

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 5411/Mum/2019 (A.Y. 2014-15)

M/s Shilpi Flocking Co. Pvt. Ltd.,
C/8, Janardhan Bhavan,
B.K. Road, Mulund (E),
Mumbai-400081.

PAN: AAACS8671C

..... Appellant

Vs.

ITO-15(3)(3),
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... Respondent

Appellant by : None
Respondent by : Ms. Neha Thakur, DR

Date of hearing : 16/03/2022

Date of pronouncement : 13/06/2022

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-24, Mumbai [hereinafter referred to as 'the CIT(A)'] vide order dated 26.04.2019 for the Assessment Year (AY) 2014-15. The assessee has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case as well as in law, the learned Income Tax officer has disallowed Rs. 1,50,000/-(6,00,000-4,50,000) as Director's Remuneration. The Income Tax Officer has considered Rs. 4,50,000 instead of Rs. 6,00,000 as Director's Remuneration paid. The learned CIT (Appeals) -24 Mumbai confirmed the same by passing the order under section 250 of the IT Act 1961.

2. On the facts and in the circumstances of the case as well as in law, the learned Income Tax officer erred in disallowing Rs.5,61,210 and Rs. 1,38,917 on account

of TDS not deducted on interest paid and loan processing charges paid respectively to NBFC. Total disallowance made of Rs 700127. The learned CIT (Appeals) -24 Mumbai confirmed the same by passing the order under section 250 of the IT Act 1961.

3. On the facts and in the circumstances of the case as well as in law, the learned Income Tax Officer has added Rs.2,57,236 /to the total income on account of FD Interest under the head 'Income From Other Source'. The learned Assessing Officer failed to consider that your appellant has offered the said interest income on maturity or pre-maturity of FD and accordingly interest income offered the same in A. Y. 2015-16. The learned CIT (Appeals) -24 Mumbai confirmed the same by passing the order under section 250 of the IT Act 1961.

4. Your appellant request to consider the delay if any for filing the appeal before your honour.

5. The Appellant submit that action of the learned ITO 15(3) (3), Mumbai is against the weight of natural justice and evidence on record.

6. The Appellant craves his right to add, alter, to delete and amend any grounds of appeal on or before the times of hearing.”

2. Brief facts of the case are that the assessee-company filed its return of income for the AY 2014-15 on 29.11.2014 declaring total income at Rs. 96,79,870/-. The case was selected for scrutiny and statutory notices were issued and served on the assessee.

3. The assessee-company is engaged in the business of manufacturing of H.R. Coils and cutting & shearing of all non-ferrous sheets. Company is deriving income under the head Business and having certain loans from various Non-Banking Financial Companies (NBFC).

4. **Ground No.1:** During the course of assessment proceeding on verification of details filed by the appellant, the Assessing Officer (AO) noticed that the assessee paid Rs. 6,00,000/- as remuneration to the Director, Shri Rang Bahadur Singh. However, the AO observed that for the year under consideration, Director had offered only Rs. 4,50,000/- under the head “Income from Salary”.

Accordingly, difference amount of Rs. 1,50,000/- was disallowed and added back to the total income of assessee.

5. In this regard, assessee submitted that remuneration paid to the Director was rightly paid and his claim is genuine. The Director of the company by any reason shown lesser amount of remuneration in his personal return, the same should be added back to his personal return and cannot be added to the total income of the assessee-company.

6. We have gone through the record and considered the contentions of the AO, order of the Id. CIT(A) and contention of the appellant. There is no material bring on record by the AO which proves that the claim of the assessee with respect to remuneration paid to its Director and in its submission they are offering to the Department that return of the concerned Director should be affected as far as difference amount of Rs. 1,50,000/- is concerned. We found force in the ground of appellant that the same should be added back to the income of concerned Director. **Hence, this addition of Rs. 1,50,000/- in the hands of appellant-company is deleted and this ground of appeal is allowed.**

7. **Ground No.2:** During the course of assessment proceedings, on verification of details filed by the assessee, the AO further noted that the assessee had paid interest of Rs. 5,61,210/- viz Bajaj Finance Rs. 51,001/-. Tata Capitals Ltd. Rs. 1,62,745/-. Religare Finvest Ltd. Rs. 2,37.245/- and Magma Finance Corporative Ltd. Rs. 1,10,219/- respectively. The AO also found that the assessee had paid processing charges of Rs. 65,123/- and Rs. 73.794/- to M/s. Tata Capita and M/s. Bajaj Finserve respectively totalling to Rs 1,38,917/- The assessee had not deducted Tax at source on these payments made. However, the assessee was asked to explain as to whether tax had been deducted on the payments made and

if not deducted asked to explain as to why the same should not be disallowed u/s. 40(a)(ia) of the Act. AO stated that the assessee had not complied with legal provisions as the assessee had failed to deduct TDS and hence, it attracts the provisions of Sec 40(a)(ia) due to non compliance with the provision of Chapter XVII B. Accordingly, the amount of Rs 7,00,127/-.

8. We have considered the AO's order and findings of Id. CIT(A) on the same. As far as amount of Rs. 1,38,917/- paid by appellant as processing charges to the NBFC does not attract any section of TDS as provided in Chapter XVII B, so there is no question of TDS on the same and consequently provisions of section 40(a)(ia) will not attract on the same. As far as interest mentioned (supra) paid by appellant to various NBFC are concerned, we found submission of appellant relevant and reproduced as under:

"Our above mentioned client had paid interest to non banking financial company during the year as under:

- a) Bajaj Finance - Rs. 51,001*
- b) Tata Capitals Ltd. Rs. 1,62,745/-
I-Think Techno Campus Building A, 4th Floor Off Pokharan Road, Thane (W)
400 067 (Tel. No. 91 22 61828282)*
- c) Religare Finvest Ltd. Rs. 2,52,577/-
D3, P3B, District Centre, Saket, New Delhi-110017
(Tel. No. + 91 11 39411 411)*
- d) Magma Finance Corporative 1,10,219/-
Magma House, 24 Park Street, Kolkata 700016
(Tel. 91 33 4401 7350/7200)*

Above mentioned companies are amount along with interest and bifurcation the interest paid received late. Hence, above mentioned client's unable to deduct the amount. We have requested above mentioned non banking financial company to give the certificate declaring that the mentioned interest income declared their Return Income and the fax.

Our above mentioned client have taken loan from Tata Capital (address as in "b" and Bajaj Finserve (Address as in "a") and the company given the loan after

deducting processing charges and unable to deduct TDS and also they are not allowing us deduct TDS. Our client already informed to the said company to give us certificate declaring the above mentioned procession charges income declared in their Return Income and paid the necessary tax.

We submit that our above mentioned client was liable to deduct TDS which we failed but he relied upon second provision to the section of the Act for the purpose that in impugned payment were included the payees in their taxable income and the same were offered by them their Income Tax Returns and due taxes were paid upon the income, then no disallowance should be made in the hands of the assessee as there was no loss to the revenue. We placed reliance upon the judgment of Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd. 160/2015 order dated 26.08.2015 and judgement of Coordinate Bench in the case of M/s. Selprint (ITA No. 3688/Mum/2012 dated 21.10.2015, wherein aforesaid judgment of Hon'ble High Court has been followed. On the basis of these judgments, it has been requested by our client to verify this fact that income has been included by the payees in their respective returns. We further submit that most of the payees are large companies which are properly identified and duly assessed by the Income Tax department but since these are not in control of our client therefore our client is not able to bring the return filing proof and tax paid on the income declared in support of our claim Therefore we requested to the assessing officer at the time of the assessment proceedings to collect this information directly from the payee companies, in spite of all addresses of NBFC given to Assessing Officer at the time of assessment proceedings. The Mumbai ITAT "T" Bench passed the order on 18.12.2015 accepting the above in the case of Indus Projects Ltd. vs. Addl. CIT 6(1), Aayakar Bhavan, Mumbai - 400 020."

9. Reliance is placed on the judgment of Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P.) Ltd., wherein it was held as under:

"Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

- (i) has furnished his return of income under section 139;*
- (ii) has taken into account such sum for computing income in such return of income; and*
- (iii) has paid the tax due on the income declared by him in such return of income;*

And the person furnishes a certificate to this effect from an accountant

in such form as may be prescribed."

11. The first proviso to Section 201(1) of the Act has been inserted to benefit the Assessee. It also states that where a person fails to deduct tax at source on the sum paid to a resident or on the sum credited to the account of a resident such person shall not be deemed to be an assessee in default in respect of such tax if such resident has furnished his return of income under Section 139 of the Act. No doubt, there is a mandatory requirement under Section 201 to deduct tax at source under certain contingencies, but the intention of the legislature is not to treat the Assessee as a person in default subject to the fulfilment of the conditions as stipulated in the first proviso to Section 201(1). The insertion of the second proviso to Section 40(a) (ia) also requires to be viewed in the same manner. This again is a proviso intended to benefit the Assessee. The effect of the legal fiction created thereby is to treat the Assessee as a person not in default of deducting tax at source under certain contingencies.

12. Relevant to the case in hand, what is common to both the provisos to Section 40(a) (ia) and Section 201(1) of the Act is that as long as the payee/resident (which in this case is ALIP) has filed its return of income disclosing the payment received by and in which the income earned by it is embedded and has also paid tax on such income, the Assessee would not be treated as a person in default. As far as the present case is concerned, it is not disputed by the Revenue that the payee has filed returns and offered the sum received to tax.

10. In the light of the above directions of the Hon'ble Delhi High Court, this issue be restored to the file of AO with following directions:

(i) Assessee to furnish PAN of the relevant NBFCs so that their return of income can be verified with reference to disclosure of income (interest paid by appellant) and due taxes paid by concerned NBFCs.

(ii) The assessee to furnish relevant certificate issued by the Chartered Accountant as prescribed in Form No. 26A r.w.r. 31ACB of the Income Tax Rules, 1962 (for short 'the Rules').

12. In the result, this ground of appeal is partly allowed for statistical purposes.

13. Ground No.3: During the course of assessment proceedings, on verification of details filed by the assessee, the AO further noted that the assessee had

encashed fixed deposit and received interest of Rs. 2,57,236/- The assessee had not offered the said income in its computation. AO stated that since the Assessee is following mercantile system of accounting, the assessee was liable to offer the income as and when the income arises or accrued. Accordingly, the amount of Rs. 2,57,236/- was added back to the total income of the assessee.

14. In this regard submissions of the assessee found to be relevant and reproduced as under:

“Ground No 3- Addition on account of Interest received on FD

It is true that our above mentioned client is following the mercantile system of accounting however in the case of interest on Fixed Deposits same is shown either on maturity or pre-matured of FD as in the earlier assessment year also same system is followed consistently and hence the interest on FD Rs. 2,57,236/- declared in the AY 2015-16. Hence, income by way of interest on FD can only be taken in one year and not both years since there is double taxation and hence addition should be either in A. Y. 2014-15 or A.Y 2015-16 Kindly refer out letter dated 16.12.2016 written to AO where we submitted all the details such as interest Certificate, Interest on FD Ledger A/c and Statement of profit & loss account for the year ending 31.03.2015 alongwith schedules where it is clearly shown that interest income has been declared in A. Y. 2015-16"

15. We have considered the order of the AO along with findings of the Id. CIT(A). As the assessee although following mercantile system of accounting but in the case of interest on fixed deposits same is shown either on maturity or pre-maturity of FD in the earlier AYs also and same has been accepted. Following the principle of consistency, assessee declared the same in AY 2015-16 instead of AY 2014-15. We found same as acceptable based on the principle of consistency. **Hence, this ground of appeal is allowed and addition on this ground directed to be deleted.**

16. In the result, this ground of appeal is allowed.

17. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 13th day of June, 2022.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 13/06/2022

SK, Sr.PS

Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai