IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A" HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMEBR

ITA Nos.	A.Y	Appellant	Respondent
1592/Hyd/2018	2007-08	Dharma Teja, Hyderabad. Pan No. ADPPD6443G	ACIT, Circle – 13(1) Hyderabad.
1593/Hyd/2018	2013-14		ITO, Ward – 14(5) Hyderabad.

Assessee by : Shri Murali Mohan Rao
Revenue by : Shri Dinesh Paduchuri

Date of hearing : 07-05-2019
Date of pronouncement : 29-05-2019

ORDER

PER P. MADHAVI DEVI, J.M.:

Both are assessee's appeals for the A.Y 2007-08 and 2013-14 respectively.

ITA 1592/Hyd/2018

2. This is assessee's appeal against the order of the Ld. CIT(A)-6, Hyderabad dated 16.04.2018 for the A.Y 2007-08.

3. Brief facts of the case are that the assessee, an individual and a film director, filed his return of income for the A.Y 2007-08 on 31.07.2007, declaring total income of Rs. 5,84,880/- and agricultural income of Rs. 3,25,000/-.

Initially the assessment was completed u/s 143(3) of the Act on 24.12.2009. Subsequently, the assessment was reopened u/s 148 of the Act, vide notice dated 23.01.2012. The assessee filed a letter requesting the AO to treat the return of income filed on 14.02.2012 as the return filed in response to notice u/s 148 of the Act. Thereafter, the A.O verified that the assessee has paid an amount of Rs. 5 lakhs to Mrs. Deepta Reddy towards rent for the property at Gachibowli, Hyderabad, but has not made TDS, though the provisions of Sec. 194-I of the Act were attracted. He, therefore, disallowed the sum of Rs. 5 lakhs u/s 40(a)(ia) of the Act. Aggrieved, the assessee filed an appeal before the CIT(A) along with a condone delay petition. The CIT(A) condoned the delay, but however he confirmed the addition. Against the order of the CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

> *"1. The order passed by the Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as Ld. CIT (A)] is erroneous both on facts and in law.*
>
> *2. The Ld. CIT (A) erred in dismissing the appeal of the appellant without appreciating the facts of the case, provisions of the Act, legal decisions etc., relating the case.*
>
> *3. The Ld. CIT(A) ought to have appreciated the fact that reopening made u/s 147 of the Act is bad in law and invalid.*

4. The Ld. CIT(A) ought to have appreciated the fact that the A.O issued notice u/s 148 of the act without having any reason to believe that income chargeable to tax has escaped assessment.

5. The Ld. CIT(A) ought to have appreciated the fact that the A.O issued notice u/s 148 of the Act on the basis of mere change of opinion since information on all issues including payment of rent were furnished to the Assessing Officer at the time of scrutiny assessment proceedings and the A.O passed order u/s 143(3) of the Act, after examining the same.

6. The Ld. CIT (A) ought to have appreciated the fact the fact that the A.O erred in initiation of proceedings ul s 147 of the Act without there being any tangible material on record to show that income of the appellant has escaped assessment.

Without prejudice to the above, the following grounds may be considered:

7. The Ld. CIT(A) erred in confirming the addition of Rs. 5,00,000/- made by the A.O ul s 40(a)(ia) of the Act.

8. The Ld. CIT (A) ought to have appreciated the fact that there is no loss of revenue to the Department, since the receiver of rent, i.e. payee has filed his return by offering the same as his income and by making payment of tax and in such cases proceedings u/s 40(a)(ia) shall not be initiated, as held by number of Hon. Courts.

9. The Ld. CIT (A) erred in confirming the addition made by the A.O u/s 40(a)(ia) of the Act, without treating the assessee as 'assessee in default' u/s 201(1) of the Act.

10. The Ld. CIT(A) ought to have considered the fact that second proviso to Section 40(a)(ia) is curative in nature and has retrospective effect from 01.04.2005 from the date in which sub clause i.e. 40(a) was inserted by Finance Act.

11. The Ld. CIT (A) erred in relying on the case laws the facts of which are different from the facts in the case of the appellant.

12. The Ld. CIT (A) ought to have appreciated the fact that the grounds of appeal submitted by the appellant before

him are supported by the decisions of Hon. Courts and ITATs.

13. The appellant may add or alter or amend or modify or substitute or delete and I or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.

3. The Ld. Counsel for the assessee submitted that vide second proviso to Sec. 40(a)(ia) of the Act, where the assessee has not deducted the tax at source but the recipient has offered the same to tax and paid taxes thereon under the proviso to Sec. 201(1) of the Act, the disallowance u/s 40(a)(ia) cannot be made. In support of his contention, he placed reliance upon the decision of the Hon'ble Delhi High Court in the case of M/s. Cheminvest Pvt. Ltd, reported in (2009) 317 ITR 86. He further submitted that without treating the assessee as an "assessee in default" the disallowance u/s 40(a)(ia) of the Act also can not be made.

4. The Ld. DR, however, supported the orders of the authorities below.

5. Having regard to the rival contentions and material available on record, we find that the assessee has not deducted TDS on the rent paid to Mrs. Deepta Reddy. It is

the contention of the assessee Mrs. Deepta Reddy has offered the same to tax and has paid taxes thereon. The CIT(A) has observed that the certificate of the CA is not filed in proof of Mrs. Deepta Reddy offering the income to tax. Further, he also referred to the decision of the CIT(A), wherein it was held that the second proviso to Sec. 40(a)(ia) of the Act is not applicable to the assessment year in question before us i.e for the A.Y 2007-08. We find that in a number of cases, it has been held that the amendments to Sec. 201(1) and 40(a)(ia) of the Act are curative in nature and therefore are applicable retrospectively. Since the assessee has claimed that the recipient of the rental income has offered the same to tax in her hands, we deem it fit and proper to remand the issue to the file of the A.O to verify the same and if it is found that the recipient has offered the income to tax then the disallowance u/s 40(a)(ia) is not called for. Even otherwise, the second proviso to Sec. 40(a)(ia) of the Act has provided that unless the assessee has been treated as an assessee is in default, no disallowance u/s 40(a)(ia) can be made. In view of the same, the appeal of the assessee is allowed.

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7. This is assessee appeal against the order of the Ld. CIT(A)-6, Hyderabad dated 16.04.2018 for the A.Y 2013-14.

8. Brief facts of the case are that the assessee had taken a loan of Rs. 2 crores from City Financial Services in March 2007 and he had invested the same in Chitram Movies for his business purposes and claimed set off of the interest payment against the income from partnership firm u/s 36(i)(iii) of the Act. The A.O, however, held that the assessee has not substantiated with the necessary evidence, the link of the investment and that it was made for the business purposes of the assessee. He, therefore, disallowed the interest claim of Rs. 24,94,669/- and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of the A.O and also further held that the same is not allowable even u/s 14A of the Act. The assessee is in second appeal before us, by raising the following grounds of appeal:

> *"1. The Hon. ITAT may admit grounds of appeal which are taken up for the first time and not taken up before the lower authorities earlier, as per the ratio laid down by the Hon. Supreme Court of India in the case of National*

Thermal Power Corporation Ltd vs. CIT [1998] 229 ITR 383 (SC).

2. The order of the Ld. Commissioner of Income Tax (Appeals) for the assessment year 2013-14 in the case of the Appellant, Sri Dharma Teja, is bad both on facts and law and prejudicial to the interest of the appellant.

3. The Ld. CIT (A) erred in dismissing the appeal of the appellant holding that appellant's claim of payment of interest amount of Rs. 24,94,669 is not allowable under section 36(i)(iii) of the Income Tax Act, 1961 (hereinafter referred to as, Act) and alternatively under section 14A of the Act.

4. The Ld. CIT (A) erred in dismissing the appeal of the appellant without affording reasonable opportunity of being heard to the appellant and without appreciating the facts of the case.

