

आयकर अपीलीय अधीकरण, न्यायपीठ – “सि” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “Virtual Court C” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.2616/Kol/2018
Assessment Year: 2013-14

M/s Aqua Transliners Pvt. Ltd., Sidha Park, 99A, Park Street, 5 th Floor, Kolkata-700 016 [PAN No.AAGCA 3607 C]	<u>बनाम</u> / V/s.	DCIT, Circle-9(1), P-7, Chowringhee Square, Aayakar Bhawan, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Smt. Ranu Biswas, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	13-08-2020
घोषणा की तारीख/Date of Pronouncement	19-08-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee’s appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (Appeals)-3, Kolkata’s order dated 11.10.2018 passed in case No.CIT(A)- Kolkata-3/10471/16-17 involving proceedings 143(3) of the Income Tax Act, 1961; in short ‘the Act’.

Case called twice. None appears at the assessee’s behest. It is accordingly proceeded ex parte. The case is now taken up for hearing on merits.

2. With the able assistance of learned departmental representative, we notice that the assessee’s sale substantive grievance to that that the CIT(A) has affirmed the Assessing Officer’s action disallowing interest payment of ₹56,74,027/- as well as

audit fees of ₹31,346/- on account of deposit of TDS already deducted within the specified time period as under:-

“3. OBSERVATIONS AND DECISION:

The only issue in this case is the disallowance made by the Assessing Officer u/s 40(a)(ia) of Rs.5705463/-. The Assessing Officer has observed in the assessment order that tax at source was deductible on the interest payment of Rs.5674027/- u/s. 194A and on the audit fees paid of Rs.31346/- u/s 194J. No documentary evidences regarding the payment, of the tax deducted at source, into the government account was furnished before the Assessing Officer and accordingly he disallowed the said sum of Rs.5705463/- u/s40(a)(ia).

Before me the Authorised Representative of the appellant contended that the interest amount of Rs.5674027/- disallowed pertained to earlier previous year i.e. for the F.Y 2011-12 and that the said amount cannot be disallowed in respect to the current previous year i.e. 2012-13. I have gone through the submissions of the assessee and the findings of the Assessing Officer carefully. The basic facts are that during the previous year the appellant company has claimed to have paid interest of Rs.5674027/- and audit fees of Rs.31436/-. The Authorised Representative of the appellant vide order sheet noting dated 11/10/2018 has stated the following:-

- 1) The tax at source, on the interest payment of Rs.5674027/-, was deducted by the appellant of Rs.567403/- on 31/03/2012. The due date for the payment of the above tax deducted at source into the Government Account was 30/04/2012. It has been admitted by the Authorised Representative of the appellant that the said payment was not made into the Government account by the due date i.e. 30/04/2012.*
- 2) Similarly it has been stated by the Authorised Representative of the appellant that tax of Rs.3104/2012 was deducted at source on the Audit fees paid by the appellant of Rs.31436/-. Further it has been admitted by the Authorised Representative of the appellant that the above tax deducted at source was not deposited in the Government account by the due date i.e. 30/04/2012.*

*On perusal of the above it can be seen that the appellant has duly deducted tax at source, as admitted by the Authorised Representative, on the interest payment of Rs.5674027/- and on audit fees of Rs.31436/-. It is an admitted position that tax was deducted on 31/03/2012 and the due date for deposit of the tax in the Government Account was 30/04/2012. It has been admitted before me that though the tax was deducted it was not deposited in respect to the Government account. One legal argument taken by the Authorised Representative of the appellant is that since the sum on which 40(a)(ia) disallowance has been made pertained to F.Y 2011-12 no disallowance in A.Y 2013-14 should be made under 40(a)(ia). In this regard my observation is that on the interest payment and audit fees payment for the F.Y 2011-12 the appellant had duly deducted tax on 31.03.2012. Therefore there was no default of non-deduction u/s. 40(a)(ia) in the previous year 2011-12. Having deducted the tax the appellant was required to make payment of the said sum in the Government Account by the due date i.e. 30/04/2012. However the appellant has failed to deposit this sum in the Government account by the due date. Therefore the default u/s. 40(a)(ia) is of not depositing the tax amount in Govt. account and it took place, after the lapse of the due date, i.e. on 30/04/2012 which falls in the previous year 2012-13 and hence the disallowance u/s. 40(a)(ia) is required to be made in A.Y 2013-14. As admitted by the Authorised Representative the TDS amount has not been deposited in the Government account therefore the disallowance made by the Assessing Officer u/s. 40(a)(ia) is hereby **confirmed**. However as per the first proviso of section 40(a)(ia) as and when this payment is made by the appellant into the Government Account the deduction would be allowable in the A.Y relating to the previous year of payment.”*

3. The assessee's only plead is that the impugned expenditure pending to financial year 2011-12 and not *qua* that assessment year 2013-14. We find no merit in assessee's instant grievance. The fact remains that the assessee had claimed the impugned expenditure after actual payment of interest and audit fee followed by the TDS deduction thereupon in the relevant previous year only. All this sufficiently proves that he had raised the corresponding expenditure claim in assessment year 2013-14 only. Be that as it may, learned CIT(A) has also directed the Assessing Officer to allow the assessee's statutory benefit available u/s 40(a)(ia) 1st proviso of the Act i.e. to accept the assessee's impugned claim in the year in which the TDS sum already deducted is credited in the government account. We see no reason to interference with the CIT(A)'s foregoing action confirming the impugned disallowance therefore.

4. This assessee's appeal is dismissed.

Order pronounced in open court on 19/08/2020

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 19/08/2020 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-M/s Aqua Transliners Pvt. Ltd., Siddha park, 99A Park Street, 5th Floor, Kolkata-700 016
2. प्रत्यर्थी/Respondent-DCIT, P-7, Chowringhee Sq. Aayakar Bhawan, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।