the impugned disallowance on appellant complying with the conditions laid down in the first proviso to sec. 201(1) of the Act.

2. Without prejudice the above, on the facts and in the circumstances of your appellant's case and in law, the ld. CIT(A) has also erred in confirming disallowance of interest expense of Rs. 6,29,771/-, on the ground that though the impugned expenditure has not remained unpaid of the last date of the relevant previous year, the decision in the case of CIT vs. Sikhandar Khan N. Tanwar 259 CTR (GUJ) 57 is still applicable.

Appellant submits that at the end of the relevant year the impugned expenditure had not remained unpaid and therefore the same is not disallowance u/s 40(a)(ia) of the Act. Appellant, therefore, prays Your Honour to hold so now and kindly direct the ld. AO to delete the impugned disallowance.

On the facts and in the circumstances of your appellant's case and in law, the Ld. CIT(A) has erred in rejecting the additional ground and thereby has erred in not allowing tax credit of Rs. 13,26,186/- though appearing in Form No. 26AS, on the ground that the appellant has not furnished requisite evidence in proof that such income on which tax deducted at source has been made and reflected in Form 26AS have been made part of its returned income as required under Rule 37BA(3) of the Income Tax Rules.

Your appellant submits that from about 2350 transactions appearing in Form No. 26AS dtd. 23.10.2013 (which continuously got amended from time to time August, 2010 to January, 2013) regarding taxes deducted by various 143 payers/deductors, your appellant noticed that tax deducted at source of Rs. 13,26,186/- has not been claimed in the return of income.

Your appellant further submits that looking to the nature of appellant's business and voluminous business transactions, exact one-to-one co-relation of income appearing in Form 26AS (as uploaded by deductors) with that of income in the books of accounts of the appellant reflected in the return of income, is time consuming and also difficult due to absence of tax deducted at source details from payers/deductors against each and every payment made by them, different system of accounting and manner of tax deducted at source followed by them, ad-hoc payments made by them etc.

Your appellant further submits that from the angle of fairness and justice, TDS credit of Rs. 13,26,186/- cannot be denied and requires to be refunded to the appellant only and hence appellant prays Your Honour to adjudicate the relief claimed vide this ground sympathetically.

In view of the above, it is humbly submitted that appellant is entitled to tax credit of Rs. 13,26,186/-, since appearing in Form No. 26AS.

Alternatively it is also entitled to said tax credit since the income stated in Form 26AS is mostly from a broad angle also verifiable

with that of its returned income as required under rule 37BA(3) of the Income Tax Rules. Appellant, therefore, prays Your Honour to hold so now and kindly direct the Assessing Officer to allow credit of the tax deducted at source of Rs. 13,26,186/-."

2. The assessee company is engaged in the business of insurance broking in the company receives brokerage/commission from various General Insurance Company covered under IRDA. During the course of assessment proceedings on verification of case records and details furnished by the assessee, it is noticed that the assessee has not deducted the tax at source from the following payments and paid into the Government Account as required under the provisions of sec. 194A of the Income Act.

Sr. No.	Name of the party	Nature of Payment	Amount credited/paid(Rs.)
1.	Kotal Mahindra Prime Finance Ltd.	Interest Payment	56,852.00
2.	-do-	-do-	63,242.00
3.	-do-	-do-	6,398.00
4.	-do-	-do-	2,90,096.00
5.	-do-	-do-	33,799.00
6.	-do-	-do-	25,575.00
7.	-do-	-do-	1,12,418.00
8.	-do-	-do-	41,391.00
		Total	6,29,771.00

3. During the course of assessment proceedings, the assessee was asked to explain as to why the above amount of Rs. 6,29,771/- on which tax has not been deducted at source should not be disallowed u/s. 40(a)(ia) of the Income Tax Act added to the total income. During the course of assessment proceedings, the authorized representative of the assessee has stated that the assessee company has not deducted tax deducted at source on the above mentioned expenses meaning thereby that the assessee itself has admitted the default of not deducting tax as per the provisions of sec. 194A of the Act. As per the provisions of se. 40(a)(ia) of the Income Tax Act no deduction shall

be allowed in respect of the amount on which tax is deductible at source under Chapter XVII-B but such tax has not been deducted at source and paid into Government Account. Hence in the instant case, as stated above, the assessee has not deducted the tax at source from the payments of interest to financial institutions totaling to Rs. 6,29,771/-. Therefore, the said amount of Rs. 6,29,771/- is disallowed u/s. 40(a)(ia) of the Income Tax Act and added to the total income of the assessee. And disallowance of Rs. 6,29,771/- on which tax has not been deducted their source of added to the total income of the assessee.

4. Thereafter assessee filed first statutory appeal before the Ld. CIT(A) who dismissed the appeal of the assessee, on the ground that amendment made by inserting second proviso to sec. 40(a)(ia) of the Act, 2012 has not been given retrospective effect and this effective from 01.04.2013 and thus is not applicable to the assessment year 2010-11.

5. We have gone through the relevant record and impugned order in support of its contention Ld. AR cited an order of Hon'ble Delhi High court in the matter of CIT vs. Ansal Land Mark Township (P.) Ltd. [2015] 61 taxmann.com 45 (Delhi) wherein it is held that second proviso of sec. 40(a)(ia) is declaratory and curative and it has retrospective effect from 01.04.2005 and relevant head note is given below:-

“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 years 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 and offered sum received from assessee to tax, impugned disallowance made under section 40(a)(ia) deserved to be deleted – Held, yes [Para 13 and 14] [In favour of assessee]”

6. Respectfully following the above said judgment of Hon'ble Delhi High Court we allow this ground of appeal.

7. Now, we come to next ground relating to rejecting the additional ground for not allowing tax credit of Rs. 13,26,186/- though same is appearing in Form No. 26AS. This ground was also dismissed by the lower authorities.

8. We have heard both the parties and gone through the relevant record the assessee contention is that on account of inadvertently mentioning of wrong TAN No. by the assessee, credit of Rs. 13,26,186/- was not given and lower authorities rejected the claim on the ground that assessee has not filed any proof. We can see Form 26AS have been made in part of its returned income as required under Rule 37BA(3) of the Income Tax Act. It is a case where on account of assessee/appellant inadvertently mentioning of wrong TAN No. claim was rejected and this sort of human error is possible. Therefore, in the interest of the justice we set aside this ground to the file of Ld. AO to allow the credit of tax deducted at source after verifying declaration to be filed by the deductee in terms of proviso to sub-Rule (2) of Rule 37BA of the Income Tax rule, and thereafter we will decide this ground of the assessee in accordance with law.

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

This Order pronounced in Open Court on 11/03/2019

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad: Dated 11/03/2019
TANMAY

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

True Copy

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue

2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।