

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.496/Del/2018
Assessment Year : 2009-10

Ram Kandoi 27, 1 st Floor, Bungalow Road, Kamla Nagar, New Delhi-110007 PAN : AGFPK 5089 G (APPELLANT)	Vs.	ITO, Ward – 35(2), New Delhi (RESPONDENT)
---	-----	---

Assessee by	--None--
Revenue by	Shri Govind Singhal, Sr. DR

Date of hearing:	16/02/2021
Date of Pronouncement:	16/02/2021

ORDER

PER AMIT SHUKLA, JM:

This appeal filed by the assessee is directed against the order dated 18.09.2017 of the Commissioner of Income Tax (Appeals)-12, New Delhi relating to Assessment Year 2009-10.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual who initially filed his return of income for A.Y. 2009-10 on 27.09.2009 declaring income at Rs.9,86,532/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dated 29.12.2011 and certain additions were made. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) and thereafter, before the ITAT. After the order of the appellate authorities, the total income of the assessee was determined at Rs.9,87,219/-. Subsequently, the case was reopened by issuing notice u/s 148 of the Act and consequently, assessment was framed u/s 147 r.w.s 143(3) of the Act vide order dated 21.12.2016 and the total income was determined at Rs.13,23,140/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 18.09.2017 in Appeal No.402/16-17 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds of appeal:

1. *“Based on facts and circumstances of the case and in law, the assessment order u/s 147/ 143(3) of the Income-tax Act, 1961 (‘Act’) dated 18.09.2017 passed by the Hon’bie Commissioner of Income Tax (Appeals) - 12, New Delhi is bad in law and void-ab-initio.*
2. *Based on facts and circumstances of the case and in law, that the order is passed based on conjectures and surmises.*
3. *Based on the facts of the case, Assessee’s income for said assessment year has been already been assessed u/s 143(3) in detail but the Ld. Assessing Officer has re- opened the case under section 147 based on mere change of opinion & on the*

basis of Audit objections. Hence, notice issued u/s 148 is null & void as assessment u/s 147 cannot be reopened due to change in opinion.

4. *Based on facts and circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals) - 12, New Delhi ignored the facts on record, unjustifiably disallowed the interest expense of the assessee amounting to Rs. 3,35,921/- u/s 40(a)(ia) of the Act.*
5. *Based on facts and circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals) - 12, New Delhi has erred in computing the Income of the assessee by making unwarranted additions to the Total Income of the assessee.*
6. *Based on facts and circumstances of the case and in law, that the Ld. Assessing Officer has erred in initiating penalty proceedings u/s 271(1)(c) of the Act.*
7. *Based on facts and circumstances of the case and in law, that the appellant craves leave to add, alter or modify any of the Statement of fact and grounds of the appeal at the time of hearing or otherwise."*

4. On the date of hearing none appeared on behalf of the assessee, nor any adjournment application was filed though the notice of hearing was sent to Assessee. The file further reveals that the notice of the hearing that was sent to the assessee at the address mentioned in Form No.36, was returned undelivered by the Postal Authorities with the remark that despite various attempts, the addressee was not found. In view of these facts, we proceed to dispose of the appeal of the assessee *ex parte* qua the assessee after considering the matter on record and after hearing the Learned DR.

5. The grounds of the appeal filed by the assessee reveals that apart from challenging the reassessment proceedings, in ground no.4 assessee is challenging the disallowance of Rs.3,35,921/- u/s 40(a)(ia) of the Act. With respect to the aforesaid disallowance, AO has noted that assessee is stated to have paid interest of Rs.1,57,556/- to Indiabulls and interest of Rs.1,78,365/- to Reliance. On such interest payment, assessee had not deducted the TDS. The assessee was asked to explain as to why the aggregate amount of Rs.3,35,921/- not be disallowed u/s 40(a)(ia) on account of failure to deduct the TDS. AO noted that assessee had furnished a certificate stating that the interest paid by the assessee to Indiabulls & Reliance has been included by them in their respective income and therefore no disallowance u/s 40(a)(ia) of the Act is called for. AO did not accept the submissions made by the assessee and proceeded to disallow the aggregate amount of Rs.3,35,921/- u/s 40(a)(ia) of the Act. When the matter came before the CIT(A), he upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

6. Before us, Learned DR supported the order of AO.

7. We have heard the Learned DR and perused the materials on record. On perusing the assessment order passed u/s 147 r.w.s 143(3) of the Act, we find that assessee submitted before AO that the interest paid by the assessee to Indiabulls and Reliance has been included by them in their respective incomes and

therefore no disallowance u/s 40(a)(ia) of the Act is called for. The aforesaid contention of the assessee has not been controverted by the authorities. We find that Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd. reported in (2015) 272 ITR 635 has held that the second proviso to Section 40 (a) (ia) of the Act is declaratory and curative in nature and should be given retrospective effect from 1st April 2005. It has further held that as long as the respective payee/resident has filed its return of income disclosing the payment received by and in which the income earned by it is embedded and has also paid tax on such income, then no disallowance can be made u/s 40(a)(ia) of the Act. We find that the assessee had made the submissions to the effect that the interest paid by the assessee to Indiabulls and Reliance have been included by the respective payees in their respective income, but there is no finding of the lower authorities on the aforesaid contention. We are therefore of the view that the issue needs re-examination by the AO in the light of the aforesaid decision rendered by Hon'ble Delhi High Court. We therefore, restore the issue back to the file of the AO to decide the issue afresh in view of the aforesaid decision of the Hon'ble Delhi High Court in the case of Ansal Land Mark Township (P) Ltd. (supra) and in accordance with law. Needless to state, that the AO shall grant adequate opportunity of hearing to the assessee. **Thus this ground of assessee is allowed.**

8. As far as the other grounds raised by the assessee challenging the reassessment proceedings are concerned, we are of the view that in the absence of any material placed by the assessee to controvert the findings of CIT(A), we find no reason to interfere with the order of CIT(A) on that aspect and **thus the other grounds of the assessee, whereby assessee is challenging the reassessment proceedings are dismissed.**

9. **In the result, appeal of the assessee is partly allowed.**

Order pronounced in the open court on 16.02.2021

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Date:- 16.02.2021

Priti Yadav, Sr.PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI