

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.1416/Ahd/2019
Assessment Year : 2013-14

ITO, Ward-2(1)(1) Ahmedabad.	Vs.	M/s.Eminent InfraconP.Ltd. 201, Satyam Complex Opp: R.K. Royal Hall Science City Road Sola, Ahmedabad. PAN : AACCE 3246 Q
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(Applicant)		(Responent)
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Assessee by : None	
Revenue by : Shri A.P. Singh, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 13/12/2022
घोषणा की तारीख /Date of Pronouncement: 23 /12/2022

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the Revenue against order passed by the Id.Commissioner of Income Tax (Appeals)-2, Ahmedabad [hereinafter referred to as "the Id.CIT(A)"] dated 28.6.2019 passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Asst.Year 2013-14.

2. The appeal of the Revenue was earlier dismissed by the Tribunal vide order dated 23.2.2022 as withdrawn on account of low tax effect in view of CBDT Circular No.17 of 2019 dated 8.8.2019. But subsequently the Revenue filed Misc. Application pointing out

that the case falls under the exceptions laid down in CBDT Circular No.3 of 2018 since the addition in dispute was made on the basis of audit objection which was accepted by the department. The order in the MA filed by the Revenue recalling the impugned order was passed in MA No.49 of 2022 dated 26.8.2022. In pursuance thereto, the present appeal was fixed for hearing before us.

3. None appeared on behalf of the assessee despite notice being served on the assessee. Therefore, we decided to proceed with the adjudication of the appeal *ex parte qua* the assessee-respondent as no application for adjournment was filed.

4. Sole ground raised by the Revenue is as under:

“1. The ld.CIT(A) has erred in law and on facts in deleting the disallowance of Rs.1,97,194/- u/s.40(a)(ia) of the Act made by the AO.”

5. As is evident, the sole issue for adjudication relates to the disallowance made under section 40(a)(ia) of the Act of Rs.1,97,194/- on account of non-deduction of tax at source. The ld.CIT(A) dealt with the issue and deleted the impugned disallowance at para 3.3 of his order as under:

“3.3. I have carefully considered the facts of the case, assessment order and submission of the appellant. The Assessing Officer has made the addition of Rs.1,97,194/- on the ground that appellant has not deducted IDS on the processing fee of loan of Rs.1,21,00,000/- taken from India Infoline Investment Service Limited. The appellant before the Assessing Officer has submitted the copy of certificate as per Rule 31ACB to the effect that above income has been included by M/s. Infoline Investment Services Limited in its income tax return and tax has been paid on it. Appellant contended that as per decision of Honourable Delhi High Court in the case of CIT Vs. Ansal Landmark Township Limited [61 taxman.com 45] and proviso to section 201, no disallowance can be made u/s. 40(a)(ia). I agree with the submission made by the appellant, that appellant's case is covered by decision of Honourable Supreme Court in the case of Coca-Cola Beverages Pvt. Ltd.[163 Taxman 355] and decision of Honourable Delhi High Court in the case of CIT Vs. Ansal Landmark Township Limited [61 taxman.com 45],

The Honourable Ahmedabad Tribunal in the case of DCIT, Cir. 2(1)(1) Vs. Esaote India (NS) Limited [2018] [96 Taxmann.com 624] has also held that if payee has included the interest income in its total income and paid taxes, no disallowance is to be made u/s. 40(a)(ia). Respectfully, following the judgments cited above, the disallowance made by Assessing Officer cannot be sustained and the same is accordingly deleted. The ground of appeal is accordingly allowed.”

6. On going through the above, it is evident that the ld.CIT(A) has noted that though the assessee had failed to deduct TDS on the impugned amount of Rs.1,97,194/-, the payee on other hand had paid taxes on the same and the assessee had filed the stipulated certificate as per Rule 31ACB of the Income Tax Rules certifying the fact of taxes have been paid by the payee (India Infoline Investment Services Ltd. in the present case) on the impugned payment. The ld.CIT(A) thereafter noted that Hon’ble Delhi High Court in the case of CIT Vs. Ansal Landmark Township Ltd., 61 taxmann.com 45 has held that in such circumstances, where taxes are shown to have been paid by the payee, no disallowance under section 40(a)(ia) of the Act was called for in the hands of the payer for default in taxes deduction at source. The ld.CIT(A) followed several other judgments laying down similar ratio, both of the Hon’ble High Courts and the ITAT, Ahmedabad Bench also as noted in para 3.3. above. The ld.DR was unable to convert this factual finding of the ld.CIT(A) that the payer in the impugned case had paid taxes on the impugned sum involved and the certificate, as per Rule 31ACB of IT Rules 1962, certifying the aforesaid fact, had been filed to the AO. He was also unable to controvert or distinguish the decision relied upon by the ld.CIT(A) in the case of Ansal Landmark Township Ltd. (supra).

7. In view of the above, we see no reason to interfere in the order of the ld.CIT(A) deleting disallowance of Rs.1,97,194/- by invoking

provisions of section 40(a)(ia) of the Act. The ground raised by the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 23rd December, 2022 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 23/12/2022