

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.493/PUN/2019
निर्धारण वर्ष / Assessment Year: 2012-13

ITO, Ward- 1(3), Pune.	Vs.	Decimus Financial Ltd., Decimus House, 195 M.G. Road, Pune- 411001. PAN : AAACK9547K
Appellant		Respondent

Revenue by : Shri M. G. Jasnani
Assessee by : None

Date of hearing : 30.05.2022
Date of pronouncement : 31.05.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 1, Pune dated 28.01.2019 for the assessment year 2012-13.

2. When the appeal was called on, none appeared on behalf of the respondent-assessee despite due service of notice of hearing. Therefore, after hearing the Id. Sr. DR, we proceed to dispose of this matter on merits.
3. The Revenue raised the following grounds of appeal :-

“1. The order of the Ld. CIT(A) is contrary to law and to the facts and circumstances of the case.

2. On the facts of the case the Ld. CIT(A) has erred in deleting the disallowance made by AO u/s. 40(a)(ia) by relying upon 2nd proviso to the said section even though the said proviso was inserted by the Finance Act, 2012 w.e.f. 01/04/2013 and not retrospective in nature and hence not applicable for A.Y. 2012-13.

3. The appellant craves to add, amend, alter or delete any of the above ground of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”

4. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of the Companies Act, 1956. The return of income for the assessment year 2012-13 was filed on 13.09.2012 declaring loss of Rs.1,06,55,146/-. There was no scrutiny assessment. Subsequently, the Assessing Officer had come to know that the respondent-assessee had paid interest on loan taken from non-banking financial corporation without deduction of tax at source u/s 194A of the Income Tax Act, 1961 ('the Act'). Accordingly, the Assessing Officer formed an opinion that the income escaped assessment to tax within the meaning of section 147 of the Act and after obtaining necessary approval from the Addl. Commissioner of Income Tax, the notice u/s 148 dated 24.06.2016 was issued to the respondent-assessee.

On receipt of the notice u/s 148, the respondent-assessee filed a letter stating that the return filed u/s 139 be treated as return in

response to notice u/s 148 of the Act. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-1 (3), Pune ('the Assessing Officer') vide order dated 22.12.2017 passed u/s 143(3) r.w.s. 147 of the Act after making addition of Rs.2,85,69,000/- being interest paid to non-banking financial corporation for reason that no deduction of tax at source on payment of interest to the above mentioned parties.

5. Being aggrieved by the above addition, an appeal was filed before the Id. CIT(A), who vide impugned order directed to the Assessing Officer to delete the addition of Rs.2,85,69,000/- placing reliance on the second proviso to section 40(a)(ia) of the Act.

6. Being aggrieved by the above decision of the Id. CIT(A), the Revenue is in appeal before us with the above extracted grounds of appeal.

7. It is contended that the provisions of second proviso to section 40(a)(ia) were not retrospective effect in nature, therefore, cannot be applied. It submitted that the second proviso to section 40(a)(ia) was inserted by the Finance Act, 2012 w.e.f. 1.4.2013. Therefore, the Id. CIT(A) had grossly erred in applying the second proviso to

section 40(a)(ia) without examining the evidence that there was no evidence that assessee was not declared as assessee in “default”.

8. We heard the ld. Sr. DR and perused the material on record. The issue in the present appeal relates to the applicability of second proviso to section 40(a)(ia) of the Act. The said second proviso inserted by the Finance Act, 2012 w.e.f. 1.4.2013 provides that where the assessee fails to deduct tax at source but it is not deemed to be an assessee in default u/s 201(1), it shall be deemed that the assessee had deducted at source and paid tax thereon within due date for filing return of income. This second proviso is held to be declaratory in nature w.r.e.f. 1.4.2005 i.e. from the date of main provision itself was inserted by the Hon’ble Jurisdictional High Court in the case of PCIT vs. Perfect Circle India Ltd. ITA No.707 of 2016 following the decision of the Hon’ble Delhi High Court in the case of Ansal Land Mark Township (P) Ltd. vs. CIT ITA No.160 of 2015 (Del). Following these decisions, the ld. CIT(A) allowed the appeal of the assessee. However, we find from reading of the order of the ld. CIT(A), he had not examined any evidence before coming to the conclusion that the proceedings u/s 201(1) were not initiated against the assessee. Thus, the ld. CIT(A)

allowed the appeal without examining any evidence in support of ground of appeal raised. Therefore, in the interest of justice, we remand the matter to file of the Id. CIT(A) for *de novo* adjudication in accordance with law after affording due opportunity of being heard to the respondent-assessee.

9. In the result, the appeal filed by the Revenue stands partly allowed.

Order pronounced on this 31st day of May, 2022.

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 31st May, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.