

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1688 to 1690/Bang/2019
Assessment Years: 2010-11, 2012-13 & 2013-14

M/s. Infants Travels (P) Ltd. No.5, Subedar Garden Krishna Temple Road Indiranagar Bengaluru-560038 PAN NO :AABCI1204N	Vs.	Deputy Commissioner of Income-tax Circle-3(1)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar S.V., A.R.
Respondent by	:	Shri R. Premi, D.R.

Date of Hearing	:	09.03.2020
Date of Pronouncement	:	11.03.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

All these three appeals have been filed by the assessee challenging the orders passed by Ld. CIT(A)-3, Bengaluru confirming the additions made by the assessing officer u/s 40(a)(ia) of the Income-tax Act, 1961 [‘the Act’ for short] in assessment years 2010-11, 2012-13 & 2013-14.

2. We heard the parties and perused the record. This is second round of proceedings. The assessee had paid

interest to non-banking financial companies in all the three years on the loan taken by it from them. However, the assessee did not deduct tax at source as required u/s 194A of the Act. Hence the A.O. disallowed the interest expenditure by invoking provisions of section 40(a)(ia) of the Act. The details of interest paid by the assessee to various financial companies have been tabulated below:

Sl. No.	Name of company	Assessment year		
		2010-11	2012-13	2013-14
1.	<i>Reliance Capital Ltd.</i>	52,36,493/-	49,76,637/-	63,77,894/-
2.	<i>RIL Business Loan</i>	63,283/-		
3.	<i>Sundaram Finance Ltd.</i>	23,710/-		
4.	<i>Tata Motors</i>	26,19,981/-		
5.	<i>Cholamandalam Investment & Finance</i>		20,01,631/-	25,72,409/-
6.	<i>ReligareFinvest Ltd.</i>		34,65,264/-	52,66,940/-
7.	<i>Tata Capital</i>		13,45,731/-	15,90,830/-
8.	<i>Magma Fincorp Ltd.</i>		1,20,282/-	
9.	<i>Indiabulls Financial Services</i>			9,70,286/-

3. The Ld CIT(A) confirmed the disallowances and hence the assessee carried the matters before the ITAT and the Tribunal restored the issues, vide its order dated 11.08.2017, to the file of the AO for examining the issue afresh, since the assessee had placed reliance on the

second proviso to sec.40(a)(ia) of the Act inserted with effect from 1.4.2013 and further it was contended that the same shall have retrospective application. Hence the assessing officer has passed the impugned assessment orders.

4. It is pertinent to note that, as per second proviso to sec. 40(a)(ia), the disallowance u/s 40(a)(ia) is not required to be made if the assessee is not deemed to be an assessee in default under the first proviso to sec.201(1) of the Act. As per the first proviso sec. 201(1), the assessee, in order to be declared as an assessee not in default, is required to furnish a certificate from an accountant specifying therein that the recipient has furnished his return of income u/s 139, has taken into account such sum for computing total income and has paid the tax due on the total income so declared in the return of income.

5. Before the AO, the assessee appears to have submitted the certificates obtained from some of the companies in the prescribed Form No.26A. The AO issued letters to all the finance companies asking for their confirmation.

Since the AO did not receive any reply from them, he again made the disallowance u/s 40(a)(ia) of the Act in all the three years.

6. Before Ld CIT(A), the assessee submitted that it has furnished certificate in Form No.26A. It was contended that the assessee should not be penalized for non-response of the finance companies to the letter written by the AO. It was further admitted that some companies have confirmed lesser amount of interest only. Accordingly it was prayed that the disallowance made u/s 40(a)(ia) of the Act should be deleted.

7. The Ld CIT(A) was not convinced with the contentions of the assessee. He noticed that the Rule 31ACB of Income tax Rules has prescribed a procedure, according to which the certificate obtained in Form No.26A should be presented to Director General of Income tax (Systems) or the person authorized by him in accordance with the procedures, formats and standards specified in Rule 31ACB. Since the assessee has not followed the procedure prescribed in Rule 31ACB, the Ld CIT(A)

refused to take cognizance of certificates in Form 26A filed by the assessee before the AO. Accordingly he confirmed the disallowance made in all the three years.

8. For the sake of convenience, we extract below the operative portion of the order passed by Ld CIT(A) in assessment year 2010-11:-

4.4 Now as per appellant itself, it was not able to provide confirmation of interest payment to the extent of Rs 8,41,084/- from the payees. As regards balance amount of Rs 71,02,383/- the appellant has argued that requisite Form 26A along with Annexure A was produced before the AO. Since in relation to the interest amount totaling to Rs 8,41,084/- the appellant had itself failed to file any confirmation, the disallowance to that extent is confirmed. To decide about the allowability of the balance amount of Rs 71,02,383/-, it is important to look into the provisions of Section 40(a)(ia) of the Act. The relevant part of the same reads as follows:

"40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(a) in the case of any assessee—

(ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid,—

(A) in a case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sub-section (1) of section 139; or

(B) in any other case, on or before the last day of the previous year.]

(A. I. 2010-11)

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted—

(A) during the last month of the previous year but paid after the said due date; or

(B) during any other month of the previous year but paid after the end of the said previous year,

such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

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4.5 A proviso to the Section 40(a)(ia) of the Act was inserted by the Finance Act, 2012 w.e.f. 01.04.2013, which is reproduced as follows:

“ 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.”

4.6 As per the decision of ITAT in the case of the appellant, this proviso would apply to the year under consideration as the said proviso was declaratory and clarificatory in nature and thus should be read w.e.f. 01.04.2005. Now this second proviso of the Section 40(a)(ia) provides that if 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 it shall be deemed that the assessee had deducted and paid the tax on such sum on the date of furnishing the return of income. The provisions of Section 201(1) of the Act read as follows :

“201. (1) Where any person, including the principal officer of a company,—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum



(A. I. 2019-20)

paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

- (i) has furnished his return of income under section 139;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

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4.7 The relevant Rule 31ACB reads as follow:

“Form for furnishing certificate of accountant under the first proviso to sub-section (1) of section 201.

31ACB. (1) The certificate from an accountant under the first proviso to sub-section (1) of section 201 shall be furnished in Form 26A to the Director General of Income-tax (Systems) or the person authorised by the Director General of Income-tax (Systems) in accordance with the procedures, formats and standards specified under sub-rule (2), and verified in accordance with the procedures, formats and standards specified under sub-rule (2).

(2) The Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the Form 26A and be responsible for the day-to-day administration in relation to furnishing and verification of the Form 26A in the manner so specified.”

4.8 Now in accordance with provisions of Section 201(1) read with Rule 31ACB of IT Rules, the appellant was required to file Form 26A along with Annexure-A before the DGIT (Systems) or the person authorized by him. Further as per Rule 31ACB (2) of the IT Rules, necessary verification of the form was required to be carried out as per the procedures specified by the DGIT systems. However no such action had been taken by the appellant to file Form 26A along with Annexure-A before the DGIT(Systems) or the person authorized by him. Thus although during the pendency of assessment proceedings, in consequence to order of the ITAT, the appellant had sufficient opportunity to file Form 26A, however the appellant had not availed the same as per procedure laid down in Rule 32ACB of the IT Rule. During appellate proceedings the appellant has argued that the said Form 26A along with Annexure-A was filed before the AO. However filing such form before AO does not fulfill the condition laid down in Rule 31ACB of the IT Rules. So no cognizance of the same could have been taken by the AO, as the verification of



the Form 26A could not have been done by the AO. Despite this, to comply with the directions of the ITAT, the AO issued notices under Section 133(6) of the Act to various NBFCs, however they did not respond. So as such the claim of the appellant remained unverified. Even if the confirmation had been received, considering the fact that the appellant was never deemed to be an assessee not in default as per provisions of first proviso to Section 201(1) of the Act, the benefit of second proviso to Section 40(a)(ia) of the Act could not have been granted to it by the AO. Thus balance disallowance of Rs 71,02,383/- is also confirmed.

4.9 Considering above, the action of the AO in making disallowance under Section 40(a)(ia) of the Act is upheld for the reason that the appellant failed to deduct tax at source on the interest payment and it was also not deemed to be an assessee not in default as per provisions of first proviso to Section 201(1) of the Act . The grounds of appeal 3 to 5 of the appellant are thus dismissed.

8. Aggrieved by the order passed by Ld CIT(A) in all the three years under consideration, the assessee has filed these appeals.

9. We heard the parties and perused the record. We notice that the Ld CIT(A) has confirmed the disallowance, only for the reason that the assessee has not followed the procedure prescribed in Rule 31ACB. At the time of hearing, the Ld A.R submitted that the assessee may be provided with an opportunity to comply with the procedure prescribed in Rule 31ACB of the Act. He further submitted that the disallowance, to the extent

covered by the certificates obtained in Form 26A, should also be directed to be deleted.

10. The Ld D.R also agreed that the disallowance may be directed to be deleted, if the assessee has followed the procedure prescribed in Rule 31ACB of the Act.

11. Accordingly, in the interest of natural justice, we are of the view that the assessee should be provided with an opportunity to comply with Rule 31ACB of I.T Rules. There is also merit in the contentions of the assessee that the disallowance, to the extent covered by the certificates obtained in Form 26A, should be deleted, after complying with the provisions of Rule 31ACB.

12. Accordingly, we set aside the orders passed by Ld CIT(A) in all the three years and restore the same to the file of the assessing officer with the direction to allow the assessee to comply with the provisions of Rule 31ACB of Income tax Rules. The prayer of the assessee is to delete the disallowance to the extent covered by certificates obtained in Form 26A. Subject to the compliance of Rule

31ACB of Income tax Rules, we direct the AO to allow the above said prayer of the assessee.

13. In the result, all the three appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 11.3.2020

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 11th March, 2020.
/VG/

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.