

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 880/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2011-12)

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| Shri Keyur D Gandhi HUF 'Keyur', Spring Valley, B/h Karnavati Club, S. G. Highway, Ahmedabad 380058 | बनाम/ Vs. | ACIT Circle - 11, Ahmedabad |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACHK0790H | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से /Appellant by : | Smt. Urvashi Shodhan, A.R. |
| प्रत्यर्थी की ओर से / Respondent by : | Shri Lalit P. Jain, Sr. D.R. |

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| सुनवाई की तारीख / Date of Hearing | 17/10/2019 |
| घोषणा की तारीख /Date of Pronouncement | 23/10/2019 |

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-5, Ahmedabad (CIT(A)' in short), dated 06.01.2016 arising in the assessment order dated 04.02.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. Grounds of appeal raised by the assessee as under:

- “1 Ld. CIT (A) erred in law and on facts confirming disallowance of interest expense of Rs. 42,184/- paid to Kotak Mahindra Prime Ltd made by u/s 40(a)(ia) of the Act for non deduction of tax at source.
2. Ld. CIT (A) erred in law and on facts upholding action of AO treating sale transaction of 2 properties though sold in A Y 2011/12 by mistake shown & offered to tax in A Y 2012/13 as unaccounted transaction.
3. Ld. CIT (A) ought to have accepted plea of appellant to direct AO to grant relief of taxes paid for AY 2012/13 once AO accepted in remand report of appellant having paid taxes on same sale transaction for both the years.
4. Ld. CIT (A) erred in law and on facts confirming action of AO treating rent income of Rs. 44,150/- as income for A Y 2011/12 that is already treated as income in A Y 2012/ 13 on accrual basis.”

Additional Ground:

1. AO/CIT(A) erred in disallowing 20% of interest expense incurred on car loan as personal in nature.”

3. When the matter was called for hearing, the learned AR for the assessee submitted that Ground No.1 concerns disallowance of Rs.42,184/- in respect of interest paid to Kotak Mahindra Prime Ltd. without deduction of tax. It was submitted that identical issue came up in the case of *ITO vs. Arvind Lifestyle Brands Ltd.* in *ITA No.3461/Ahd/2015* order dated 27.08.2018. The relevant para concerning the issue is reproduced hereunder for easy reference:

“9. Ground No.2 concerns disallowance of Rs.4,24,692/- in respect of interest paid to NBFC without deduction to tax.

10. During the course of the assessment proceedings, it was noticed by the AO that the assessee had paid interest of Rs.4,24,692/- on vehicle loans to Kotak Mahindra Prime Ltd. (A NBFC and subsidiary of Kotak Mahindra Bank Ltd.). It was observed by the AO that assessee has failed to deduct tax at source as per provisions of Section 194A on such interest expenses. The AO accordingly invoked the provisions of Section 40(a)(ia) of the Act and disallowed the expenses.

11. In the first appeal, the CIT(A) relied upon the decision of the Hon'ble Delhi High Court in the case of *Ansal Lankmark Township (P.) Ltd. vs. CIT 279 CTR 384 (Delhi)* which hold that 2nd proviso to Section 40(a)(ia) of the Act is retrospective in nature and applicable to the AY 2011-12 in question. In the light of the aforesaid decision, the CIT(A) held remitted the matter back to the file of the AO to allow the aforesaid

expense, if it is found that the recipients have offered the payments made by the assessee as income in their tax return.

12. We find that similar issue was under consideration before the co-ordinate bench in the case of Dipak r. Gondaliya vs. ITO in ITA No.3313/Ahd/2015 & Another order dated 16.03.2016 cited on behalf of the assessee in the course of hearing. The relevant para dealing with the issue by the co-ordinate bench reads as under:

- “3. The common grievance in both these appeals relates to the holding that the amendment to Section 40(a)(ia) by the Finance Act, 2012 w.e.f. 01.04.2013 is prospective and by holding so the assessee is aggrieved by the disallowance of interest expenditure.*
- 4. While scrutinizing the return of income, the A.O noticed that the assessee has taken loan for purchase of property from Reliance Capital and has also taken Car loan from Kotak Mahindra Ltd. The A.O further noticed that the assessee has made interest payment to these parties without making any deduction of tax at source. Assessee was asked to explain on the disallowance of interest expenditure should not be made u/s. 40(a)(ia) of the Act.*
- 5. Assessee filed a detailed reply claiming that if the payees have offered the income for tax and has paid taxes thereon provisions of Section 40(a)(ia) are not applicable because of the amendment brought in the explanation. However, this claim of the assessee did not find favour with the A.O, who was of the firm belief that the amendment is applicable from A.Y. 2013-14 onwards and accordingly made the disallowance of interest.*
- 6. Assessee carried the matter before the ld. CIT(A) but without any success. Before us, the ld. counsel for the assessee stated that the issue is no more res integra as the Hon'ble High Court of Delhi has held that applicability of second proviso to Section 40(a)(ia) has retrospective effect. Per contra, the ld. D.R. drew our attention to the Departmental view of CBDT vide Circular No. 10/DV/2013 dated 16.12.2013. It is the say of the ld. D.R. that in the light of the said Circular, the disallowance made by the A.O and confirmed by the ld. CIT(A) should be upheld.*
- 7. We have given a thoughtful consideration to the orders of the authorities below and have carefully considered the rival contentions. At the very outset, we have to say that the reliance on the Circular by the D.R. is misplaced as that Circular refers to the decision of the Tribunal Special Bench, Vishakhapatnam in the case of Merilyn Shipping & Transports vs. Addl. CIT. The Circular also refers to the decision of the Hon'ble High Court of Gujarat, High Court of Allahabad which all relates to the issue relating to "paid or payable" whereas the issue before us relates to the amendment of second proviso to Section 40(a)(ia) which has been held to have a retrospective effect by the Hon'ble High*

Court of Delhi in the case of Ansal Landmark Township Pvt. Ltd. 279 CTR 384.

8. *However, in the interest of justice and fair play, we restore this issue to the files of the A.O. The assessee is directed to furnish necessary evidences to show that the payee has filed returns and offered the sum received to tax. The A.O is directed to verify the same and decide the issue in the light of the ratio laid down by the Hon'ble High Court of Delhi (supra).*
9. *In the result, both these appeals by the assessee are treated as allowed for statistical purpose."*

13. A perusal of the order of the CIT(A) shows that its action is squarely in tandem with the observations made by the co-ordinate bench. The CIT(A) has rightly applied the ratio laid down by the Hon'ble Delhi High Court in the facts of the case. Thus, there is no warrant to interfere with the same.

14. In the result, Ground No.2 of the Revenue's appeal is dismissed."

In the light of the decision of the co-ordinate bench, we restore the issue to the file of the AO. It shall be open to the assessee to furnish necessary evidences to show that payee has filed returns and has included the receipt from the assessee for the purposes of taxation. The AO may also make suitable inquiries in this regard and decide the issue in accordance with law.

4. In the result, Ground No.1 of the assessee's appeal is allowed for statistical purposes.

5. Ground Nos. 2 & 3 concern addition on account of income from sale of two properties in AY 2011-12 resulting into double taxation.

6. In the course of hearing, the learned AR for the assessee submitted that admittedly the sale transactions of two properties happened in AY 2011-12 was wrongly accounted for and offered to taxation in AY 2012-13. On being confronted by AO, the assessee however duly paid tax in correct AY 2011-12. It was thus submitted that appropriate direction would thus be required from the Tribunal as the Revenue authorities have failed to refund the tax collected on such income in AY 2012-13 while simultaneously collecting the taxes in AY 2011-12.

7. We find apparent justification in the plea of the assessee. The same income cannot be taxed in two assessment years simultaneously as per the scheme of taxation. Thus, while the assessee may not be permitted to defer the tax liability of income of the present year to the next year, the Revenue at the same time cannot sit over the taxes wrongly paid for the income already assessed in the preceding assessment year AY 2011-12 and refusing to refund the same in AY 2012-13. The action of the CIT(A) is accordingly set aside on this score and the AO is directed to refund the taxes collected in AY 2012-13 in accordance with law after ascertaining the fact of the taxes recovered on the same income in AY 2011-12.

8. In the result, Ground No.2 & 3 of the assessee's appeal are allowed for statistical purposes.

9. Ground No.4 concerns redressal of dispute on account of mis-match in the rent income offered as per return of income vis-à-vis income accrued reported by the payer as reflected in annual statement Form No.26AS of the assessee. The learned AR for the assessee while addressing the issue submitted that while the payer has wrongly declared the rent income of 13 months in Form No.26AS in AY 2011-12 in question, the assessee has declared actual income for 12 months. The prayer has committed mistake in the subsequent year and declared rental income for 11 months whereas the assessee has declared rental income again for 12 months. Thus, the mis-match of one month rent is purely an accounting mistake attributable to the prayer for which the assessee should not be penalized. It was submitted that entire exercise is tax neutral. The learned AR for the assessee however at the same time submitted that the issue may be sent back to the AO for necessary factual verification in this regard, if considered expedient.

10. We find the averments made on behalf of the assessee to be just and proper. The issue is remitted back to the file of the AO for factual verification of the aspects and re-determination of the issue in accordance with law after giving opportunity to the assessee in this regard.

11. In the result, Ground No.4 of the assessee's appeal is allowed for statistical purposes.

12. The assessee has also raised an additional ground challenging the disallowance of estimated disallowance of 20% of interest expenditure incurred of car loan as personal in nature. We are not impressed by the late challenge of this aforesaid issue without putting it across before the CIT(A). Additional ground towards disallowance of interest expenditure cannot be permitted to be raised at this stage where necessary evidence towards sole user of car for business purposes is not available on record. The assessee cannot raise additional ground without good reason at a belated stage without showing its bonafides. The additional ground raised is thus dismissed.

13. In the result, the appeal filed by the assessee is partly allowed.

This Order pronounced in Open Court on 23/10/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 23/10/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।