

आयकरअपीलीयअधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जी मंजूनअणु लेखकसदस्य, एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

I.T.A Nos.1618/CHNY/2017 (AY 2012-13)

I.T.A Nos. 2577/CHNY/2018 (AY 2013-14)

&

I.T.A Nos. 2578/CHNY/2018 (AY 2014-15)

M/s. Albert & Company Private Limited,
No.13, Whannels Road,
Egmore, Chennai – 600 008

PAN AADCS 9670C

..... अपीलकर्ता/Appellant

Vs.

The Income Tax Officer,
Corporate Ward – 6(1),
7th Floor, New Block,
No.121, M.G. Road,
Chennai – 600 034.

..... प्रत्यर्था/Respondent

Appearances:

For the Appellant/Assessee : Mr. S. Sridhar, Advocate

For the Respondent/Department : Ms. V. Sreedevi, JCIT

Date of conclusion of hearing : 31.05.2022

Date of pronouncement of order : 02.06.2022

आदेश / ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are three appeals filed by the Appellant/Assessee which were heard together as there were common grounds, and therefore, the same are being disposed by way of a common order.
2. We would first take up appeal for the Assessment Years 2013-2014 and 2014-15 as the same arise from a common order dated 28.06.2018 passed by the CIT(A).

**I.T.A. No. 2577/CHNY/2018 (A.Y. 2013 – 2014) &
I.T.A No. 2578/CHNY/2018 (A.Y. 2014 – 2015)**

3. By way of the present appeals, the Appellant/Assessee has challenged the common order, dated 28.06.2018, passed by the Commissioner of Income Tax (Appeals)-15, Chennai [hereinafter referred to as the 'the CIT(A)'] in I.T.A. No.78/2016-17/CIT(A)-15 and I.T.A. No.274/2016-17/CIT(A)-15 for the Assessment Year 2013-14 & 2014-15, respectively, whereby the CIT(A) had partly allowed the appeal filed by the Appellant/Assessee against the Assessment Order dated 22.04.2016 for the Assessment Year 2013-14 and 09.01.2017 for the Assessment Year 2014-15.
4. There was a delay in filing the appeals for the Assessment Year 2013-14 and 2014-05. Learned Authorized Representative of the Appellant, referring to the affidavit filed by the Appellant explaining the reason for delay, submitted that the employee of the Appellant had misplaced the duly executed appeal sets and therefore, the appeals could not be filed within time due to inadvertent mistake on the part of the employee of the Company. He prayed that the delay in filing be condoned and appeals be considered on merits. Learned Departmental Representative did not raise any objections in view of the reasons for delay provided by the Appellant. Accordingly, for the reasons stated in the affidavit explaining the delay, we condone the delay of 2 days in filing the appeal and proceed to decide the appeal on merits.
5. The brief facts of the case are that Appellant filed return of income for the Assessment Year 2013-2014 and 2014-2015 which were selected

for detailed scrutiny. The Assessing Officer completed the assessment after making the following additions / disallowance:

Particular	AY 2013-14 Amount (INR)	AY 2014-15 Amount (INR)
Disallowed deduction of proportionate interest on the capital borrowed under Section 36(1)(iii) of the Act	85,80,882	1,05,20,672
Disallowed under Section 40(a)(ia) of the Act on account of failure to deduct tax at source from Hire Chagres	49,93,513	38,26,918
Disallowed under Section 40(a)(ia) of the Act on account of failure to deduct tax at source from Labour Chagres	89,11,904	1,84,18,116

6. In the appeal filed by the Appellant against the assessment order, the CIT(A) confirmed the disallowance made by the assessing officer under Section 36(1)(iii) of Act and under Section 40(a)(ia) of the Act in respect of Labour Charges. However, as regards disallowance under Section 40(a)(ia) in respect of Hire Charges, the CIT(A) granted some relief to the Appellant by granting the benefit of Second Proviso to Section 40(a)(ia) read with First Proviso to Section 201(1) of the Act.
7. Being still aggrieved, the Appellant has filed the present appeal. The Appellant has raised identical grounds in the two appeals for the Assessment Year 2013-14 and 2014-15 and the same are as under:
 1. *The common order of the Commissioner of Income Tax (Appeals) – 15, Chennai dated 28.06.2018 in I.T.A. No.78/2016-17/CIT(A)-15, I.T.A.No.274/2016-17/CIT(A)-15 for the abovementioned Assessment Year is contrary to law, facts and in the circumstances of the case.*

2. *The CIT(Appeals) erred in sustaining the disallowance of interest on borrowed funds in the computation of taxable total income of both the Assessment Years without assigning proper reasons and justification.*
3. *The CIT(A) went wrong in recording the findings in this regard from paragraph 4.3 to para 4.3.7 of the impugned order without assigning proper reasons and justification.*
4. *The CIT(Appeals) failed to appreciate that the presumption of diversion of borrowed funds for non-business purpose was wholly unjustified and ought to have appreciated that having not checked the purpose of alleged diversion of borrowed funds and further having not checked the financial statements bringing to light the availability of non-interest bearing funds. The mechanical action is sustaining the proportionate disallowance of interest on borrowed funds was wholly unjustified.*
5. *The CIT(Appeals) erred in sustaining the disallowance of labour charges for want of TDS on the application of Section 40(a)(ia) of the Act in the computation of taxable total income without assigning proper reasons and justification.*
6. *The CIT(Appeals) failed to appreciate that the applicability of TDS provisions for labour payments in the absence of the contract(s), the sustenance of disallowance on wrong grounds was bad in law.*
7. *The CIT(Appeals) went wrong in recording the findings in this regard in paragraph 5.3.3 of the impugned order without assigning proper reasons and justification.*
8. *The CIT(Appeals) erred in partly considering one facet of the issue pertaining to the disallowance of hire charges within the scope of section 40(a)(ia) of the Act in paragraph 5.3.1. and in paragraph 5.3.2 of the impugned order without assigning proper reasons and justifications.*

9. *The CIT(A) failed to appreciate that the other issues raised including alternative contentions canvassed before him would establish the stand of the Appellant for allowing such charges in the computation of taxable total income.*
10. *The CIT(A) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law.*
11. *The Appellant craves leave to file additional grounds / arguments at the time of hearing.*
8. Ground No. 2 and 3 pertain to disallowance under Section 36(1)(iii) of the Act while Ground 4 to 10 pertain to disallowance under Section 40(a)(ia). The connected grounds are taken up together hereinafter.

Ground Nos.2 & 3:

9. The brief facts relevant for adjudication of the issue are that during the assessment proceedings the assessing officer noticed that while on one hand the Appellant has claimed deduction for interest expenses incurred on borrowed funds, on the other hand the Appellant has given interest free loans and advances to the Directors. Since the assessing officer was of view that the funds given to the directors were not for business purpose, the assessing officer made disallowance of proportionate interest expenditure under Section 36(1)(iii) of the Act which was computed as under:

		AY 2013-14 Amount (INR)	AY 2014-15 Amount (INR)
(A)	Interest Debited to P&L A/c	1,51,71,085/-	1,38,40,095/-
(B)	Total Interest Free Loans & Advances to Directors	8,48,46,427/-	7,93,31,564/-

(C)	Total Borrowed Funds	12,23,50,773/-	12,79,53,785/-
(D)	Disallowed u/s 36(1)(iii) [A x B/C]	1,05,20,672/-	85,80,882/-

10. Being aggrieved, the Appellant carried the issue in appeal before the CIT(A). Before the CIT(A) it was contended on behalf of the Appellant that the Assessing Officer has erred in not excluding interest on long terms borrowing, being vehicle loans & term loans, and the interest on overdraft facility & packing credit from the amount of interest debited to the Profit & Loss Account as the same could not have been used for purpose other than business purpose from which the same were granted. It was also contended on behalf of the Appellant that the loans and advances given to Directors were out of the own funds available with the Appellant. However, the CIT(A) rejected the aforesaid contentions and confirmed the additions made by the assessing officer under Section 36(1)(iii) of the Act.
11. The Appellant is now in appeal before us. The Learned Authorized Representative of the Appellant reiterated the submissions made before the lower authorities. He vehemently contended that the interest on terms loan, car loan, overdraft facility and packing credit facility cannot be disallowed as the funds from the aforesaid loans/facilities were used for business purposes. In this regard, he referred to Note 3 : 'Long Term Borrowings Secured' forming part of the financial statement for the Assessment Year 2013-14. He submitted that the Assessing Officer had failed to establish that the interest bearing funds were given

as interest free loans and advances to the directors. He further submitted that the Appellant had interest free own funds which were used to give loans and advances to the directors of the Appellant.

12. Per contra, Ld. Departmental Representative submitted that both the Assessing Officer and CIT(A) have concluded that interest bearing funds were used for giving loans and advances to the Directors. The Appellant did not have sufficient own funds for making loans and advances to the Directors. She supported the assessment order by relying upon the order passed by the CIT(A).
13. We have considered the rival contentions and perused the material on record. The Assessing Officer and CIT(A) have concluded the funds given to the directors as loans and advances were not used for business purpose. The Appellant has contended that the Assessing Officer had committed error in computing proportionate interest disallowance directors by not excluding interest on loans granted for specific purpose. While we find merit in the contention of the Appellant as regards car loans are concerned, there is no material on record to show that the funds were utilized for business purposes. The Appellant has not placed on record any material in support of this contention in the form of cash flow statement or otherwise. On the other hand, the CIT(A) has made the following observations:

“4.3.1. It is an undisputed fact that the Appellant had borrowed funds during the previous year relevant to the Assessment Year 2013- 2014 and such borrowings remained unpaid during the subsequent previous year relevant for the Assessment Yea 2014

– 2015 a well. It is also apparent that the Appellant had advanced interest free loans during the previous relevant for the Assessment Year 20-13 – 2014 and such loans continued to remain outstanding in the books of the Appellant as on 31.03.2013 and 31.03.2014. In fact the outstanding from Directors had increased during the year ended 31.03.2014.

4.3.4. A close scrutiny of the financials for the year ended 31.03.2013 shows that there has been an increase of short term borrowings and with corresponding increase of loans and advances to Directors (interest free). The relevant data is as under:

<i>Particulars</i>	<i>31.03.2012</i>	<i>31.03.2013</i>	<i>Increase</i>
<i>Short Term borrowings</i>	<i>186,68,748</i>	<i>694,48,602</i>	<i>507,79,854</i>
<i>Loans and advances to Directors</i>	<i>41148454</i>	<i>983,80,578</i>	<i>572,32,124</i>

4.3.5 On the contrary, the increase in reserve and surplus was only Rs.31,65,460/-. There have not been any significant changes in the sources and application. The Appellant did not make available cash flow statements proving that the interest-free advances were made out of internal accrual and there has not been any diversion of interest bearing borrowed funds. In the absence of direct evidence to show that the advances has been made out of funds generated by way of internal accruals the factual position stands against the Appellant and there is every reason to hold that interest bearing funds have been diverted for Directors by way of interest-free loans and advances. It is therefore held that the financial data prima facie proves that there has been diversion of funds and such funds were outstanding at the end of 31.03.2013 and 31.03.2014 along with interest-free loans and advances to Directors.”

Thus, the CIT(A) has examined the increase in short term borrowings and co-related it to the increase in the loans and advances given to the

directors during the previous year relevant to Assessment Year 2013-14 to establish nexus between interest bearing funds and loans & advances to the directors. Further, the CIT(A) has also returned a finding that there was an increase of INR 31,65,460/- only during the aforesaid previous year. These findings of the CIT(A) have not been controverted in the appellate proceedings before us.

14. In view of the above, we direct the Assessing Officer to re-compute the amount of proportionate disallowance of interest on borrowed capital for the purpose of disallowance under Section 36(1)(iii) of the Act for the Assessment Year 2013-14 and 2014-15 by excluding the interest on car loans (*Kotak Mahindra Prime Limited - Tata Sumo & XUV Car*) from the amount of interest debited to Profit & Loss Account, and by reducing the total amount of interest free loans and advances given to directors by the surplus of INR 31,65,460/- generated during the previous year relevant to Assessment Year 2013-14.
15. In terms of paragraph 14 above, Ground Nos.2 & 3 raised by the Appellant are partly allowed.

Ground Nos. 4 to 10

16. During the assessment proceedings the assessing officer noticed that the Appellant had failed to deduct tax on source on hire charges of Crane, Front End Loader (FEL) and Grab [hereinafter referred to as 'the Hire Charges'] which were included under the head Sugar/Wheat Handling Charges in the books of accounts. The Appellant contended

that the Crane, FEL and Grab were 'goods carriage' and therefore, provisions of Section 194C were not attracted. However, the Assessing Officer rejected the aforesaid contention and since the Appellant had failed to deduct tax at source, the Assessing Officer made disallowance under Section 40(a)(ia) of the Act amounting to INR.49,93,513/- and INR.38,26,918/- for the Assessment Year 2013-14 and 2014-15, respectively.

17. In appeal on this issue, the CIT(A) confirmed the above disallowance under Section 40(a)(ia) of the Act. However, the CIT(A) granted relief to the Appellant by extending the benefit of the Second Proviso to Section 40(a)(ia) of the Act (amended through Finance Act, 2013) to the Appellant. The aforesaid Second Proviso provided that in case the amount paid by payer (*on which tax has not been deducted at source*) has been included by the payee in his return of income for relevant assessment year filed under Section 139 of the Act, and payee has paid the taxes due on the income declared in such return of income, then to the extent the payee includes the sum in his return of income, no disallowance under Section 40(a)(ia) of the Act can be made by the Assessing Officer in terms of Second Proviso to Section 40(a)(ia) of the Act read with First Proviso to Section 201(1) of the Act. Accordingly, the CIT(A) directed the Appellant to provide specified certificate/documents to the Assessing Officer while holding that no disallowance shall be made by the Assessing Officer in respect of the amount specified in the aforesaid certificate/document.

18. Not being satisfied, the Appellant is in appeal before us on this issue.
19. The Authorized Representative of the Appellant reiterated the submissions made before the lower authorities. He submitted that the provisions of Section 40(a)(ia) of the Act are attracted only in relation to amounts outstanding at the end of the year. He further submitted that though the CIT(A) has granted the benefit of Second Proviso to Section 40(a)(ia) of the Act to the Appellant, the disallowance should be restricted to 30% in view of the amendment made to the provisions of Section 40(a)(ia) by the Finance Act, 2014. The Learned Departmental Representative relied upon the order passed by the CIT(A) on this issue and submitted that sufficient relief has already been granted to the Appellant by the CIT(A).
20. We have heard the rival submissions and perused the materials on record including the orders passed by the lower authorities. We note that the Hon'ble Supreme Court has in the case of Shree Chaudhary Transport Company Vs ITO: (2020) 118 Tamann.com 47 (SC) held that the applicability of provisions of Section 40(a)(ia) is not limited to the amount outstanding at the year end, and is also applicable to the amount incurred/paid during the year. Further, the amendments to Section 40(a)(ia) introduced by the Finance Act, 2014, the benefit of which has been sought by the Appellant, are effective from 01.04.2015 and therefore, are not applicable to the assessment years before us. We are of the considered view that the order passed by the CIT(A) on this issue does not require any interference. Having held that the Hire

Charges were subject to deduction of tax under Section 194C of the Act, the Assessing Officer had made disallowance of the entire amount as the Appellant had failed to deduct tax from the same. However, the CIT(A) has granted the benefit of Second Proviso to the Appellant. We are not persuaded to interfere with the order passed by the CIT(A) on this issue.

21. Similarly, the Assessing Officer also made a disallowance under Section 40(a)(ia) of the Act in respect of labour charges as the Appellant had failed to deduct tax at source from the same. During the assessment proceedings the Appellant had contended that the labour charges/payments were actually disbursements to coolies for loading and unloading purposes made through one common person. However, the Assessing Officer observed that the payments of labour charges were contractual in nature. Not being satisfied with the explanation offered by the Appellant, the Assessing Officer made disallowance under Section 40(a)(ia) of the Act amounting to INR.89,11,904/- and INR.1,84,18,116/- for the Assessment Year 2013-14 and 2014-15, respectively.
22. In appeal before the CIT(A) on this issue, it was contended on behalf of the Appellant that the labour charges represented payments disbursed through employees of the Appellant and the leader of coolies in relation to multiple days of work done during the relevant previous year. The individual payments to be made to the coolies/labour were very small and fell below the limit for deduction at tax at source, however, in the

books of accounts cumulative entries were passed in the name of the employee of the Appellant or the leader of the coolies. However, the Assessing Officer failed to take the same into account and invoked provisions of Section 40(a)(ia) of the Act in a mechanical manner. However, the CIT(A) was not convinced as he noted that the Appellant had failed to file any documents such as ledger accounts during the assessment and the appellate proceedings to support the claim. The CIT(A) was of the view that nothing prevented the Appellant for making payments through bank accounts and therefore, in absence of any details and documents to support the claim of the Appellant, CIT(A) confirmed the disallowance made by the Assessing Officer.

23. Now, the Appellant is in appeal before us challenging the order of the CIT(A) on this issue. The learned Authorized Representative of the Appellant vehemently argued that the authorities below fell in error in not appreciating that payments were made through supervisors to many casual labourers which were very small and were grouped under one name. The provisions of Section 40(a)(ia) had no application to such payments and had been invoked/applied mechanically. Learned Departmental Representative, countering the submissions made by the Authorized Representative of the Appellant, submitted that the Appellant had not filed any documents to support his claim and therefore, the Assessing Officer/CIT(A) were justified in making disallowance under Section 40(a)(ia) of the Act.

24. We have the considered the rival submissions and perused the material on record. It is an admitted fact that the payments were made in cash. According to the Assessee the small payments were made to a number of coolies/laborer which were clubbed together and recorded in the books of accounts in the name of an employee of the company or the leader of coolies. In our view, the Assessing Officer was justified in taking the figures as recorded in the books of accounts and in invoking provisions of Section 40(a)(ia) of the Act. The Appellant had the opportunity to file documents during the assessment as well as the Appellate proceedings to support his claim. However, no such documents were filed before the authorities below. Even in the present appellate proceedings, the Appellant has not filed any evidence/additional evidence in support of his claim. The contentions/claims of the Appellant are not based upon the material on record, The order passed by the CIT(A) on this issue is, therefore, upheld.

25. In view of the above, Ground Nos. 4 to 10 raised by the Appellant are disposed of in terms of paragraph 20 and 24 above.

Ground No.1 & 11

26. Ground No.1 & 11 are disposed off as they are general in nature.

27. In result present appeal is partly allowed.

Now, we would take up appeal for the Assessment Year 2012-13.

I.T.A. No. 1618/CHNY/2017 (A.Y. 2012-13)

28. There was a delay in filing the appeals for the Assessment Year 2012-2013. Learned Authorized Representative of the Appellant, submitted that appeal could not be filed within time on account of dispute in the family of one of the Directors an account of which the business of the Appellant had come to stand still. This resulted in inadvertent delay of 18 days in filing the appeal. Learned Departmental Representative did not raise any objections regarding the reasons of delay. Accordingly, for the reasons stated in the application for condonation of delay the delay of 18 days in filing the appeal is condoned, and we proceed to decide the appeal on merits.
29. The brief facts of the case are that Appellant filed return of income for the Assessment Year 2011-12 which was selected for detailed scrutiny. The Assessing Officer completed the assessment after making the following additions / disallowance:

Particular	AY 2014-15 Amount (INR)
Disallowed deduction of proportionate interest on the capital borrowed under Section 36(1)(iii) of the Act	51,89,484
Disallowed under Section 40(a)(ia) of the Act on account of failure to deduct tax at source from Hire Chagres	76,94,449
Disallowed under Section 40(a)(ia) of the Act on account of failure to deduct tax at source from Labour Chagres	34,50,866
Disallowed under Section 40(a)(ia) of the Act on account of failure to deduct tax at source from Other Charges – lease rent, forwarding charges & legal fee	11,76,000

Disallowance under Section 37 of the Act being 35,000
ROC Fee pertaining to earlier years debited to P&L
Account

30. Being aggrieved, the Appellant preferred an appeal before the Learned CIT(A) on all the above issues. The CIT(A) confirmed the order of the Assessing Officer on all the above issues. However, the CIT(A) granted relief to the Appellant by giving directions in relation to the disallowance made u/s.40(a)(ia) of the Act holding as under:

“Besides the above disallowances, the AO has also disallowed expenses of lease rent, forwarding charges and legal fees since the Appellant had failed to make TDS on the payments. In the written submission of the Learned Authorized Representative, it has been contended that the AO has mechanically applied the provisions of Section 40(a)(ia) without going into the applicability of the provisions governing TDS in relation thereto. In the assessment order, the AO has not discussed the issues at length. She has simply invoked Section 40(a)(ia) of the Act and disallowed the expenses. However, at the same time, the Appellant has also not contradicted the findings of the AO with cogent material evidence. Therefore, notwithstanding the above rival contentions, the nature of payments reveals that these expenses attracted the provisions of TDS. Since the Appellant has failed to deduct the tax at source, the disallowance u/s.40(a)(ia) is confirmed.

However, notwithstanding the above findings of the AO, as claimed by the Appellant, the provisions of Section 40(a)(ia) of the Act are not applicable since the said sums remain paid at the end of the previous year relevant to the assessment year under consideration. The Learned Authorized Representative has also relied on the decision of the Hon'ble Jurisdictional Tribunal in the case of the Appellant in I.T.A. No.435/Mds/2015/A.Y.2010-11; dated 14.01.2016 wherein the Tribunal relied on its own decision in the case of Shri N. Palanivelu vs. ITO in I.T.A. No.618/Mds/20156; dated

29.04.2015. It was held by the Hon'ble Tribunal that if the impugned amount is not outstanding at the end of the close of the relevant assessment year in respect of the expenses either as outstanding expenses or as sundry creditors, this amount cannot be disallowed.

Therefore, respectfully following the decision of the Hon'ble Jurisdictional Tribunal, I direct the AO to allow the expenses of Rs.1,23,21,315/-. However, the AO is directed to verify that the amount remains paid as on 31.03.2012. If, however, the impugned amount or part thereof remains unpaid as on 31.03.2012, the same shall be disallowed." (Emphasis supplied)

31. Thus, the Learned CIT(A) had confirmed the disallowance under Section 40(a)(ia) of the Act. However, CIT(A) granted relief to the Appellant by directing the Assessing Officer to verify the amount paid as on 31.03.2012 and restricted the disallowance under Section 40(a)(ia) of the Act to the amount remaining unpaid as on 31.03.2012.

32. Not being satisfied, the Appellant / Assessee has preferred the present appeal raising the following grounds:

[1] *The order of the Commissioner of Income Tax (Appeals) – 15, Chennai dated 24.03.2017 in I.T.A. No.92/A.Y.2012-13/CIT(A)-15/2015-16 for the above mentioned Assessment Year is contrary to law, facts and in the circumstances of the case.*

[2] *The CIT(Appeals) erred in sustaining the disallowance of proportionate interest aggregating to Rs.51,89,484/- on the application of Section 36(1)(iii) of the Act in the computation of taxable total income without assigning proper reasons and justification.*

[3] *The CIT(Appeals) failed to appreciate that the presumption of diversion of interest bearing funds for non-business purpose was not correct and further ought to have*

appreciated that the commercial expediency aspect in placing the funds to the Directors was completely overlooked and brushed aside in the impugned order.

- [4] The CIT(Appeals) failed to appreciate that the decisions cited in support of the plea were not considered and further ought to have appreciated that the decisions applied to sustain the addition were not applicable to the factual matrix of the case.*
- [5] The CIT(Appeals) went wrong in recording the findings in this regard from para 16 to 18 of the impugned order without assigning proper reasons and justification.*
- [6] The CIT(Appeals) erred in sustaining the disallowance of Rs.35,000/- being the ROC fees in the computation of taxable total income without assigning proper reasons and justification and went wrong in recording the findings in this regard in para 13 of the impugned order without assigning proper reasons and justification.*
- [7] The CIT(Appeals) erred in sustaining the applicability of the provisions of Section 194C of the Act for the payments made which were morefully captured in Ground Nos.2 to 6 of the statutory Form No.35 without assigning proper reasons and justification.*
- [8] The CIT(Appeals) went wrong in recording the findings in this regard in para 12 of the impugned order without assigning proper reasons and justification.*
- [9] The CIT(Appeals) failed to appreciate that in the absence of a valid contract, the provisions governing TDS had no application thereby vitiating the finding recorded in relation thereto.*
- [10] The CIT(Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law.*

[11] *The Appellant craves leave to file additional grounds / arguments at the time of hearing.*

Adjudication on this issue for the Assessment Years 2013-14 and 2014-15 would be apply mutatis mutandis to the Assessment Year 2012-13 as both sides agree that identical grounds have been raised in similar facts and circumstances.

Ground No.1 & 11

33. Ground No.1 & 11 are disposed off as they are general in nature.

Ground No.2 to 5

34. Ground Nos. 2 to 5 pertains to disallowance of interest of INR 51,89,484/- made by the AO u/s.36(1)(iii) of the Act which has been confirmed by the Learned CIT(A). In view of our adjudication on this issue in appeal for the assessment year 2013-14 & 2014-15 above in identical facts and circumstances, the order of CIT(A) of confirming disallowance of INR 51,89,484/- made by the AO u/s.36(1)(iii) of the Act is confirmed. Ground No 2 to 5 are partly allowed in terms of Paragraph 14 above. Accordingly, we direct the Assessing Officer to re-compute the amount of proportionate disallowance of interest on borrowed capital for the purpose of disallowance under Section 36(1)(iii) of the Act for the Assessment Year 2013-14 and 2014-15 by excluding the interest on car loans (*Kotak Mahindra Prime Limited - Tata Sumo*) from the amount of interest debited to Profit & Loss Account, and by reducing the total amount of interest free loans and

advances given to directors by the surplus, if any, generated during the previous year relevant to Assessment Year 2012-13

Ground No.6

35. Ground No. 6 pertains to disallowance of INR 35,000/- being ROC Fee pertaining to prior period debited to the Profit & Loss Account. The CIT(A) has returned a factual finding that the expense does not pertain to the relevant assessment year which have gone uncontroverted in appellate proceedings before us. Accordingly, the order of CIT(A) on this issue is sustained and Ground No. 6 raised by the Appellant is dismissed.

Ground No.7 to 10

36. Ground No.7 to 10 pertain to disallowance under Section 40(a)(ia) of the Act. In view of our adjudication on this issue in appeal for the assessment year 2013-14 & 2014-15 above in identical facts and circumstances, the disallowance under Section 40(a)(ia), made by the Assessing Officer and to the extent confirmed by CIT(A), is confirmed in respect of labour charges amounting to INR 34,50,866/-, and other charges amounting to INR 11,76,000/- [*consisting of ease rent INR 10,80,000, forwarding charges INR 51,000 and legal fee INR 45,000/-*] is confirmed. Whereas, in respect of disallowance made in respect of Hire Charges of INR.7,69,449/- the issue is remanded back to the file of Assessing Officer for re-computing the disallowance under Section 40(a)(ia) of the Act after giving benefit of Second Proviso to Section 40(a)(ia) of the Act subject to the Appellant complying with the

requirements of the said provision by furnishing relevant certificate/documents. In view of the aforesaid, Ground No. 7 to 10 are disposed off as partly allowed.

37. In result present appeal is partly allowed.

Order pronounced in the court on 02.06.2022 at Chennai.

Sd/- (जीमंजूनाथ) (G. MANJUNATHA) लेखासदस्य/ACCOUNTANT MEMBER	Sd/- (राहुलचौधरी) (RAHUL CHAUDHARY) न्यायिकसदस्यएवं /JUDICIAL MEMBER
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चेन्नई/Chennai,
दिनांक/Dated, the 2nd June, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

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