

**आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई**  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
Before Shri Duvvuru RL Reddy, Judicial Member &  
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A.No.2732/Chny/2018  
निर्धारण वर्ष/Assessment Year:2014-15

M/s. Home Theatre Solutions,  
No. 24, Arulambal Street,  
T. Nagar, Chennai 600 017.

The Income Tax Officer,  
Vs. Non Corporate Ward 1(3),  
Chennai 600 034.

**[PAN:AAFFH2223P]**

**(अपीलार्थी /Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri Guru Bashyam, JCIT  
सुनवाई की तारीख/ Date of hearing : 25.06.2019  
घोषणा की तारीख /Date of Pronouncement : 19.07.2019

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 2, Chennai dated 10.07.2018 relevant to the assessment year 2014-15. The only effective ground raised in the appeal of the assessee relates to confirmation of disallowance made under section 40(a)(ia) of the Income Tax Act, 1961 ["Act" in short] towards non-deduction of TDS.

2. At the outset, the Id. Counsel for the assessee has submitted that there is only one day delay in filing the appeal since the assessee was

prevented by sufficient cause and prayed for condoning the delay to which; the Id. DR has not raised any serious objection. Consequently, since the assessee was prevented by sufficient cause, the delay of 1 day in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed its return of income for the assessment year 2014-15 on 31.03.2016 admitting total income of ₹.2,51,000/-. The case was selected for scrutiny. Against service of statutory notices, the assessee filed the details called for. After verification of details filed by the assessee and considering the submissions, the Assessing Officer completed the assessment under section 143(3) of the Act and determined the income of the assessee at ₹.33,84,377/- after making disallowance under section 40(a)(ia) of the Act for want of evidence towards TDS.

4. On appeal, after considering the written submissions of the assessee, the Id. CIT(A) confirmed the disallowance.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that certain payments are payable and subsequently paid in the subsequent assessment years and also deducted TDS for the entire amount and prayed for deleting the

addition. On the other hand, the Id. DR strongly supported the orders of authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. On verification of the details of expenditure furnished by the assessee, the Assessing Officer observed that the assessee had not remitted any TDS payments on the expenditure incurred towards clearing and forwarding charges of ₹.2,63,335/- before the due date of filing of return of income and accordingly, brought to tax under section 40(a)(ia) of the Act. It was the submission of the assessee that the above amount was not charged through separate bills by the forwarding and clearing agents. It was included in their total bills which includes all the expenses to be reimbursed by the firm for clearing their imports of their equipment. Hence, the total amount was paid without deducting TDS since it was not predominantly disclosed in their invoices. The above statement is not acceptable because, without separate bills, on what basis, the assessee made payments towards clearing and forwarding charges of ₹.2,63,335/-. When the assessee made payment towards clearing and forwarding charges, he is liable to deduct TDS on such payments. In the absence of complete bills, vouchers, etc., the Id. CIT(A) confirmed the disallowance under section 40(a)(ia) of the Act. However, before the Tribunal, the Id. Counsel for the assessee submitted that the bills,

vouchers, etc. are available with the assessee and prayed for one more opportunity to present the same before the Assessing Officer. Accordingly, we remit the matter back to the file of the Assessing Officer to decide the issue afresh by considering the evidence of TDS payment made by the assessee as may be filed for consideration. Thus, the ground raised by the assessee is allowed for statistical purposes.

6.1 With regard to the disallowance of rental payment made to Chowdary and D.S. Prasad of ₹.22,76,174/-, it was the submission that the TDS deducted on the rental payment was, though not remitted before the due dates, the total TDS amount was paid by the firm on 22.08.2015 before filing their return of income for the assessment year 2014-15 and filed ledger copies and form 16A before the Id. CIT(A). However, by observing that the remittance was made only after the end of the relevant financial year, the Id. CIT(A) confirmed the disallowance made under section 40(a)(ia) of the Act.

6.2 We have considered the rival submissions. While reiterating the same arguments as advanced before the Id. CIT(A), it was further submissions of the Id. Counsel for the assessee that the assessee has complied to the statutory provisions under Chapter XVII-B of the Act that the assessee deducted the TDS and remitted to the Government account. It was further submission that in CBDT Circular No.7 dated 05.07.2003 in explanatory notes and provisions relating to Direct Taxes, wherein it was stated that

'according to the existing provisions disallowances were attracted for non-payment or non-deduction and since, the assessee has deducted the tax at source and also made the payment of the TDS, no disallowance is warranted and prayed for deleting the addition. In this case, the return of income for the assessment year 2014-15 was filed on 31.03.2016 and the due date for filing of return under section 139(1) of the Act is 30.09.2014. Thus, it is evident that the TDS amount was not remitted in the year it was deducted, but, it was remitted only in the next year. The provisions of section clearly states that where the tax has been deducted but paid in any subsequent year, the same will be allowed as deduction in the year in which tax has been paid or deducted. The said CBDT circular also states the same. Therefore, for allowing the deduction of the expenditure, not only deduction of tax at source but also remittance to Government of India account is a mandatory requirement. In this case, admittedly, the return of income for the assessment year 2014-15 was filed on 31.03.2016. The provision of section envisages that the TDS deduction made should have been remitted to Government account on or before the due date of filing of return of income under section 139(1) of the Act. The Proviso to section 40(a)(ia) of the Act makes it very clear that expenditure is allowed in the year in which the tax has been remitted to. Thus, the assessee is entitled for claiming the expenditure in the year in which it was paid. In the assessee's case, though the tax was deducted but remitted to the Government account

in the subsequent year. Therefore, the Assessing Officer has rightly applied the provisions of section 40(a)(ia) of the Act and disallowed the claim of the assessee and the Id. CIT(A) has confirmed the disallowance. The assessee's argument on this ground is not acceptable and thus, the ground raised by the assessee is dismissed.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 19<sup>th</sup> July, 2019 at Chennai.

Sd/-  
(S. JAYARAMAN)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 19.07.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.