5. The Ld. CIT (A) ought to have appreciated the fact that the A.O erred in making an addition of Rs. 24,94,669 towards disallowance of appellant's claim of interest, without affording reasonable opportunity of being heard to the appellant and without appreciating the facts of the case.

6. The Ld. CIT(A) erred in holding that interest bearing loans borrowed by the appellant have been diverted for the purpose other than business purpose, without any supporting evidence.

7. The Ld. CIT(A) ought to have appreciated the fact that the appellant has utilised the loans borrowed in question for the purpose of business and his claim of payment of interest is eligible for deduction.

8. The Ld. CIT (A) ought to have appreciated the fact that the appellant has utilised the loans borrowed in question for business expediency.

9. The Ld. CIT (A) erred in holding that there is no nexus between borrowed loans and income received by the appellant.

10. The Ld. CIT(A) ought to have appreciated the fact that the loans in question were utilised for investment in MI s.

Chitram Movies, a partnership firm in which the appellant is a partner.

11. The Ld. CIT (A) erred in disallowing appellant's claim of payment of interest by invoking provisions of section 14A of the Act.

12. The Ld. CIT (A) ought to have appreciated the fact that the appellant through his investment has not received any income which is exempt from tax.

13. The Ld. CIT (A) ought to have appreciated the fact that share of profit by the appellant is subject to taxation in the hands of the firm, before he receives.

14. The Ld. CIT (A) erred in holding personal loan (on which payment of interest of Rs.18,008 was claimed) as ingenuine.

15. The Ld. CIT (A) erred in holding that appellant's claim of interest amount of Rs. 18,008 is not allowable as deduction uls 36(1)(iii) or Dis 37 of the Act.

16. The Ld. CIT (A) erred in relying on the case laws the facts of which are different from the facts of appellant's case.

17. The Ld. CIT(A) erred in holding that the assessee has invested loan amounts in question in his firm MI s. Chitram Movies, without charging any interest.

18. The CIT (A) ought to have appreciated the fact that as per partnership deed, the appellant was eligible to receive interest only on event of profits in the firm.

19. The appellant may add or alter or amend or modify or substitute or delete and/ or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.

9. The Ld. Counsel for the assessee while reiterating the submissions made by the assessee before the authorities below, submitted that there is no dispute that the assessee has invested the loan amount into the partnership firm and therefore the income from partnership firm is to be

assessed as business income and the interest paid on the loan is the expenditure which is to be allowed against the same u/s 36(i)(iii) of the Act. In support of his claim, he placed reliance upon the decision of the Coordinate Bench of this Tribunal at Mumbai in the case of Sudheer Dattaram Patil Vs. DCIT, reported in [2005] 2 SOT 678 Mumbai.

10. Ld. DR, on the other hand, supported the orders of the authorities below.

11. Having regard to the rival contentions and the material on record, we find that the interest on borrowed capital can be set off against the income from partnership firm u/s 36(i)(iii) of the Act as held by the Coordinate Bench of the Tribunal in the case of Sudheer Dattaram Patil (Supra). The A.O himself has given a finding that the loan taken from the City financial Services has been invested in M/s. Chitram Movies. Therefore, (interest expenditure) can be set off against the income from partnership firm. As regards the CIT(A)'s finding that the same is not allowable u/s 14A of the Act, we are not able to agree with his finding because the income from partnership firm though is not taxable in the hands of the assessee, it

has suffered tax in the hands of the partnership firm and therefore it is not totally tax free or exempt income and the provisions of Sec. 14A cannot be made applicable to such cases. Accordingly, appeal of the assessee is allowed.

12. In the result, both the appeals filed by the assessee are allowed.

Pronounced in the open court on 29th May, 2019

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(P. MADHAVI DEVI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, Dated: 29th May, 2019

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1Shri Dharma Teja C/o P. Murali & Co. Cas, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad.
2) ACIT, Circle – 13(1), Hyderabad.
3)ITO, Ward – 14(5) Hyderabad.
4) CIT(A)-6, Hyderabad.
5) Pr.CIT-6, Hyderabad.
6) The Departmental Representative, I.T.A.T., Hyderabad.
7) Guard File.