

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.685 & 686/Bang/2018
Assessment years : 2011-12 & 2013-14

Mr. Mohinder Mittal, Director of M/s. Meenaxi Building Solutions Pvt. Ltd., No.29, 18 th Main, BSK 2 nd Stage, Padmanabha Nagar, Bangalore – 560 070. PAN: AAFCM 7920H	Vs.	The Income Tax Officer, Ward 4(1)(4), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Paresh S. Shah, CA
Respondent by	:	Shri K. Sankar Ganesh, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	13.09.2021
Date of Pronouncement	:	27.09.2021

ORDER

Per Chandra Poojari, Accountant Member

These two appeals by the assessee are directed against the order of the CIT(Appeals) dated 10.3.2016 on the following common grounds, with the only change in the figures, for the assessment years 2011-12 & 2013-14. The grounds in ITA No.685/Bang/2018 are as follows :-

- “1. The Appellant submits they have maintained the books of accounts in verifiable manner and also audited U/s 44 AB of the Income Tax Act, 1961.

2. The Appellant submits that they had filed their return of Income for the Assessment year 2011-12 which was true, correct and complete in all respects.
3. The only point of dispute that has arisen in the Commissioner of Income Tax (Appeals)-4 and the Income Tax Officer, Ward -4(1)(4), Bangalore that is "Disallowance made U/s. 40(a)(ia) of the Income Tax Act, 1961 towards Non Deduction of TDS on interest paid to NBFC's to the tune of Rs.1,01,89,671=00.
4. The Commissioner of Income Tax Appeals-4, Bengaluru has disallowed the claims made by the Appellant and confirmed the Asst. Order passed by the Assessing Officer.
5. The Appellant submits that during the scrutiny of the Assessment, the Appellant submitted certain interest certificates to the Assessing Officer (FORM26A) issued by the NBFC's Chartered Accountants in the prescribed FORM-26A in lieu of non deduction of TDS on interest payment made by the Appellant which proves beyond any reasonable doubts that the payee's income has been fully considered/offered to income tax in their return of income filed and the total taxes on the returned income has been discharged by them. But the Assessing Officer utterly failed to accept the same and failed to discussed the same in the assessment order.
6. The Appellant is ready to submit balance copies of FORM 26A at this stage. In this regard, Appellant submits that, the Appellant has put lot of effort for getting FORM 26A from the NBFC's but, due to constrained/time barring of the scrutiny assessment, the same could not be able to get in time.
7. The Appellant further submits that they are relied upon the following judgments viz.
 - a) Judgment of the Hon'ble Income Tax Appellate Tribunal, Agra Bench, in the case of Mr. Rajeev Kumar Agarwal v/s. Additional Commissioner of Income Tax, Range-3

Mathura bearing ITA No.337/Agra/A13 dated 29.05.2013

- b) Judgment in the case of Jitendra Mansukhlal Shah v/s. DCIT(ITAT Mumbai)
 - c) Special bench decision of Allahabad High Court in the case of Merilyn Shipping 136 ITD 23(SB) when there are contrary decisions of different Honorable High Courts, then the decision which is in the favor of the Assessee has to be followed in the light of the decision of the Honorable Supreme Court in the case of Vegetable Products Ltd 88 ITR 192
8. The Appellant humbly prays to set aside the Appeal Order passed by CIT Appeals-4 as well as The Income Tax Officer, Ward 4(1)(4), Bangalore and to allow the appeals in favor of Appellant.
9. The Appellant humbly prays to pass any order deemed to be fit.”

2. There is a delay of 31 days in filing both the appeals before the Tribunal. The delay was explained to be that the assessee handed over the order of the CIT(Appeals) to CA, one Mr. Nagendra J R, Proprietor of N J Rairakhia & Co., to file the appeal before the Tribunal. He suddenly expired on 5.2.2018 and as such there was delay of 31 days in filing these appeals by the new CA before this Tribunal and prayed that delay may be condoned.

3. We have heard both the parties on the condonation of delay. We find that there are good and sufficient reasons for the delay in filing the appeals before the Tribunal and it was not due to the fault of the assessee for belated filing of the appeals. Accordingly, the delay in filing the appeals is condoned and appeals admitted for adjudication.

4. The assessee has also filed the following additional grounds of appeal:-

“1. The overdue charges levied by non banking finance companies were by oversight classified under the head "Interest Payments to NBFC's. The said over due charges are nothing else but bank charges which will not fall under the ambit of interest payments to non banking finance companies. The following are details of such overdue charges wrongly debited to profit and loss account under the head of interest paid to NBFC's instead of Bank charges:-

a) Religare Finvest Ltd.,	Rs. 485917.00
b) TATA Motors Finance Limited	Rs. 296401.46
c) L & T Finance Ltd	Rs. 846055.00
d) Reliance Capital Ltd.,	Rs. 45884.83
	<hr/>
	Rs.1674258.29

Thus, the actual interest payment to NBFC's would work out to Rs. 6801588.71 as against the original amount of Rs. 8475847.00 debited to profit and loss account. The supporting documentary evidence in this regard is enclosed along with this additional grounds of appeal for kind perusal and necessary action.

2. The Appellant humbly prays to consider this additional grounds of appeal and pass any order deemed to be fit.”

5. It was submitted that inadvertently the assessee has not raised these grounds along with the original grounds and prayed that the same may be admitted. After hearing both the parties and following the judgment of the Hon'ble Supreme Court in the case of *M/s National Thermal Power Co. Ltd. Vs. CIT, 229 ITR 383 (SC)*, we are inclined to admit the additional grounds for adjudication.

6. Further, the assessee has also filed additional evidence by way of petition to admit the same under Rule 29 of the ITAT Rules for both the assessment years as follows:-

Details of Certificates received from NBFCs regarding non-deduction of tax on interest payment made to assessee

Sl.No.	Particulars	Particulars	Page No.
1	L & T Financial Services	Statement of overdue charges	1-150
2	Religare Finvest Ltd	Statement of overdue charges	151-216
3	TATA Motors Finance Ltd	Statement of overdue charges	217-228
4	Reliance Capital Ltd	Statement of overdue charges	229-231

Sl. No.	Particulars	No. of certificates	Amount of certificates	Page No.
1	TATA Motors Finance Ltd	1	1642553.00	1-3
2	Srei Equipment Finance Ltd	2	3026608.00	4-5
3	Magma Fincorp Ltd	1	406749.00	6-7
4	India Bulls financial Service Ltd	1	924883.00	8-9
5	Reliance Capital Ltd	2	1369914.00	10-15
	Total	7	7370707.00	

Sl.No.	Particulars	No.of Certificates	Amount of Certificates	Page No.
01	Religare Finvest Ltd.	4	3443011.00	1 - 12
02	Magma Finecorp Ltd.	1	641266.00	13-14
	Total	5	4084277.00	

7. Since these additional evidence are very important to decide the issue in dispute, we are inclined to admit the additional evidence for adjudication.

8. We have heard both the parties and perused the material on record. We find that the additional grounds and the additional evidence have been filed for the first time before the Tribunal and the lower authorities had no occasion to examine the same which go to the root of the matter. Hence, in the interest of justice, we remit the entire issues in dispute to the file of the AO for fresh consideration in the light of the additional grounds and additional evidence raised before the Tribunal. While deciding the issue, the AO shall consider the judgment of the Supreme Court in the case of *Shree Chaudhary Transport Co. v. ITO, in Civil Appeal No.7865/2009 dated 29.7.2020* and pass fresh decision in accordance with law, after affording opportunity of being heard to the assessee.

9. In the result, the appeals by the assessee are allowed for statistical purposes.

Pronounced in the open court on this 27th day of September, 2021.

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 27th September, 2021.
/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.