

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2070/PUN/2017

निर्धारण वर्ष / Assessment Year : 2007-08

M/s. Ambarwadikar & Company,  
Gut No. 103, Beed Bye Pass Road,  
Deolai, Aurangabad-431010

PAN : AAHFA6223A

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Asstt. Commissioner of Income Tax,  
Circle – 3, Aurangabad

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni  
Revenue by : Shri Madhavan A.M. Krishnan

सुनवाई की तारीख / Date of Hearing : 18-05-2021

घोषणा की तारीख / Date of Pronouncement : 27-05-2021

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 14-07-2017 passed by the Commissioner of Income Tax (Appeals)-2, Aurangabad [‘CIT(A)'] for assessment year 2007-08.

2. The assessee raised ground Nos. 1 to 3 questioning the action of CIT(A) in enhancing the income of the assessee by invoking Section 251(1)(i-a) of the Act in the facts and circumstances of the case.

3. The ld. AR submits that the assessee is ready to reconcile the entries stated to have been appearing in the impounded material with the books of accounts before the lower authorities. The CIT(A) by AO did not give proper opportunity to the assessee to reconcile with the books of accounts. The ld. DR referred to Page No. 2 of the AO and submitted that impounded material with reference to entries that the assessee failed to reconcile the same with the cogent evidences. We note that that in Para No. 11 of the impugned order the CIT(A) clearly mentioned that the assessee could not substantiate the entries to reconcile with books of accounts and drawn adverse inference against the assessee which resulted in enhancing the income of the assessee. The only issue raises before us in view of the grounds raised by the assessee that there was no opportunity for the assessee to reconcile the same and considering the facts and circumstances of submissions of the ld. AR and ld. DR, in interest of justice, we deem it proper to remand the matter to the file of AO for its fresh consideration. The assessee is liberty to file evidences, if any, in support of its claim. Thus, ground Nos. 1 to 3 raised by the assessee are allowed for statistical purpose.

4. Ground No. 4 raised by the assessee that the confirmation of disallowance u/s. 40(a)(i-a) of the Act in the facts and circumstances of the case.

5. Heard both the parties and perused the material available on record. According to AO, the assessee has taken loan from Tata Motors Finance Ltd. and paid interest at Rs.4,95,413/-. The AO show caused the assessee why disallowance u/s. 40(a)(i-a) of the Act should not be made for not deducting the tax on interest paid to Tata Motors Finance Ltd. The assessee contended that the Tata Motors Finance Ltd. filed return of income acknowledging the interest paid by the assessee as income and shown the same in their accounts. The disallowance should not be made in view of the retrospective amendment. The AO found that the arguments of the assessee as not acceptable and held the retrospective amendment is not applicable for the year under consideration. The CIT(A) also confirmed the order of AO. The main contention before us by the ld. AR is that in similar situation the Tribunal in many cases remanded the similar issue to the AO for its verification to find out whether the payee acknowledging the receipts as their income or not, if the payee acknowledges the receipt as their income, the Tribunal held no disallowance should be made in the hands of payer. Taking into consideration the same, we deem it proper to remand the issue to the file of AO for its examination and to find out whether the Tata Motors Finance Ltd. which is NBFC acknowledged the interest paid by the assessee as income or not in their accounts. Thus, ground No. 4 raised by the assessee is allowed for statistical purpose.

6. The ld. AR submits that the assessee is not interested to prosecute ground Nos. 5 and 6. Accordingly, ground Nos. 5 and 6 raised by the assessee are dismissed as not pressed.

7. In the result, the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on 27<sup>th</sup> May, 2021.

Sd/-  
(R.S. Syal)  
VICE PRESIDENT

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> May, 2021.

RK

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad
4. The Pr. CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune