

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER
AND
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No.3347/Del/2016
Assessment Year: 2011-12

Assistant Commissioner of Income Tax, Circle – 62 (1), New Delhi	Vs	Sh. Vinod Sharma A-2/165, 2 nd Floor, Safdarjung Enclave, New Delhi -110029 PAN No.AUJPS32935K
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Rinku Singh, Sr. DR
Department by	None

Date of hearing:	14/03/2019
Date of Pronouncement:	30/04/2019

ORDER

PER R.K. PANDA, AM:

1. This appeal filed by the revenue is directed against the order dated 31.03.2016 of the CIT(A)-20, New Delhi relating to A. Y. 2011-12.
2. Despite service of notice for a number of times nobody was appearing on behalf of the assessee. Therefore, this appeal is being decided on the basis of material available on record and after hearing the Ld. DR.

3. The ground No.1 by the revenue reads as under :-

In the facts and circumstances the Ld. CIT(A) has erred in deleting the addition of Rs.12,49,300/- u/s 40 (a) (ia) on account of non deduction of TDS.”

4. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of civil construction under the name and style of M/s. Laxmi Builders. He filed his return of income on 27.09.2011 declaring total income of Rs.1,07,87,520/-. The Assessing Officer during the course of assessment proceedings asked the assessee to provide the details of TDS deducted on interest payment against loan taken by the assessee during the year. From the various details furnished by the assessee he observed that assessee has not deducted any TDS from the payment of interest to the following parties :-

S. No.	Name	Amount
1	Tata Capital Housing Finance Limited	1,41,600/-
2	Reliance Capital Limited	1,07,281/-
3	Bajaj Finsery Limited	2,06,199/-
4	Indiabulls Housing Finance Limited	5,45,704/-
5	Fortis Finvest Limited	2,48,516/-
	Total	12,49,300/-

5. The submission of the assessee is that no TDS is required to be deducted was not accepted by the Assessing Officer. Invoking the provision of section 40 (a) (ia) of the IT Act, the Assessing Officer made addition of Rs.12,49,300/- to the total income of the assessee.

6. Before CIT(A) it was submitted that the entire payment was paid by means of advance EMI cheques and those cheques were duly paid on presentation. All those companies are income tax payee and it would be impossible to presume that they might have tried to avoid payment of income tax on their regular business income. It was further submitted that no amount was payable at the end of the year and, therefore, provision of section 40 (a) (ia) are not applicable. Relying on various decisions it was submitted that the addition made by the Assessing Officer is not justified.

7. Based on the arguments advanced by the assessee, the Ld. CIT(A) deleted the addition by relying on the decision of Hon'ble High court in the case of CIT-1 Vs. Ansal Landmark Township Private Limited vide ITA No.160 and 161 /Del/2015 order dated 26.08.2015 on the ground that the assessee in the instant case has filed certificate under proviso to sub-section (1) of section 201 (1) of the Income Tax Act from NBFCs to whom interest were paid.

8. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

9. After hearing the Ld. DR and on perusal of the orders of the authorities below we do not find any infirmity in the order of the CIT (A) on this issue. The assessee has filed certificates from Bajaj

Finserve Limited, Reliance Capital Limited, TATA Capital Housing Finance Limited, India Bulls Housing Finance Limited and Fortis Finvest Limited substantiating that these companies have filed their income tax returns disclosing such interest income in the taxable income. Therefore, the Ld. CIT(A) in our opinion is fully justified in deleting the addition by relying on the decision of Hon'ble Delhi High Court in the case of CIT-1 Vs. Ansal Landmark Township Private Limited where in it is held that the insertion of second proviso to section 40 (a) (ia) of the IT Act is declaratory and curative in nature and it has retrospective effect from 1st April, 2005 and where the payees have declared such income in their respective return of income itself deemed that the assessee has deducted and paid tax on such sum on the date of furnishing of income. Therefore, the ground raised by the revenue on this issue is dismissed.

10. The ground of appeal No.2 by revenue reads as under :-

“In the facts and circumstances the Ld. CIT(A) has erred in deleting the addition on account of cash payment u/s 40 A (3) of Rs.48,35,476/-.”

11. Facts, of the case, in brief are that the Assessing Officer during the course of assessment proceedings observed from the various details furnished by the assessee that the assessee has made cash payments to various parties in violation of provisions of section 40A(3) of the IT Act. Rejecting the various explanation given by the assessee the Assessing Officer made addition of Rs.48,35,476/-.

12. Before CIT(A) it was submitted that the assessee is engaged in the business of civil construction work mainly for Government agencies and the project sites are situated in remote places. While executing the contractual obligations, the assessee had to hire labourers and purchase materials at the local level as and when required. The work at local level is mainly done through such contractors who incurred the expenditure at the local level. The provision of rule 6 DD (k) and 6DD (j) was brought to the notice of the CIT(A).

13. Based on the arguments advanced by the assessee and relying on the decisions of Hon'ble Delhi High Court in the case of RC Goyal Vs. CIT reported in 29 taxman.com 406, the Ld. CIT(A) deleted the addition holding that the case of the assessee falls under the ambit of Rule 6 DD(K).

14. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

15. We have considered the arguments advanced by Ld. DR and perused the orders of the authorities below. We find the Assessing Officer invoking the provision of section 40 A (3) made addition of Rs.48,35,376/- on the ground that the assessee has violated the provisions by making cash payments in excess of Rs.20,000/- at a time otherwise than by crossed account payee cheques or crossed bank drafts. We find the Ld. CIT(A) relying on the provision of Rule 6 DD (k) deleted the addition holding that the payments have been made in cash are mostly done at the local level because of business exigencies through such contractors who act as his agent within the

meaning of rule 6 DD (k). We find the facts are not coming out clearly from the order of the CIT (A) as to who are the agents or sub contractors of the assessee at the sites, whether the payment has been made by the such contractor after deduction of tax and or through banking channel etc. We, therefore, deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate that the case of the assessee falls within the provision of section 6 DD (k). Needless to say the Assessing Officer shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground No.2 by the revenue is allowed for statistical purpose.

16. The ground of appeal No.3 by revenue reads as under :-

“In the facts and circumstances the Ld. CIT(A) has erred in deleting the addition on account of interest on service tax of Rs.9,26,182/-.”

17. The facts of the case, in brief, are that the Assessing Officer made addition of Rs.9,26,182/- on the ground that assessee has paid the above amount as interest on service tax for delayed payment. According to the Assessing Officer when the assessee has collected the amount from different customers and intentionally kept the money with it resulting into delay in deposit of the service tax, therefore, the assessee has violated the provision of relevant Act. Invoking the explanation to section 37 (1) of the Act, the Assessing Officer made addition of Rs.9,26,182/- treating the same as penalty for infringement of law.

18. The Ld. CIT(A) deleted the addition on the ground that such payment of interest on account of delayed deposit of service tax is compensatory in nature. We find no infirmity in the order of the CIT(A). The Ld. CIT(A) while deleting the such disallowance has followed various decisions where it has been held that such payment of interest on account of delayed payment of service tax is compensatory in nature. The Ld. DR could not point out any contrary decision so as to take a different view. We, therefore, uphold the order of the CIT(A) on this issue and the ground raised by the revenue is dismissed.

19. The Ground of appeal No.4 by revenue reads as under :-

“In the facts and circumstances the Ld. CIT(A) has erred in deleting the addition in reducing the travelling expenses of Rs.1,53,317/0 to 31,326/-.”

20. After hearing the Ld. DR and on perusal of the orders of the authorities below, we find the Assessing Officer made addition of Rs.1,53,317/- on estimate basis being 1/4th of such expenses treating the same as personal in nature. We find in appeal Ld. CIT (A) restricted such disallowance to Rs.61,326/- by observing as under :-

“I have considered the submission of the appellant and the assessment order. For any business, traveling and business promotion is a legitimate business expenses. However, the primary onus of proving that such expenses are incurred wholly and exclusively for business purposes lies on the assessee. Therefore, taking a reasonable view on the basis of appellant submissions and facts on

records, it is reasonable to restrict the disallowance to 10% of the expenses claimed to cover expenses of personal and non-business purposes.”

21. We do not find any infirmity in the order of the CIT(A) on this issue. No doubt the assessee has not furnished the requisite details before the Assessing Officer for which verification that such expenses are wholly and exclusively incurred for the purpose of business was not possible. However, disallowance made by the Assessing Officer appears to be on the higher side under the facts and circumstances of the case. We find the CIT(A) has taken a pragmatic view on this issue which calls for no interference from our side. We, therefore, uphold the same and the ground raised by the revenue on this issue is dismissed.

22. The ground of appeal No.5 being general in nature is dismissed.

23. In the result, the appeal filed by the revenue is partly allowed for statistical purpose.

Order pronounced in the open court on 30.04.2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Neha

Date:- 30.04.2019

Copy forwarded to:

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

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	10.04.2019
Date on which the typed draft is placed before the dictating 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	30.04.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	