

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “G”: NEW DELHI
BEFORE
SHRI G.S. PANNU, HON’BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 6084/Del/2017

Asstt. Year : 2014-15

Shri Santosh Kumar Singh, A-25, 1 st Floor, Rajouri Garden, New Delhi – 110 027 PAN AQBPS2817E	Vs.	ACIT, Circle-45(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Umesh Takyar, Sr. DR
Date of Hearing	12.04.2022
Date of pronouncement	30.06.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 30.08.2017 of the Ld. Commissioner of Income Tax (Appeals)-15, New Delhi (“**CIT(A)**”) pertaining to the Assessment Year (“**AY**”) 2014-15.

2. The assessee is a proprietor of M/s. Creative Solutions (Direct selling agent, collection agents & auxiliary services). For AY 2014-15 the assessee filed his return of income on 20.11.2014 declaring income of Rs. 26,69,960/. It was processed under section 143(1) of the Income Tax Act, 1961 (**the “Act”**). Subsequently, the case was selected for scrutiny on the basis of CASS.

3. After due process the Ld. Assessing Officer (**“AO”**) completed the assessment on 28.12.2016 under section 143(3) of the Act on total income of Rs. 57,67,290/- including therein addition of Rs. 26,21,992/- representing disallowance of interest paid on loan obtained from NBFC, M/s. HDB Financial Services Limited under section 40(a)(ia) of the Act and disallowance of Rs. 4,75,339/- under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (**“the Rule”**).

4. The assessee filed appeal before the Ld. CIT(A) challenging the impugned addition of Rs. 26,21,992/- under section 40(a)(ia) of the Act and disallowance of Rs. 4,75,339/- under section 14A of the Act read with Rule 8D of the Rule. The Ld. CIT(A) deleted the disallowance made by the Ld. AO under section 14A of the Act and sustained the addition of Rs. 26,21,992/- under section 40(a)(ia) of the Act against which assessee is in appeal before the Tribunal.

5. Notices of hearing sent by the Tribunal at the given address of the assessee remained uncomplished with. We, therefore, proceeded to dispose off the appeal ex parte after hearing the Ld. DR.

6. The Ld. DR relied on the order of the Ld. CIT(A).

7. We have gone through the orders of the Ld. AO and the Ld. CIT(A) and heard the Ld. DR.

8. The Ld. AO has discussed the issue in para 4.1 of his assessment order which reads as under :-

“4.1 Non Deduction of TDS:-

On perusal of the P & L A/c and Balance Sheet of the assessee as on 31.03.2014 furnished by the assessee during the course of assessment proceedings, it is found that the assessee has paid Rs. 26,21,992/- as interest on loan sanctioned to him by NBFC named M/s. HDB Financial Services

Limited. The assessee was asked to provide proof of deduction of TDS on the interest paid for the above loan. However, the assessee confirmed that he had failed to deduct TDS as per provisions of section 194A of the Act. Subsequently, the assessee was asked to file the Accountant's Certificate prescribed as Form 26A as per the requirement of Section 201(1) of the Act. On 19.11.2016, the assessee was asked to show cause as to why the total amount of interest paid to the said NBFC may not be disallowed and added to his total income for A.Y. 2014-15. However, despite several opportunities being given in this regard, the assessee has not been able to produce Accountant's Certificate/ Form 26A till date. In view of the above, an amount of Rs. 26,21,992/- is added to the income of the assessee as per section 40(a) (ia) of the Act.”

8.1 The Ld. CIT(A) has recorded his findings sustaining the impugned addition by observing in para 7 of his appellate order as follows :-

*“7. **Ground No. 2:** This ground relates to the addition of Rs.26,21,992/- made u/s 40(a)(ia) of the Act. During the course of assessment proceedings, AO found that the interest of Rs.26,21.992/- was paid by the appellant to NBFC named M/s HDB Financial Services Limited on which no tax was deducted as required by the provisions of Section 194A of the Act. The appellant could not file Form 26A as well before the AO. AO therefore made an addition of Rs.26,21,992/- u/s 40(a)(ia) of the Act. During the course of appellate proceedings, AR of the appellant filed Form No. 26A dated 19.01.2017 attaching therewith Annexure 'A' dated 19.01.2017 issued by M/s HDB Financial Services Limited. As the said certificate is dated 19.01.2017 and it was required to be issued by the payee the same obviously could not have been produced before the AO. Form No. 26A now produced is considered in terms of Rule 46A(4) of the I. T. Rules, 1962 for adjudicating this issue. For deciding this issue, it is important to make a reference to the judgment of Hon'ble Delhi High Court given in the case of CIT vs Ansal Land Mark Township (P) Ltd. reported in (2015) 377 ITR 635 (Delhi). In the said judgment, Hon'ble Delhi High court considered the decision of Hon'ble ITAT-Agra Bench in the case of Ravi Kumar Agarwal vs. ACIT (Supra) on the issue of retrospective*

applicability of second proviso to Section 40(a)(ia) of the Act. Hon'ble Delhi High Court affirmed the conclusions drawn by the Hon'ble ITAT-Agra Bench that the second proviso to Sec. 40(a)(ia) of the Act is of declaratory and curative in nature and the same is applicable retrospectively with effect from 01.04.2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance(No-2) Act, 2004. Respectfully following the decision of the jurisdictional High Court in the case of M/s Ansal Landmark Township (P) Ltd. (Supra), it is held that the 2nd proviso to Sec 40(a) (ia) is applicable in appellant's case as well.

Section 40(a)(ia) of the Act reads as under:

"(ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work) on which tax is deductible at source under chapter XVII-B and such tax had not been deducted or after deduction [has not been paid on or before the due date specified in sub section (1) of section 139]"

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

"Provided further that where an assessee failed to deduct the whole or any part of the tax in accordance with the provision of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso of sub section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso]"

Thus the second proviso to section 40(a)(ia) provides that the date of furnishing of return by the payee shall be deemed to be the date when the payer has

deducted and paid the tax on such sum. It is seen from the Annexure 'A' submitted by the appellant that the payee (HDB Financial Services Limited) has affirmed the receipt of interest payment of Rs.26,21,992/- in the F.Y. 2013-14, the return in respect of which has been filed by the payee on 29.03.2016. Going by the second proviso to Section 40(a)(ia), appellant can be deemed to have been deducted & paid tax on the said sum on 29.03.2016 which is after the due date of filing the return of income u/s 139(1) of the Act. The appellant therefore cannot be allowed the deduction in respect of the said interest in the assessment year 2014-15. The addition made by the AO therefore deserves to be sustained."

8.2 We find that the Ld. CIT(A) has held that the second proviso to section 40(a)(ia) is applicable to the facts of the assessee's case following the decision of the Hon'ble Delhi High Court in CIT vs. Ansal Landmark Township (P.) Ltd. (2015) 377 ITR 635 (Delhi). Accordingly, the assessee can be deemed to have deducted and paid tax on the impugned sum of interest on 29.03.2016 (the date on which he filed the return for AY 2014-15) which date falls after the due date of filing the return under section 139(1) of the Act. Therefore, the assessee can not avail the benefit of deduction for the impugned interest payment in AY 2014-15 under consideration.

8.3 We do not find any infirmity in the order of the Ld. CIT(A) and uphold his findings and reject the appeal of the assessee.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 30th June, 2022.

sd/-

**(G. S. PANNU)
PRESIDENT**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 30/06/2022

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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Date of dispatch of the Order	