

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH  
(Conducted Through Virtual Court)  
**Before: Ms. Annapurna Gupta, Accountant Member**  
**And Ms. Suchitra Kamble, Judicial Member**

**ITA No. 265/Ahd/2019**  
**Assessment Year 2015-16**

M/s. King Roadways Opp. Wadiya Body Builders, Nr. Aslali, Octroi Naka, H.H. No. 8, Aslali,, Ahmedabad PAN No: AAEFK0552F (Appellant)	Vs	The ITO, Ward-3(2)(7), Ahmedabad (Respondent)
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**Appellant by : Shri Vivek N. Chavda, A.R.**  
**Respondent by : Shri Shaurya S Shukla, D.R.**

Date of hearing : 24-03-2022  
Date of pronouncement : 30-03-2022

**आदेश/ORDER**

**PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-**

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-3, Ahmedabad, (in short referred to as CIT(A)), dated 26-11-2018, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the “Act”) pertaining to Assessment Year (A.Y) 2015-16.

2. The solitary issue in the present appeal relates to disallowance of a sum u/s. 40(a)(ia) of the Act and the grounds raised by the assessee reads as under:

1. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer of disallowing a sum of Rs.8,59,820/- u/s 40(a)(ia) of the Income Tax Act, 1961.*
2. *The addition of Rs.859820/- made by the Ld. AO on account of non-submission of form No. 26A from India Info Line Pvt. Ltd is not in consonance with the facts of the case and in law.*
3. Before us, Ld. Counsel for the assessee contended that the disallowance made of Rs. 8,59,820/- u/s. 40(a)(ia) of the Act related to interest payment of Rs. 28,66,011/- paid by the assessee to India Infoline Finance Ltd. without deduction of tax at source and on account of which 30% of the same amounting to Rs. 8,59,820/- was disallowed as per the provisions of law in this regard. Ld. Counsel for the assessee contended that the recipient of income i.e. recipient of the impugned interest income M/s India Infoline Finance Ltd. had paid taxes on the same and as per the second proviso to Section 40(a)(ia), therefore the assessee, not being an assessee in default as per section 201 of the Act, No disallowance u/s. 40(a)(ia) was warranted. Our attention was drawn to section 40(a)(ia) second proviso as under:

***SECTION 40.***

***Amounts not deductible.***

*Notwithstanding anything to the contrary in sections 30 to [1636](#)[38], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",-*

(a) *in the case of any assessee-*

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- .

ia) [1642](#)[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 or, after deduction, [1643](#)[has not been paid on or before the due date specified in sub-section (1) of section 139:]

[1644](#)[Provided.....]

[1646](#)[Provided further 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 sub-section (1) of section 201, then, for the purpose of this sub-clause, 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 [1647](#)[\*\*\*] payee referred to in the said proviso.]

4. Ld. Counsel for the assessee submitted a certificate of accountant to this effect issued u/s. 201(1) of the Act certifying the payment of tax by the recipient.

5. Ld. D.R. responded by stating that the matter be restored back to the A.O. for verification of the facts as canvassed ld. Counsel for the assessee as above and thereafter the issue be adjudicated in accordance with law.

6. In view of the above, since the assessee has palpably demonstrated before us that no disallowance u/s. 40(a)(ia) of the Act is warranted for non deduction of tax at source, by virtue of second proviso of the said section, excluding the applicability of the rigors of the said section from assesseees who are held to be not assesseees in default on account of taxes having been paid by the recipient on the Interest paid to it and having filed evidence in support of its claim of the same by way of a

certificate of accountant as provided by the Income Tax Rules,1962, we consider it fit to restore the issue back to the A.O. to verify the facts being pleaded by the assessee and thereafter to adjudicate the issue in accordance with law. Needless to add the assessee be granted due opportunity of hearing in this regard.

7. In effect, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30 -03-2022

Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER True Copy  
Ahmedabad: Dated 30/03/2022

Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद