

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1612/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s.Mani Nagappa Motors Madurai P. Ltd. 10, Deputy Collectors Colony, K.K.Nagar, Madurai-625 020.	बनाम/ Vs.	Income Tax Officer, Corporate Ward-1, Madurai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAECs-2738-Q		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S.Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri D.V.Subba Rao (Addl.CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	29/11/2021
घोषणा की तारीख / Date of Pronouncement	:	07/12/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Madurai, [CIT(A)] dated 16/04/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s.143(3) on 28/12/2016. In this appeal, the assessee is aggrieved by confirmation of certain addition u/s 40(a)(ia) for Rs.18.49 Lacs

2. The Ld.AR, drawing our attention to the factual matrix, sought similar directions as given by the Tribunal under similar circumstances in the case of **M/s Royal India Gems & Jewels Pvt. Ltd. V/s ITO (ITA No.683/CHNY/2018) dated 18/09/2018**. The copy of the order has been placed on record. The Ld. DR opposed the same by submitting that the assessee did not discharge the required onus and failed to file Form 26A which justify the confirmation of impugned disallowance. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as given in succeeding paragraphs.

3. During assessment proceedings, it transpired that the assessee paid interest of Rs.18.49 Lacs to an entity namely M/s Hero Motors Corp. Ltd. but the assessee did not deduct tax at source (TDS) against the same as required u/s 194A. The assessee submitted that it had requested the payee to issue Form No.26A. However, since the said form could not be produced by the assessee during assessment proceedings, Ld. AO disallowed the expenditure u/s 40(a)(ia) for want of TDS. During appellate proceedings, the assessee expressed inability to produce the same which resulted into confirmation of disallowance. Aggrieved, the assessee is in further appeal before us.

4. We find that similar issue has been dealt with by the Tribunal in the cited decision as under: -

6. We have considered the rival contentions and perused the orders of the authorities below. Disallowance u/s.40(a)(i) of the Act was fastened on the assessee for its failure to furnish Form 26A for the interest paid by it to M/s. Reliance Capital Ltd. As per the Id. Authorized Representative, assessee had addressed a letter on 18.03.2016 to M/s. Reliance Capital Ltd for getting Form 26A, but the said company had not responded. Where the payee had included the amounts received as a part of its income and filed return after paying the taxes, assessee can always say that it cannot be deemed as one in default. By virtue of the judgment of Hon'ble Delhi High Court in the case of Ansal Land Mark Township P. Ltd (supra), first proviso to Section 201(1) as

well as proviso to Section 40(a)(i) of the Act had to be construed retrospectively. Considering the facts and circumstances of the case, we are of the opinion that issue requires a fresh look by the Id. Assessing Officer. Ld. Assessing Officer can use the powers vested on him for getting the required information from M/s. Reliance Capital Ltd, so as to ascertain whether they had included the interest paid by the assessee, as a part of their income and filed return after paying due taxes. Ld. Assessing Officer can also direct the M/s. Reliance Capital Ltd to issue the certificate mandated in Annexure A to form 26A, if the said company fails to respond to assessee's request. Ld. Assessing Officer shall thereafter proceed in accordance with law.

We find that the assessee could escape the rigors of Sec.40(a)(ia) in terms of second proviso to Section 40(a)(ia) read with first proviso to sub-section (1) of Section 201 by demonstrating that the payee had duly offered the payment in their Income tax returns and paid due taxes thereon. In such a case, no disallowance u/s 40(a)(ia) is called for. As per the submissions of Ld. AR, the assessee could demonstrate the fulfillment of these conditions and is ready to file the requisite certificate / declaration from the payee. Therefore, we deem it fit to restore the matter back to the file of AO on similar lines as above to provide an opportunity to the assessee to demonstrate fulfillment of these conditions by adducing requisite documentary evidences. The Ld. AO is directed to consider the same and grant the benefit of proviso to the assessee, if otherwise available and found in order. The assessee, in turn, is directed to substantiate its claim in accordance with law. No other arguments have been urged before us.

5. The appeal stand allowed for statistical purposes.

Order pronounced on 07th December, 2021

Sd/-

(V.Durga Rao)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

चेन्नई Chennai; दिनांक Dated : 07/12/2021
TLN

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चेन्नई / DR, ITAT, Chennai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, चेन्नई / ITAT, Chennai**