

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 2480/Mum./2019
(Assessment Year : 2014-15)

M/s.Bhushan Logistics Pvt. Ltd.
Office no.7, Ground Floor
Shivanijali CHS, Sector-2
Sanpada, Navi Mumbai 400 705
PAN – AADCB5175B

..... Appellant

v/s

Income Tax Officer
Ward-15(1)(3), Mumbai

..... Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Chandra Vijay, CIT-DR

Date of Hearing – 16.02.2022

Date of Order – 08/04/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 15 January 2019, passed by the Commissioner of Income Tax (Appeals)-24, Mumbai ["CIT (A)"] under section 250 of the Income Tax Act, 1961 ("*the Act*") for the assessment year 2014-15.

2. The issue arising on ground No. 1, raised in assessee's appeal, is with regard to disallowance under section 40(a)(ia) of the Act on account of interest paid to various NBFC.

3. The brief facts of the case pertaining to this issue as emanating from the record are: The assessee company is engaged in the business of transporters. For the relevant assessment year, the assessee filed its return of income on 29 September 2014 declaring total income at Rs.13,86,163. During the course of scrutiny assessment proceedings, it was observed that the assessee has made payment of interest on loans amounting to Rs.10,87,826 to L&T Finance Ltd., Citi Corp Finance Ltd, Indiabulls Financial Services Ltd, Sundaram Finance Ltd and SREI Equipment Private Limited, on which no tax at source was deducted by the assessee. The assessee was asked to show cause as to why interest expenses to NBFCs should not be disallowed under section 40(a)(ia) of the Act as the assessee has failed to deduct TDS on interest paid to such NBFCs during the year. In reply, assessee filed copies of some interest certificates regarding interest paid/payable to the aforesaid NBFCs but no explanation/reason/justification was submitted for non-deduction of TDS from interest payments to NBFCs. The Assessing Officer vide order dated 31 October 2016 passed under section 143(3) of the Act disallowed the interest amounting to Rs.10,87,826 under section 40(a)(ia) of the Act for non-deduction of TDS on interest paid to NBFCs.

4. In appeal before CIT(A), the assessee placed reliance on second proviso to section 40(a)(ia) and submitted that if NBFCs have paid income tax on the interest received from the assessee, no disallowance could be made under section 40(a)(ia) of the Act. However, the CIT(A) vide impugned order dated 15 January 2019, inter-alia, upheld the disallowance

made by the Assessing Officer under section 40(a)(ia) on the basis that assessee has failed to establish or prove that NBFCs have paid income tax on interest received from the assessee. Being aggrieved, the assessee is in appeal before us.

5. During the course of hearing, Shri Kishor Phadke, learned Authorised Representative ("*learned A.R.*"), submitted that assessee vide application dated 29 December 2021 has sought admission of additional evidence, which were received only after the completion of appellate proceedings before CIT(A) and have bearing on the present appeal. The learned A.R. submitted that the assessee has, inter-alia, received Form No. 26A issued by the accountant under the first proviso to sub-section (1) of section 201 of the Act in respect of interest paid by the assessee to L&T Finance Ltd., Sundaram Finance Ltd and SREI Equipment Private Limited, wherein it has been certified that the aforesaid NBFCs have taken into account the sum received as interest from the assessee while computing its taxable income in the return filed. Thus, the learned A.R. submitted that this issue may be remanded to the Assessing Officer for necessary verification. Further, in respect of interest paid to Citicorp finance Ltd and Indiabulls Finance Ltd, learned A.R. submitted that the said entities have stopped its operations and thus it is difficult to obtain similar certificate. However, the learned A.R. submitted that these entities have issued statement of interest which forms part of the record.

6. On the other hand, Shri Chandra Vijay, learned Departmental Representative ("*learned D.R.*") vehemently objected to the admission of additional evidence furnished by the assessee. Learned D.R submitted that the assessee has not sufficiently proved the delay in furnishing such details before the lower authorities.

7. We have considered the rival submissions and perused the material available on record. In the present case, it has not been disputed that the assessee had availed loans from aforesaid NBFCs and on such loans interest was paid by the assessee. The Assessing Officer disallowed the interest payment under section 40(a)(ia) of the Act on the basis that assessee had failed to deduct tax at source while making the payment of interest to the NBFCs. However, second proviso to section 40(a)(ia) of the Act, inserted by Finance Act, 2012 w.e.f. 01.04.2013, provides 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 on the first proviso to section 201(1), then, for the purpose of this sub-clause, it shall be deemed that assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee.

8. From the facts available on record, it is evident that the assessee though has taken the plea on the basis of second proviso to section 40(a)(ia) of the Act, however, failed to establish or prove that NBFCs had paid income tax on interest received from the assessee. Accordingly, the

CIT(A) upheld the disallowance made by the Assessing Officer. Now, in the present appeal, the assessee by way of additional evidence has produced copies of Form No. 26A in support of its aforesaid plea based on second proviso to section 40(a)(ia) of the Act. In view of the above, we deem it appropriate to admit the additional evidence filed by the assessee before us. We are further of the view that this issue be remanded to the Assessing Officer for *de novo* adjudication as per law after necessary verification of details as submitted by way of additional evidence before us. Before concluding on this issue, we may add that in respect of interest paid to Citicorp Finance Ltd and Indiabulls Finance Ltd, if the assessee is able to furnish similar details before the Assessing Officer, same shall be taken into consideration while deciding the issue as per law. As a result, ground No. 1 in assessee's appeal is allowed for statistical purpose.

9. The issue arising in ground No. 2, raised in assessee's appeal, is with regard to disallowance under section 40(a)(ia) of the Act on account of salary paid to Directors.

10. The brief facts of the case pertaining to this issue as emanating from record are: During the course of assessment proceedings, it was observed that assessee has paid salary of Rs. 9,60,000 as remuneration to its Directors. However, no TDS has been deducted on such payments. Accordingly, the assessee was asked to explain as to why the salary expenditure should not be disallowed under section 40(a)(ia) of the Act. As no reply was filed by the assessee, the Assessing Officer vide order passed

under section 143(3) of the Act disallowed the amount of salary of Rs. 9,60,0000 under section 40(a)(ia) of the Act.

11. In appeal before CIT(A), assessee submitted that salary was paid to the Directors of the assessee company and the Directors had offered the same in the return of income filed. The assessee also submitted the tax return filed by the Directors. The CIT(A) vide impugned order held that first proviso to section 201(1) of the Act, inter-alia, requires furnishing a certificate from an accountant, in such form as may be prescribed, to the effect that the payee has filed its return of income and has taken such sum into account while computing the income and has paid tax due on the income declared by him in such return of income. However, in the present case, the assessee has merely submitted copies of return filed by the Directors and has not furnished certificate from the accountant and thus has not complied with all the conditions of first proviso to section 201(1) of the Act. Accordingly, the CIT(A) dismissed the appeal filed by the assessee and upheld the disallowance made under section 40(a)(ia) of the Act. Being aggrieved, the assessee is in appeal before us.

12. During the course of hearing, learned A.R. referred to Form No. 26A issued by the accountant under the first proviso to sub-section (1) of section 201 of the Act in respect of salary paid to the Directors, filed by way of additional evidence before us. On the other hand, learned D.R. vehemently relied upon the orders passed by the lower authorities.

13. We have considered the rival submissions and perused the material available on record. In the present case, it is an undisputed fact that salary was paid to the Directors of the assessee company and the Directors had offered the same in the return of income filed. The only basis on which CIT(A) dismissed the appeal filed by the assessee on this issue was that the assessee has not furnished the certificate as required under first proviso to section 201(1) of the Act. As the assessee has now furnished the said certificate issued under Form No. 26A, we deem it appropriate to remand this issue to the file of Assessing Officer for necessary verification of the details furnished by way of additional evidence before us and decide the issue *de novo* as per law. As a result, ground No. 2 in assessee's appeal is allowed for statistical purpose

14. The issue arising in ground No. 3, raised in assessee's appeal, is with regard to disallowance under section 40(a)(ia) of the Act on account of rent paid.

15. The brief facts of the case pertaining to this issue as emanating from record are: During the course of assessment proceedings, it was observed that the assessee had paid rent amounting to Rs.3,02,500 on which no TDS was deducted by the assessee. The assessee was asked to explain as to why the rent expense should not be disallowed under section 40(a)(ia) of the Act. In reply, assessee submitted that the TDS was not deducted on rent as the amount paid was below Rs. 1,80,000 to the respective parties. The assessee also filed copy of agreement for leave and license

whereunder it pays rent to Mr. Pandharinath Mali and Mrs. Pratiksha Mali. From the perusal of the agreement, the Assessing Officer observed that the assessee was required to pay rent of Rs. 12,500 per month which comes to Rs. 1,50,000 per annum and the agreement nowhere mentions that the assessee had to pay Rs. 1,52,500 to Mr. Pandharinath Mali and Rs. 1,50,000 to Mrs. Pratiksha Mali and thus there is no basis for not deducting the TDS on rent paid. Accordingly, the Assessing Officer disallowed the rent paid amounting to Rs. 3,02,000 under section 40(a)(ia) of the Act. The CIT(A) dismissed the appeal filed by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

16. During the course of hearing, learned A.R. submitted that rent paid to Mr. Pandharinath Mali and Mrs. Pratiksha Mali respectively was below Rs. 1,80,000 and thus no tax is liable to be deducted at source on such payment. On the other hand, learned D.R. vehemently relied upon the orders passed by the lower authorities.

17. We have considered the rival submissions and perused the material available on record. In the present case, it has not been disputed that as per the leave and license agreement the assessee was required to pay rent of Rs. 12,500 per month which comes to Rs. 1,50,000 per annum. The assessee neither during the course of assessment nor in the proceedings before us placed any cogent material on the basis of which it can be concluded that the rent was required to be paid separately to Mr. Pandharinath Mali and Mrs. Pratiksha Mali. Further, the assessee has not

furnished any additional evidence to the effect that the payee have offered the rent income in the return of income and paid taxes thereon. Thus, as there is no dispute that as per leave and license agreement, assessee is required to pay Rs. 1,50,000 per annum which is below the threshold required for deducting tax at source on the payment of rent, we direct the Assessing Officer to delete the disallowance under section 40(a)(ia) of the Act to an extent of Rs.1,50,000 covered by the aforesaid leave and license agreement. As a result, ground No. 3 raised in assessee's appeal is partly allowed.

18. The issue arising in ground No. 4, raised in assessee's appeal, is with regard to ad hoc disallowance of Rs. 6,55,161 out of diesel, petrol and oil expenses and freight expenses.

19. The brief facts of the case pertaining to this issue as emanating from the record are: During the relevant assessment year, the assessee incurred expenditure towards diesel, petrol and oil expenses amounting to Rs. 1,23,53,178 and Freight Expenses of Rs. 5,31,62,956. During the course of assessment proceedings, assessee submitted copy of Ledger account of these expenses. The Assessing Officer vide order passed under section 143(3) of the Act doubting the correctness of claim of expenditure on cash vouchers, disallowed 1% of these expenses for want of verification. The CIT(A) dismissed the appeal filed by the assessee on this issue. Being aggrieved the assessee is in appeal before us.

20. During the course of hearing, learned A.R. submitted that the percentage of freight expenses and diesel, petrol and oil expenses in cash in comparison to freight income is very less. Further by reference to the audited financial statements for financial years 2012 – 13 and 2011 – 12, the learned A.R. submitted that assessee being engaged in business of transporters is having trailers and pickup trucks as part of its fixed assets. Thus the aforesaid expenditure was incurred as part of its business. On the other hand, learned D.R. vehemently relied upon the orders passed by the lower authorities.

21. We have considered the rival submissions and perused the material available on record. In the present case, it is not disputed that the assessee is engaged in business of transporters. It cannot be doubted that being in such business the assessee would have incurred freight expenses and diesel, petrol and oil expenses on daily basis. From the summary of expenses, as provided at page 118 of the paper book filed by the assessee it is evident that the percentage of freight expenses in cash to freight income was 0.05% in financial year 2013 – 14, 0.04% in financial year 2012-13 and 0.02% in financial year 2011 – 12. Similarly the percentage of diesel, petrol and oil expenses in cash to freight income was 0.28% in financial year 2013 – 14, 0.22% in financial year 2012 – 13 and 0.13% in financial year 2011 – 12. Thus, from the above, it is evident that the expenditure incurred in cash in comparison to the freight income is very minuscule. We are of the view that assessee being engaged in business of transporters such expenses are unavoidable and at the same time it is

difficult to maintain proper documentation in respect of such cash expenditure. Further, the Assessing Officer has also not provided any basis for making disallowance on an ad hoc basis. Accordingly we direct the Assessing Officer to delete the disallowance of Rs. 6,55,161 out of diesel, petrol and oil expenses and freight expenses. As a result, ground No. 4 raised in assessee's appeal is allowed.

22. Insofar as ground No. 5 in assessee's appeal with regard to disallowance of Diwali expenses, same was not pressed during the course of hearing. Accordingly, ground No. 5 is dismissed as not pressed.

23. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 08/04/2022

Sd/-
GAGAN GOYAL
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 08/04/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai