

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA NO. 255/MUM/2019 : A.Y : 2014-15

Surendrakumar Mohanlalji Kothari Vs. ITO - 18(3)(4), Mumbai
413F, 1st floor, Vasant Wadi, (Respondent)
Kalbadevi Road, Mumbai 400 002.
PAN : AADPK9103F (Appellant)

**Appellant by : Shri Rajesh Shah
Respondent by : Shri R. Bhoopathi**

**Date of Hearing : 20/01/2020
Date of Pronouncement : 29/01/2020**

ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of CIT(A)-53, Mumbai dated 10.12.2018 for assessment year 2014-15.

2. Shri Rajesh Shah appearing on behalf of assessee submitted that disallowance has been made by Assessing Officer under Section 40(a)(ia) of the Income Tax Act, 1961 (in short 'the Act') on the ground that assessee has not deducted TDS on the payment of rent – Rs.3,84,000/-. The assessee furnished Form 26A to show that recipient of rent has declared rent received in the return of income and has offered rental income to tax. Thus, there is no escapement of revenue. The CIT(A) has upheld the findings of Assessing

Officer on the ground that declaration in Form 26A was not available before the Assessing Officer and further, the return of income was also not furnished to the Assessing Officer for verification. The observations of the CIT(A) are factually incorrect. The learned AR pointed that the authorities below have erred in not considering the relevant documents filed by the assessee to substantiate that the payee had offered rental income to tax, therefore, no disallowance under Section 40(a)(ia) of the Act should have been made.

3. *Per contra*, Shri R. Bhoopathi representing the Department vehemently defended the impugned order. The learned DR submitted that undisputedly the assessee defaulted in deduction of tax at source on payment of rent. Further, no documents were furnished by the assessee before the authorities below to show that the payee had offered rental income to tax.

4. Both sides heard. Orders of authorities below perused. Ostensibly, assessee had furnished declaration in Form 26A before the Assessing Officer. This fact is evident from perusal of para 5 of assessment order. However, the Assessing Officer failed to examine the same. The provisions of Section 40(a)(ia) of the Act have been amended by the Finance Act, 2012 w.e.f. 01.04.2013. The second proviso has been inserted to Section 40(a)(ia) of the Act by the amendment. The proviso reads as under :-

“Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.”

5. Thus, in light of the second proviso, we deem it proper to restore this issue back to the file of Assessing Officer to re-examine the documents furnished by assessee in support of his contention that the rental income has been offered to tax by the payee.

6. In the result, impugned order is set aside and appeal of the assessee is allowed for statistical purpose.

Order pronounced in open Court on Wednesday, the 29th day of January, 2020.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Date : 29th January, 2020

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai