

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.492/NAG/2014

निर्धारण वर्ष / Assessment Year : 2013-14

The Income Tax Officer (TDS),  
Ward – Wardha

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Varco Associates,  
Laxmi Residency, Near Tilak Smarak,  
Mahadeo Mandir Road,  
Yavatmal - 445001

PAN : AALFM7378Q

.....प्रत्यर्थी / Respondent

Assessee by : Shri S. Kailash Jogani  
Revenue by : Shri R.K. Baral

सुनवाई की तारीख / Date of Hearing : 27-03-2019

घोषणा की तारीख / Date of Pronouncement : 29-03-2019

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of  
Commissioner of Income Tax (Appeals)-III, Nagpur dated 10-09-2014 passed

u/s. 201(1) r.w.s. 201(1A) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for the assessment year 2013-14.

2. Shri R.K. Baral representing the Department submitted that survey action u/s. 133A was carried out in the case of assessee. Thereafter on spot verification carried out on 24-10-2013 certain documents were found that indicate the assessee has made payment of interest to 156 persons in lieu of unsecured loans taken from the aforesaid persons. The assessee had not deducted tax on source on such payment of interest. However, neither the unsecured loans nor the payment of interest were reflected in the books of account of assessee. The Assessing Officer in respect of aforesaid payment of interest without complying with the TDS provisions invoked section 201 and has made the addition holding the assessee to be the assessee in default.

2.1 Against the order dated 28-02-2014 passed u/s. 201(1) r.w.s. 201(1A) of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The First Appellate Authority after considering the facts of the case and documents on record erred in holding that no interest was paid by the assessee and deleted the addition. Against the said findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal.

3. Per contra, Shri S. Kailash Jogani appearing on behalf of the assessee submitted that the Assessing Officer without appreciating the facts has wrongly made addition merely on presumptions and assumptions. The

assessee has not paid any interest as alleged by the Assessing Officer against unsecured loans from third party. The unsecured loans were advanced by the partners of assessee firm, the payment of interest on such loans does not fall within the purview of Chapter-XVII-B of the Act. The ld. AR further submitted that the books of account maintained by the assessee were duly audited and the same were not rejected by the Assessing Officer at any point of time.

4. Both sides heard. Orders of authorities below perused. The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) in deleting the demand of Rs.94,07,988/- u/s. 201(1) r.w.s. 201(1A) of the Act. The Assessing Officer had made addition of the aforesaid amount on the premise that the assessee has paid interest on unsecured loans to the third parties without complying with TDS provisions. It is an undisputed fact that in the audited books of account the unsecured loans as alleged by the Assessing Officer does not figure and the assessee has not claimed payment of interest on the alleged unsecured loans in the books. The unsecured loans as reflected in the documents found during the spot inspection were purportedly advanced by the partners of the assessee firm. Payment of interest on loans from partners, no TDS was required to be deducted.

5. Thus, in facts of the case and in the light of decision of Hon'ble Supreme Court of India in the case of GE India Technology Center Pvt. Ltd. Vs. CIT reported as 327 ITR 456 the Commissioner of Income Tax (Appeals)

deleted the addition. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals). Accordingly, the impugned order is upheld and the appeal of Revenue is dismissed.

6. In the result, the appeal of Revenue is dismissed.

Order pronounced on Friday, the 29<sup>th</sup> day of March, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

नागपुर / Nagpur; दिनांक / Dated : 29<sup>th</sup> March, 2019.

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-III, Nagpur
4. आयकर आयुक्त / The CIT(TDS), Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,  
नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur