

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND

HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No.2821/Chny/2018

(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Thirumathi Kannammal Educational Trust 22, G.N. Chetty Road, T. Nagar, Chennai – 600 017.	बनाम / Vs.	ITO International Taxation Ward -2(2), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAATT-0891-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate) & Shri. N. Arjunraj (CA) – Ld. ARs
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT) – Ld. Sr. DR

सुनवाईकी तारीख/ Date of Hearing	:	13-04-2022
घोषणाकी तारीख / Date of Pronouncement	:	20-04-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order passed by the learned Commissioner of Income Tax (Appeals)-16, Chennai [CIT(A)] dated 14.08.2018 in the matter of an order passed by Ld. Assessing Officer [AO] u/s 201(1) / 201(1A) of the

Act on 15.03.2017. The sole issue under the appeal is that the assessee has been treated as assessee-in-default u/s 201(1) & 201(1A) for want of Tax Deduction at Source (TDS) on purchase of an immovable property and consequent demand has been raised u/s 201(1) & 201(1A).

2. The Ld. AR advanced arguments and sought benefit of second proviso to Sec. 40(a)(i) as inserted by Finance Act, 2019 w.e.f. 01.04.2020. The Ld. Sr. DR, on the other hand, submitted that the assessee failed to comply with TDS provisions and therefore, the demand was justified. Having heard rival submissions, our adjudication would be as under.

3. During assessment proceedings, it transpired that the assessee trust purchased a vacant land situated at Neelankarai for sum of Rs.295.92 Lacs from Smt. Zainee Razana who happened to be a non-resident. However, the assessee did not deduct tax at source as required u/s 195 and accordingly, the assessee was held to be assessee-in-default in an order passed by Ld. AO u/s 201(1) / 201(1A). The assessee submitted that the provisions of Sec.194-IA were applicable only w.e.f. 01.06.2013. However, this plea was rejected since the seller was non-resident and accordingly, the provisions of Sec.195 and not the provisions of Sec.194-IA would apply. It was noted that the capital gains were assessed to tax in the hands of the seller on 30.03.2015 and the vendor has not paid the taxes demanded by the revenue. Therefore, a demand was raised against the assessee for interest of Rs.36.90 Lacs u/s 201(1A). However, Ld. AO did not raise a demand of Rs.57.66 Lacs, being the amount of tax default @20% u/s 201(1).

4. The Ld. CIT(A) noted the mistake of Ld. AO and issued enhancement notice to the assessee. The assessee submitted that the transaction was completed during financial year 2009-10 itself relevant to AY 2010-11. However, the property was registered during this assessment year and accordingly, the income was assessed in the hands of the seller in this year only vide order dated 30.03.2015. In further appeal by seller, Tribunal had restored the matter back to the file of Ld. AO for fresh adjudication. In the above background, the assessee sought shelter of first proviso to Sec.201(1) by drawing attention to the fact that the seller had offered the gains in financial year 2009-10. However, rejecting the same, Ld. CIT(A) dismissed the appeal and directed Ld. AO to compute correct tax and interest u/s 201(1) & 201(1A). Aggrieved, the assessee is in further appeal before us.

5. The Ld. AR submitted that pursuant to the directions of the Tribunal, an assessment has been re-framed in the hands of the seller for AY 2012-13 vide order dated 31.12.2018 wherein the capital gains have been computed in the hands of the seller and a tax demand has been raised. The copy of the assessment order of the seller passed u/s 143(3) r.w.s. 254 has been placed on record. In the said background, Ld. AR sought benefit of second proviso to Sec.40(a)(i) read with first proviso to Sec.201(1). The Ld. Sr. DR, on the other hand, submitted that full payments were made in earlier financial years and therefore, the assessee would be liable for interest up-to the date of actual payment by the seller.

6. After due consideration of material fact, we find that it is undisputed fact that the assessee has not deducted TDS on purchase of property and accordingly, the assessee has been treated as assessee-in-default.

However, the assessee has sought benefit of second proviso to Sec.40(a)(i) which has been inserted by Finance Act, 2019 w.e.f. 01.04.2020. The Memorandum explaining amendment made to Section 40(a)(i) and section 201 of the Act by Finance (No.2) Bill, 2019 explains that amendment is to remove anomaly and the rationale of amendment is stated to be as follows: -

Relaxing the provisions of sections 201 and 40 of the Act in case of payments to non-residents

Section 201 of the Act provides that where any person, including the principal officer of a company or an employer (hereinafter called 'the deductor'), who is required to deduct tax at source on any sum in accordance with the provisions of the Act, does not deduct or does not pay such tax or fails to pay such tax after making the deduction, then such person shall be deemed to be an assessee in default in respect of such tax.

The first proviso to sub-section (1) of section 201 specifies that the deductor shall not be deemed to be an assessee in default if he fails to deduct tax on a payment made to a resident, if such resident has furnished his return of income under section 139, disclosed such payment for computing his income in his return of income, paid the tax due on the income declared by him in his return of income and furnished an accountant's certificate to this effect.

This relief in section 201 is available to the deductor, only in respect of payments made to a resident. In case of similar failure on payments made to a non-resident, such relief is not available to the deductor. To remove this anomaly, it is proposed to amend the proviso to sub-section (1) of section 201 to extend the benefit of this proviso to a deductor, even in respect of failure to deduct tax on payment to non-resident.

Consequent to this amendment, it is also proposed to amend the proviso to sub-section (1A) of section 201 to provide for levy of interest till the date of filing of return by the non-resident payee (as is the case at present with resident payee). These amendments will take effect from 1st September, 2019. [Clause 49] For the same reason, it is also proposed to amend clause (a) of section 40 to provide that where an assessee fails to deduct tax in accordance with the provisions of Chapter XVII-B on any sum paid to a non-resident, but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of the return of income by the payee referred to in that proviso. Thus, there will be no disallowance under section 40 in respect of such payments.

This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years. [Clause 10]"

Upon perusal of the same, we find that the second proviso to Section 40(a)(i) has been inserted w.e.f. 01.04.2020 and provide that where 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 it shall be deemed that the assessee has deducted and paid the taxes on such sum on the date of furnishing of return of income by the payee referred to in the said proviso. As per proviso to Section 201(1), a payee shall not be deemed to be an assessee in default in respect of such tax if such payee, (a) furnished its return of income under section 139, (b) has taken into account such sum for computing income in such return of income and (c) has paid the tax due on the income declared by him in such return of income and along with such payee furnishes a certificate to this effect from an accountant in the prescribed form.

7. We are of the considered opinion that the aforesaid amendment is curative in nature and would have retrospective application. Our opinion draws strength from the fact that second proviso to Sec.40(a)(ia) and Sec. 40(a)(i) are evenly worded and pari-materia to each other. Both the provisions were introduced by the legislature in order to remove the anomaly / hardship and therefore, could be held to be curative in nature. In the case of section 40(a)(ia), Hon'ble High Court of Bombay in the case of **Pr. CIT Vs. Perfect Circle India (P.) Ltd. (ITA No.707 of 2016; 07.01.2019)** as well as Hon'ble Delhi High Court in the case of **CIT Vs. Ansal Land Mark Township (P) Ltd. (377 ITR 635)** have already held that these provisions are applicable retrospectively with effect from 01.04.2005. Since the amendment to Sec. 40(a)(ia) was carried out in

order to remove the anomalies, similar amendment brought in Sec.40(a)(i) is also to remove the anomaly and therefore, this amendment is to be considered as curative in nature having retrospective application.

8. Therefore, we set aside the impugned order and direct assessee to furnish requisite details / documents in support of its claim under second proviso to Sec.40(a)(i) read with proviso to Sec.201(1). The Ld. AO may compute interest, as applicable, in accordance with law.

9. The appeal stand partly allowed for statistical purposes.

Order pronounced on 20th April, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 20-04-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF