

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1582/Bang/2018
Assessment year : 2012-13

The Dy. Commissioner of Income-tax, Circle-7(1)(1), Bengaluru.	Vs.	M/s United Steel International Pvt. Ltd., No.32/1-2, Crecent Tower, Crecent Road, High Grounds, Bengaluru-560 001. PAN – AAACU 9236 F
APPELLANT		RESPONDENT

Appellant by	:	Smt. R Premi, JCIT (DR)
Respondent by	:	None

Date of hearing	:	10.12.2019
Date of Pronouncement	:	11.12.2019

ORDER

Per B.R Baskaran, Accountant Member :

The Revenue has field this appeal challenging the order dated 7/3/2018 passed by Id CIT(A)-7 Bengaluru and it relates to the asst. year 2012-13.

2. The Revenue is aggrieved by the decision of Id CIT(A) in directing the AO to delete interest disallowance made u/s 40a(ia) of the Act for non deduction of tax at source, after verification of the said information.

3. None appeared on behalf of the assessee. Even though the case was posted for hearing several occasions hence we proceed to dispose of the appeal ex-parte without the presence of the assessee.

4. We heard the ld DR and perused the record. The assessee is engaged in the business of trading in mining products. During the course of asst. proceedings the AO noticed that the assessee has paid interest of Rs.1.72 crores to a sister concern named M/s United Mega Builders without deducting tax at source as required u/s 194A of the Act. Before AO the assessee furnished a certificate obtained in Form No.26A as per first proviso to sec. 201(1) of the Act and accordingly claimed that the provisions of sec. 40a(ia) should not be applied to it. The AO took the view that the above said provisions shall apply only w.e.f from asst. year 2013-14 and accordingly rejected the explanations given by the assessee. Accordingly he made disallowance of Rs.1.72 crores u/s 40(a)(ia) of the Act.

5. The ld CIT(A) noticed that the Bengaluru Bench of Tribunal has held in the case of G Shankar Vs. ACIT (ITA No.1832/Bang/2013) dated 10/10/2014 that the second proviso to sec. 40(a)(ia) of the Act is retrospective in application w.e.f 1/4/2005. Accordingly, following the above said decision of Tribunal, the Ld CIT(A) directed the AO to consider the certificate in Form No.26A filed by the assessee, verify the facts and allow the deduction if the said amount has been shown as receipt by M/s

United Mega Builders in its Books of accounts and offered to tax in the period under consideration.

6. The Revenue is aggrieved by the decision so rendered by Id CIT(A).

7. The Id DR submitted that the Id CIT(A) does not have power to set aside the issue to the file of AO. She further submitted that the second proviso to sec. 40(a)(ia) has been inserted by the Finance Act No.2012 w.e.f 1/4/2013 and hence it shall apply only from asst. year 2013-14.

8. We noticed that the applicability of second proviso has been examined by the coordinate bench in the case of G Shankar (supra) and the relevant observations made by the Tribunal has been extracted by Id CIT(A) in its order and the same read as under:-

“the second proviso to section 40(a)(ia) of the Act is retrospective in application w.e.f 01 Apr 2005. As per this newly inserted proviso, the assessee is required to file form 26A as per rule 31ACB of the IT Rules 1962 so as not to be held as an assessee in default as per proviso to section 201 of the Act. As held in the decision of the coordinate bench in the case of S.M Anand vs. ACIT (supra), since the assessee in the period under consideration i.e. assessment year 2005-06, could not have contemplated that such a compliance was to be made, we also in the case on hand, remit the matter to the file of the Assessing

Officer for affording the assessee adequate opportunity to file Form No.26A and verification of whether the said payee has reflected the payment/receipt in his books of account and offered the same to tax in the period under consideration.”

9. We noticed that the Id CIT(A) has followed the above said decision of Tribunal and since the matter requires verification he has restored the same to the file of AO. It is the contentions of the Id DR that the Id CIT(A) does not have power to set aside the matter to the file of AO. Since the claim of the assessee requires verification at the end of AO, we set aside the said issue to the file of AO and the same will regularize the order passed by Id CIT(A).

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on **11th December, 2019.**

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, the 11th **December**, 2019.
/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
Dictation note enclosed
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
.....
14. Dictation note enclosed
.....