

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
824/Hyd/18	2012-13	Smt.Shashikala Ramkumar, Hyderabad [PAN: AGPPR1448G]	Asst.Commissioner of Income Tax, Circle-4(1), Hyderabad
825/Hyd/18	2013-14		

For Assessee : NONE  
For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 25-02-2021  
Date of Pronouncement : 29-04-2021

**ORDER**

**PER S.S.GODARA, J.M. :**

These two assessee's appeals for AYs.2012-13 & 2013-14 arise against the CIT(A)-1, Hyderabad's order(s) dated 26-03-2018 in case Nos.0019 & 0020 / CIT(A)-1 / Hyd / 2016-17 / 2017-18 involving proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act']; respectively.

2. The assessee appears to have filed an adjournment letter but there is no body to pursue the same during the course of hearing. We thus proceed with these twin cases with the able assistance coming from the Revenue side.

ITA No.824/Hyd/2018:

3. We advert to the sole issue of Section 40(a)(ia) disallowance of Rs.20,93,462/- in former and first issue of the

very nature involving a sum of Rs.40,13,749/- in latter assessment year; respectively. It is not in dispute that both the learned lower authorities have held that the assessee has failed to deduct TDS on interest payments made to various financial institutions; almost all payees are the same parties, without deducting TDS thereupon.

4. Learned departmental representative fails to dispute that the assessee's detailed paper books have filed the necessary details of almost all the payees having included the corresponding income(s) in their respective computations in view of the necessary certificates, copies of e-mails and correspondence coming from the latter's side. We thus observe that the assessee's instant first grievance deserves to be examined in light of Section 40(a)(ia) second proviso; inserted vide Finance Act, 2012 w.e.f.01-04-2013, that the impugned disallowance would not apply in case of an assessee not held as the assessee in default as per Section 201(1) 1<sup>st</sup> proviso of the Act. Hon'ble Delhi high court's decision in CIT Vs. Aansal Landmark Townships (P) Ltd. (2015) [377 ITR 635] (Delhi) holds the above proviso as a curative one having retrospective effect. We thus restore the instant first common issue back to the Assessing Officer to be examined in light of Section 40(a)(ia) said proviso in consequential proceedings as per law. The assessee's former appeal ITA No.824/Hyd/2018 raising the sole issue is treated as allowed for statistical purposes.

The assessee's first substantive ground in latter appeal ITA No.825/Hyd/2018 follows the suit.

5. Next comes the second substantive ground in AY.2013-14 appeal ITA No.825/Hyd/2018 that both the lower authorities have erred in law and on facts in treating the un-secured loans of Rs.85,72,904/- as un-explained cash credits. The CIT(A)'s detailed discussion to this effect reads as under:

*“8.3 The submissions of the appellant have been carefully considered. The contention of the appellant that there are 22 parties who are given unsecured loans to the appellant company. After verification, lacunas were found, they are as follows:*

- a) In all the cases, interest was paid and the TDS was deducted. No details of TDS remittance / challans were submitted before me.*
- b) Confirmations of the accounts are stereo type and not supported by any documentation.*
- c) It is not known whether the parties are Income Tax Assessee. Having PAN number does not confirm filing of income tax return. None of the parties have submitted copy of PAN nor Aadhar card.*
- d) No bank confirmation was submitted to show the inflow and outflow of the funds in the loan accounts. Only a voucher entry in the ledger account was submitted.*
- e) Appellant did not submit any details regarding the credibility of the parties to give such huge loans to the appellant. Appellant has not given any explanation regarding relation to these parties or guarantee given to them while taking loans.*

*In background to this, the submissions of the appellant is not accepted. The addition made by the Assessing Officer is upheld”.*

6. Learned departmental representative fails to dispute that the assessee's corresponding paper book pages 12 to 31 has *inter alia* placed on record the statement of all these un-secured loans and ledger copies with PAN/address details which require a detailed factual verification in our considered opinion. More so when the Assessing Officer is also re-examining the first and foremost issue of Section 40(a)(ia)

disallowance we therefore adopt the very course of action for the assessee's instant second grievance as well. The assessee is directed to file all the necessary corresponding details before the Assessing Officer in consequential proceedings to be subjected to necessary factual verification within three effective opportunities of hearing.

7. Lastly comes disallowance of car hire charges of Rs.6,49,683/- @10% of the total claim of Rs.64,96,383/-. The Revenue's only case is that the assessee could not prove the impugned car hire charges as incurred; wholly and exclusively in her day-to-day business. The fact also remains that the assessee had *prima-facie* failed to prove the same by treating all the cogent supportive evidence.

Faced with this situation, we direct the Assessing Officer to restrict the impugned 10% disallowance to 4% with a rider that the same shall not be taken as a precedent in any other case. The assessee's latter appeal ITA No.825/Hyd/2018 is partly accepted.

8. To sum-up, the assessee's former appeal ITA No.824/Hyd/2018 is allowed for statistical purposes whereas her latter appeal ITA No.825/Hyd/2018 is partly allowed in above terms. A copy of this common order be placed in the respective case files.

*Order pronounced in the open court on 29<sup>th</sup> April, 2021*

Sd/-  
**(LAXMI PRASAD SAHU)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

Hyderabad, Dated: 29-04-2021

*Copy to :*

*1.Smt.Shashikala Ramkumar, 1-2-43, Gaganmahal Road, Domalguda, Hyderabad.*

*2.The Asst.Commissioner of Income Tax, Circle-4(1), Hyderabad.*

*3.CIT(Appeals)-1, Hyderabad.*

*4.Pr.CIT-1, Hyderabad.*

*5.D.R. ITAT, Hyderabad.*

*6.Guard File.*