

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'C': NEW DELHI)**

**BEFORE SMT. BEENA A. PILLAI, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No: 2885/Del/2016  
(Assessment Year: 2011-12)**

Manjeet Kumar HUF Prop. Rawalpindi Jewellers C/o. Manoj Mittal, Advocate, 1126, Sector- 9 Karnal	Vs	ACIT Circle- Karnal
<b>PAN No:</b> AAAHM6578H		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri Manoj Mittal, Adv.,  
Shri Manjeet Kumar, HUF  
**Revenue by** : Shri P.V. Gupta, Sr. DR

**ORDER**

**Per Anadee Nath Misshra, AM**

**(A)** This appeal by Assessee is filed against the order of the Learned Commissioner of Income Tax (Appeals)-2, Gurgaon, ["Ld. CIT(A)" for short], dated 01.03.2016, for Assessment Year ("A.Y.", for short) 2011-12, on the following grounds:

*"The assessment order passed u/s 143 (3) by the ACIT, Circle, Karnal and the Appellate order passed u/s 250(6) by the CIT(A)-2, Gurgaon is against Law and facts and is challenged on the following grounds:-*

*1. That the ACIT, Karnal grossly erred in disallowing an amount of Rs. 6,53,532/- paid as interest to GE Money Finance (P) Ltd. on loan taken from them. The*

*disallowance of this business expenditure was made on pretext of TDS not deducted on this interest amount. The assessee submitted detailed submissions in this regard alongwith various judgments supporting the assessee, but those were not considered by the Assessing Officer.*

*2. That the Learned CIT (A)-2, Gurgaon also erred in confirming the above disallowance/addition and rejecting the appeal of the appellant on this point.*

*3. That the disallowance/addition made by the ACIT, Karnal and confirmed by the Learned CIT(A)-2, Gurgaon are liable to be quashed by this Hon'ble Tribunal.*

*4. That the detailed arguments shall be put forth before this Hon'ble Tribunal at the time of hearing of this appeal.*

*5. That keeping in view the facts and circumstances mentioned above, the addition/disallowance be kindly quashed and appropriate relief be kindly given to the appellant.*

*The appellant craves leave to add, alter, change or modify the above grounds of appeal before the same are disposed of."*

**(B)** Vide Assessment Order dated 29.03.2014, the Assessing Officer ("AO", for short) disallowed assessee's claim on interest expenses amounting to Rs. 6,53,532/- paid by the assessee to M/s G.E. Money Finance Pvt. Ltd. and made corresponding addition to assessee's income by invoking the Section 40(a)(ia) of Income Tax Act, 1961 ("I.T. Act", for short) on the ground that the assessee had not deducted tax at source Under Section 194A of I.T. Act. The assessee took the plea before the AO that effect of proviso inserted in section 201 by the Finance Act, 2012 w.e.f. 01.07.2012 should be given retrospectively, which provides that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax, if such recipient –i) has furnished his return of income under section 139. ii) has taken into account such sum for

computing income in such return of income; and iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed. The assessee's plea to treat second proviso to Section 201 of I.T. Act (inserted by Finance Act, 2012 w.e.f. 01.07.2012) as having retrospective effect was rejected by the AO, by holding as under:

*"7. Regarding retrospective effect to proviso to section 201 inserted by the Finance Act, 2012 w.e.f. 01.07.2012, it is clearly written about the date from which effect is to take place for any law and provisions contained when it is specifically written that the effect is to take place from such date, the effect has to be applied from such date. Even otherwise, when no date is written about the applicability of the provisions of any statute, it is assumed that it will have prospective application, not retrospective. There are no two views. "*

**(C)** Aggrieved, the assessee filed appeal before the Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(A)", for short]. Vide appellate order dated 08.03.2016; the Ld. CIT(A) dismissed assessee's appeal on this ground and held that second proviso to Section 40(a)(ia) of I.T. Act, inserted w.e.f 01.04.2013 by Finance Act, 2012 was not retrospective and was not applicable for earlier Assessment Years. For this the Ld. CIT(A) relied on decision of Hon'ble Kerala High Court order dated 13.01.2014 in the case of M/s Prudential Logistics & Transports vs. The Income Tax Officer in ITA No. 1 of 2014 {now reported at [2014] 364 ITR 689 (Kerala)} and order dated 21.11.2014 in the case of The Kasargod District Co-operative Bank Ltd. vs. Dy. CIT, Circle 1 Kannur, in ITA No. 245/Coch/2014, {now reported at [2015] 55 taxmann.com 442 (Cochin- Trib.)}. Aggrieved again, the assessee has filed this appeal in Income Tax Appellate Tribunal ("ITAT", for short).

Before us, the Ld. Counsel for assessee submitted that the aforesaid amount of Rs. 6,53,532/- has already been accounted for by the recipient i.e. the aforesaid M/s G.E. Money Finance Pvt. Ltd. He further contended that second proviso to Section 40(a)(ia) of I.T. Act should be given retrospective effect and the assessee should be allowed its benefit for this Assessment Year, i.e. for 2011-12, although, it is inserted w.e.f. 01.07.2012. In support of his contention, the Ld. Counsel for assessee relied on order dated 19.02.2016 of ITAT, Delhi in the case of Hindustan Plywood Company vs. ITO (ITA No. 145/Del/2014); order dated 29.05.2013, ITAT Agra Bench, in the case of Rajeev Kumar Agarwal vs. Additional Commissioner of Income Tax (ITA No. 337/Agra/2013); and order dated 26.08.2015, High Court of Delhi in the case of Commissioner of Income Tax vs. Ansal Land Mark Township (P) Ltd. (ITA 160/2015, 161/2015). The Ld. Counsel for assessee further submitted that the assessee is willing to prove to the satisfaction of Revenue Authorities that conditions necessary for availing the benefit of second proviso to Section 40(a)(ia) of I.T. Act are fulfilled by the assessee; and accordingly submitted that the matter be remanded to the AO for verification in this regard and fresh order on this issue. The Learned Departmental Representative ("Ld. DR", for short) agreed with the submission of the Ld. Counsel for the assessee that the matter be remanded to the AO for verification in this regard and fresh order on this issue.

**(D)** We have heard both sides patiently. We have perused the materials available on record, carefully. We have considered the judicial precedents brought to our notice by the Ld. Counsel for assessee. We have also considered the judicial precedents referred to in the aforesaid Assessment Order 29.03.2014 and the aforesaid impugned order dated

08.03.2016 of Ld. CIT(A). Under second proviso to Section 40(a)(ia) of I.T. Act, there are statutory provisions to the effect that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of Section 201; then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso. The question before us, is whether second proviso to Section 40(a)(ia) of I.T. Act is prospective in application or is to be applied retrospectively. On the aforesaid question before us, we have the benefit of guidance from the order of Hon'ble Delhi High Court, in the case of CIT vs. Ansal Land Mark Township (P.) Ltd. 377 ITR 635 (Delhi) in which the Hon'ble High Court held that second proviso to Section 40(a)(ia) of I.T. Act is declaratory and curative and it has retrospective effect from 01.04.2005. Revenue's Special Leave Petition against this order of Hon'ble Delhi High Court has been dismissed by Hon'ble Supreme Court in CIT vs. Ansal Landmark Township (P.) Ltd. 242 Taxman 5 (SC). The view that second proviso of Section 40(a)(ia) of I.T. Act is declaratory and curative in nature and has retrospective effect from 01.04.2005 was also taken in Rajeev Kumar Agarwal vs. Addl. CIT 149 ITD 363 (Agra- Trib.); and in DCIT vs. Esaote India (NS) Ltd. 172 ITD 299 (Ahd.) and Hindustan Plywood Company vs. ITO (supra). The issue in question is squarely covered in favour of the assessee, in view of these precedents. Therefore, we also hold, respectfully following these precedents, that second proviso to Section 40(a)(ia) of I.T. Act is curative in nature and has retrospectively. Accordingly, in the fitness of things, and also as both

sides agree, the disputed addition U/s 40(a)(ia) of I.T. Act is remanded to the Assessing Officer for fresh order on this limited issue after necessary verification, having regard to Section 40(a)(ia) of I.T. Act, read with first proviso to Section 201(1) of I.T. Act and also read with Rule 31 ACB of Income Tax Rules, 1961 ("I.T. Rules", for short). Before passing fresh order, the AO will give opportunity to the assessee to furnish necessary materials in support of claim for benefit under second proviso to Section 40(a)(ia) of I.T. Act, read with first proviso to Section 201(1) of I.T. Act and also read with Rule 31 ACB of I.T. Rules.

**(D.1)** By way of abundant caution, we clarify that, on whether the provisions are curative and retrospective, we have expressed opinion only about second proviso to Section 40(a)(ia) of I.T. Act, because the dispute brought before us in the present appeal is only regarding disallowance Under Section 40(a)(ia) of I.T. Act. We have expressed no opinion regarding other provisions under I.T. Act, such as Section 201(1A) and Section 271C of I.T. Act, because the present appeal before us, is not concerned with any disputes other than disallowance Under Section 40(a)(ia) of I.T. Act.

**(E)** In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 12<sup>th</sup> day of April, 2019

Sd/-

**(BEENA A. PILLAI)**  
**JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 12.04.2019  
*Bidhan /Pooja*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	Direct on computer 11.04.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	