

आयकर अपीलिय अधिकरण, 'सी/एस एम सी' न्यायपीठ, चेन्नई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C/SMC' BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND

आयकर अपील सं./ITA No.3459/Chny/2019
निर्धारण वर्ष /Assessment Year: 2012-13

K. Selvaraghavan,
Old No.286, New No.200,
Avvai Shanmugam Salai,
Lloyds Road, Royapettah,
Chennai – 600 014.

The Income Tax Officer,
Vs. Non Corporate Ward-20(5),
Chennai.

[PAN: ASIPS-9835-M]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri K. Balasubramanian, Advocate
: Shri S. Chandrasekaran, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.03.2023

घोषणा की तारीख /Date of Pronouncement

: 08.03.2023

आदेश / ORDER

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-14, Chennai [CIT(A)] in ITA No.119/CIT(A)-14/2015-16 dated 05-11-2019. The Assessment was framed by Income Tax Officer, Non Corporate Ward-20(5), Chennai for the relevant A.Y. 2012-13 vide order dated 27.03.2018 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

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2. The only issue in this appeal of assessee is as regards to the order of CIT(A) in confirming the disallowance made by A.O of Rs. 18,02,305/- being amount on which TDS was remitted during the year under consideration and claimed to have been allowed under the first proviso to Sec.40(a)(ia) of the Act.

3. I have heard the rival contentions and gone through the facts and circumstances of the case. Brief facts of the case are that the assessee is a Film Producer, Distributor and Director. The assessee has claimed expenditure of Rs. 91,31,357/- during A.Y 2010-11, on which no TDS was deducted by the assessee and hence, in that year disallowed the same. Out of the above, disallowance made by A.O for want to TDS u/s. 40(a)(ia) of the Act, a sum of Rs. 18,02,305/- being professional fee/contract amount, on which the assessee now paid TDS in A.Y 2012-13 i.e., the relevant Assessment Year and claimed in the revised return of income filed on 30.03.2013 i.e., within the time limit prescribed u/s. 139(5) of the Act. The A.O disallowed the claim for the reason that the original return was filed belatedly and hence, revised return cannot be accepted. Aggrieved, the assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of the A.O. Aggrieved, now the assessee is in appeal before the Tribunal.

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4. I noted the facts that the assessee initially claimed an expenditure of Rs. 91,31,357/-, which was disallowed u/s. 40(a)(ia) of the Act in A.Y 2010-11 for non deduction of TDS. Out of the above, the assessee paid a sum of Rs. 18,02,305/- being professional fee and contract work. On which, the assessee paid TDS in this year and claimed this expenditure because it was disallowed in A.Y 2010-11. Now, in view of the second proviso to Sec.40(a)(ia) of the Act, the amount has to be allowed in which year the assessee has actually remitted the amount of TDS. Hence, I find that the assessee has genuine case and even during assessment proceedings this information was available with the A.O because the assessee filed revised return and in revised return he has filed all the details before completion of assessment. Even though, the A.O claimed that original return filed was not in time, without considering the revised return, the A.O while completing assessment could have taken this information on record and could have allowed the claim of deduction. In view of the above, I direct the A.O to delete the addition and allow the appeal claimed by the assessee.

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5. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 08th of March, 2023.

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice President

चेन्नई/Chennai, दिनांक/Dated: 08-03-2023
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF