

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.6952/Del/2018
Asstt. Year: 2013-14

Amit Mehra S/o Arun Kumar Mehra, Plot No. 142A/11-12, Noida SEZ(NSEZ), Noida Uttar Pradesh Pin : 201305 PAN AAPPM0542A	Vs.	ITO, Ward-16(3) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri M P Rastogi, Advocate
Assessee by :	Shri Sanjay Kumar, Sr. DR
Date of Hearing	06/12/2021
Date of pronouncement	07/12/2021

ORDER

PER A.D. JAIN, VICE PRESIDENT :

This is an assessee's appeal for assessment year 2013-14 against the order dated 16.8.2018 passed by Ld. CIT(A) – 6 , Delhi. The following grounds have been raised:-

- 1) *“That the disallowance of Rs. 59,949/- being the interest component of the EMI paid to Tata Capital Ltd., who also offered*

for taxation in their return, in terms of Sectionj 40A(ia) of the IT Act, is arbitrary, unjust and bad in law.

- 2) That the disallowance of notional interest of Rs. 11,38,805/- being the amount calculateld at 12% on the amount of work-in-progress is arbitrary, unjust, bad in law and at any rate very excessive.*
- 3) That the above grounds of appeal are independent and without prejudice to one another.”*

2. Apropos ground No. 1, the AO observed that the assessee had paid interest of Rs. 59,949/- to Tata Capital Ltd., which was an NBFC, without deduction of tax at source. The AO noted that the assessee was liable to deduct tax at source from the interest paid u/s 194A of the IT. Act. It was, therefore, that the AO disallowed the said expenditure of Rs. 59,949/- under the provisions of section 40(a)(ia) of the Act.

3. Ld. CIT(A) confirmed the disallowance, observing that it was an admitted fact that interest of Rs. 59,949/- stood paid without deduction of tax at source ; that the second proviso of section 40(a)(ia) as above of the Act provides that where the assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B of the Act on any such sum, but is not deemed to be an assessee in default under the first proviso to section 201(1), then, it shall be deemed that the assessee had deducted and paid the tax on such sum on the date of furnishing of the return of income by the resident to be payee referred to in the said proviso ; that, further, for the purpose of the proviso to section 201(1), the certificate which is

required, is to be furnished in Form No. 26A ; and that it had also not been substantiated that the assessee had not been held to be an assessee in default in terms of the proviso to section 201(1), as required by the second proviso to section 40(a)(ia).

4. The ld. Counsel for the assessee has contended that the assessee had filed a certificate, as required under the first proviso to section 201(1), before the ld. CIT(A), which certificate the ld. CIT(A) has failed to consider. It has been contended that in view of the said certificate, the disallowance made be ordered to be deleted.

5. The ld. DR, on the other hand, has placed strong reliance on the order under appeal.

6. As per the provisions of section 40(a)(ia) of the IT Act, thirty per cent of any sum payable to a resident, on which, tax is deductible at source under Chapter XVII-B and such tax has not been deducted is not to be deducted in computing the income chargeable as profit and gains of business or profession. The second proviso to section 40(a)(ia), however, lays down 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 section 201(1), then, for the purpose of section 40(a)(ia), 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 payee referred to in the first proviso to section 201(1).

7. Section 201(1), dealing with the consequences of failure to deduct or pay tax at source, provides that where any person, as provided therein, does not deduct the whole or any part of the tax, as required by or under the I.T. Act, then, such person shall be deemed to be an assessee in default in respect of such tax.

7.1 The first proviso to section 201(1) states that any person, who fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII of the Act on the sum paid to payee or on the sum credited to the amount of the payee, is not to be deemed to be an assessee in default in respect of such tax if such payee has furnished his return of income u/ s 139, has taken into account such sum for computing income in such return of income, and 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 the prescribed form.

8. The Id. Counsel for the assessee has drawn our attention to APB 10 which is a copy of the certificate, as required under the first proviso to section 201(1) of the Act issued by Tata Capital Services Ltd. in favour of the assessee. It has been stated that this certificate was filed before the Ld. CIT(A), but the Ld. CIT(A) has failed to take the same into consideration. For ready reference, the said certificate is scanned and reproduced as under :-



(1)

Date 29th July 2015

To,

Mr. Arnit Mehra
S/o Shri Arun Kumar Mehra
H-10, Sector-39, Noida, Uttar Pradesh-201303 India.
Phone: 01204322241, 09810431491

Subject: Request for Loan Closure Letter (Loan account no: 7000043084)

Dear Sir,

We, Tata Capital Financial Services Ltd., hereby certify that we have received all the EMI from Mr. Arnit Mehra, against the above mentioned loan agreement and interest income generated from this transaction has been shown in our financial statements as income during whole tenure of the above loan agreement. Applicable income tax has been paid by company on this income.

Details are as follows :

Agreement no : 7000043084
Agreement Date : 24.10.2008
Maturing Date: 03.09.2013
RC No: DL07CFG470
Chasis No: MAKCP262H8N001335
Engine No: K24Z20002409

For TATA CAPITAL FINANCIAL SERVICES LTD



(Authorised Signatory)

TATA CAPITAL FINANCIAL SERVICES LIMITED

Corporate Identity Number U67100MH2010PLC210201

Trunk Techno Campus, A Wing, Fourth Floor, Off Poldivan Road No 2, Thane West 400607, India

9. It is indeed the mandate of the provisions of the first proviso to section 201(1) of the Act, that in case a certificate as above is furnished, the person is not to be considered to be an assessee in default. In such case, no disallowance u/s 40(a)(ia) can be attracted, in terms of the second proviso to section 40(a)(i)(ia), as discussed above. Accordingly, we remit this matter to the file of the AO, to examine and verify the above certificate. If the same is found to be in order, the AO shall delete the disallowance of Rs. 59,949/-.

10. So far as regards ground No. 2, the AO noted that while capitalising the amount of Rs. 94,90,045/-, the assessee was also required to capitalize the interest cost used for the purpose of capital work in progress. The amount of Rs. 94,90,045/- represented balance in 'Capital Work In Progress'. The assessee, as per the AO, was required to capitalise the interest cost used for the purpose of capital work in progress. The AO observed that no detail of the interest expense had been given by the assessee. Accordingly, the AO treated the entire interest expense as revenue expenditure and disallowed 12% of the amount of Rs. 94,90,045/-, amounting to Rs. 11,38,805/-.

11. The ld. DR, on the other hand, has placed strong reliance on the impugned order.

12. The ld. CIT(A) confirmed the disallowance, observing that even during the appellate proceedings before her, no details regarding Capital Work In Progress and interest paid on account of cash credit/buyer credit had been filed by the assessee, and that in such

case, the possibility that the buyer credit/cash credit had been used for the purpose of Capital Work In Progress, could not be ruled out. The Id. Counsel for the assessee has stated that details regarding the Capital Work In Progress were filed before the Ld. CIT(A). Our attention has been drawn to APB 6, i.e. the details of Capital Work In Progress. These details are scanned and reproduced as under :

MEDICO ELECTRODES INTERNATIONAL (2012-2013) PLOT NO. 142-A/11-12 N.S.E.Z., NOIDA
CAPITAL WIP
Group Summary

1-Apr-2012 to 31-Mar-2013

Particulars	CAPITAL WIP MEDICO ELECTRODES INTERNATIONAL (2012-2013)			
	1-Apr-2012 to 31-Mar-2013			
	Opening Balance	Addtlon during the Year	Capitalisation during the year	Closing Balance
BUILDING (WIP) 11-12	2123656.00 Dr		2123656.00 Cr	
BUILDING WIP 142A/27	3231635.00 Dr	41792.00 Dr		3273427.00 Dr
BUILDING . P142A/28	3290344.00 Dr	41792,00 Or		3332136.00 Dr
GEL COATER MACHINE WIP	2398822.56 Dr			2398622.56 Dr
MACHINE GPM (WIP)	244000 00 Dr			244000.00 Dr
MACHINE' .PS (WIP)		20000.00 Dr		20000.00 Dr
MACHINERY WiP-11	1221148.29 Dr		122.1148.29 Cr	
MACHINERY WIP-12		124333.96 Dr		124333.96 Dr
MACHINhi\t WIP (PW)		97525.78 Dr		97525.78 Dr
R.O.SYSTt .IS WIP	173755.00 Dr		173755.00 Cr	
Grand Total	12683160.85 Dr	325443.74Dr	3518559,29Cr	9490045.30Dr

13. Here also, the details of Capital Work In Progress required verification at the hands of the AO. For this purpose, this issue is also remitted to the AO. If the details are found to be in order, the AO shall delete the disallowance accordingly.

In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the Open Court on 7th December, 2021.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(A.D. JAIN)
VICE PRESIDENT

Dated: 07/12/2021

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi