

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5951/Del/2016  
(Assessment Year: 2012-13)

OK Play India Ltd, Plot No. 17-18, Roz Ka Meo, Industrial Estate, Nuh Mewat, Haryana PAN: AAACO2623G	Vs.	DCIT, Circle-3, Gurgaon
(Appellant)		(Respondent)

Assessee by :	Shri Gautam Jain, Adv Shri Lalit Mohan, CA
Revenue by:	Ms. Pramita M. Biswas, CIT DR
Date of Hearing	10/02/2020
Date of pronouncement	13/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-1, Gurgaon dated 05.09.2016 for the Assessment Year 2012-13.
2. The assessee has raised the following grounds of appeal:-
  - “1. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the disallowance of Rs. 1,09,250/- representing the payments made to Tata Capital Limited towards the interest paid on financing of vehicles by invoking section 194A read with section 40A(ia) of the Act.*
  - 1.1 *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since no sum was payable at the end of the year, disallowance made under section 40A(ia) of the Act is not in accordance with law and therefore, warranted deleted.*
  2. *That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding disallowance of Rs. 6.87,397/- representing the alleged notional expenditure incurred on interest on advances by invoking section 36(l)(iii) of the Act.*
  - 2.1 *That the learned Commissioner of Income Tax (Appeals) has proceeded to uphold the disallowance of interest on surmises, conjectures and suspicion and without establishing any nexus that the borrowed funds were utilized for the purpose of advances and in absence of such a*

*burden having been discharged, disallowance made was not in accordance with law and therefore, ought to have been deleted.”*

3. The brief facts of the case are that the assessee is a company who filed its return of income declaring loss of Rs. 48770276/- on 28.09.2012. The assessment order u/s 143(3) of the Act was passed on 30.03.2015, wherein the ld AO made several disallowances. The assessee preferred an appeal before the ld CIT(A) who partly allowed the appeal of the assessee, however, sustained (1) the disallowance of Rs. 109250/- representing interest payment made to Tata Capital Ltd by financing vehicles by invoking the provisions of section 40(a)(ia) of the Act as the assessee failed to deduct tax at source and (2) addition upheld by him is with respect to disallowance of Rs. 687397/- representing the notional expenditure incurred on interest on advance u/s 36(1)(iii) of the Act. The assessee is in appeal for both these disallowances.
4. The first issue involved is with respect to disallowance of Rs. 109250/- being interest paid to Tata Capital Ltd without deduction of tax at source. This is challenged as per ground No. 1 of the appeal. According to the ld AO the assessee has paid interest to a non-banking financial company and failed to deduct tax thereon u/s 194 A of the Act. The ld CIT(A) also held so and confirmed the disallowance u/s 40(a)(ia) of the Act.
5. The ld AR reiterated the submission made before the ld CIT(A) which is reproduced at page No. 3 and 4 of the order. The ld AR further submitted that the assessee cannot be held to be a assessee in default by virtue of proviso to section 201(1) of the Act. He further referred to proviso inserted w.e.f 01.04.2020 in section 40(a)(ia) of the Act and submitted that if the non banking financial company has paid the tax on the interest income, then assessee cannot be held to be assessee in default and therefore, no disallowance can be made.
6. The ld DR supported the order of the lower authorities.
7. We have carefully considered the rival contentions. Assessee paid interest to Tata capital Fund Ltd which is a Non banking Finance Co. According to us lower authorities have correctly held that assessee should have deducted tax on such interest payments u/s 194 A of the act. We find that proviso to section 201(1) has been inserted by the Finance Act 2012 w.e.f. 01.07.2012 which gives a benefit to the assessee, who has failed to deduct tax at source.

According to that if the above sum has been included by the payee in the return of income and a certificate is furnished certifying conditions complied there with, then no disallowance should be made. W.e.f 01.04.2020 a proviso is also inserted u/s 40 a (ia) incorporating similar conditions with respect to disallowance. Therefore, by holding that the assessee should have been deducted tax at source on interest payment made to a non banking financial company u/s 194A of the Act, we are of the view that the assessee should also be granted benefit of the proviso inserted in section 201(1) and section 40(a) of the Act. Both the proviso in respective sections are inserted to reduce the hardship. Therefore, both of them are retrospective in nature. Therefore, we set aside the whole issue back to the file of the ld AO with a direction to the assessee to comply with this provisions by furnishing necessary details. If the ld AO is satisfied with those details, then disallowance deserved to be deleted. Accordingly, ground No. 1 of the appeal is allowed.

8. Ground No. 2 of the appeal is with respect to the disallowance of interest u/s 36(1)(3) of the Act of Rs. 687397/-.
9. The facts of this issue shows that on the perusal of the balance sheet the ld AO noticed that certain advances to creditors are of capital nature has been made. Therefore, applying the proviso to section 36(1)(iii) interest paid on such advances are required to be capitalized. He found that the two parties have been given advances of Rs. 70 lacs and Rs. 50 lakhs respectively, he worked ng out the interest thereon @13% amounting to Rs. 687397/- and disallowed the same. On appeal before the ld CIT(A) the assessee contested the same. However, he upheld the action of the ld AO. He held that these amounts were paid from the cash credit account and there was only debit balance on this account at any moment of time.
10. The ld AR reiterated the submission made before the ld CIT(A).The ld DR supported the orders of the lower authorities.
11. We have carefully considered the rival contentions. The assessee has paid the total interest expenditure of Rs. 53978642/-. With respect to both the parties the assessee contested that cash has been generated which is deposited in cash credit account out of operations and further the company has interest free reserves and surplus of Rs. 2856.35 lakhs. It was stated

that as the assessee has adequate non- interest bearing funds, the above disallowance cannot be made. The issue is clearly covered in favour of the assessee by decision of the Hon'ble Supreme Court in CIT Vs. Reliance Industries Ltd 401 ITR 466 as the assessee has sufficient interest free funds available which were sufficient to meet the amount of advances given to the creditors, no disallowance u/s 36(1)(iii) can be made. In view of this we direct the ld AO to delete the disallowance of Rs. 687397/-. The ground No. 2 of the appeal is allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 13/05/2020.

(BHAVNESH SAINI)  
JUDICIAL MEMBER

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 13/05/2020  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi