

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC-'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 210/Bang/2023</b>
<b>Assessment Year : 2016-17</b>

Shri Ravindra Dayanand Sankeshwar, 2 <sup>nd</sup> Floor, Giriraj Annexe, Circuit House Road, Hubbali – 580 029. <b>PAN: ATTPS9364B</b>	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Circle – 1(1), Hubli.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Narendra Kumar Jain, Advocate & Mrs. Geetha Rani .K, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Dept.

Date of Hearing	:	20-04-2023
Date of Pronouncement	:	25-04-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against order dated 06.03.2023 passed by NFAC for A.Y. 2016-17 on following grounds of appeal:

*“1. The order of Honourable Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT(A)" for brevity) to the extent prejudicial to the Appellant is bad in law.*

*2. The CIT(A) has erred in confirming the action of AO in disallowing 30% of interest expenditure of Rs.77,74,626/- u/s 40(a)(ia) on the ground that there is a delay in furnishing Form 15G/ 15H.*

3. The CIT(A) has erred in confirming the action of Assessing Officer (AO) in disallowance of interest expenditure without appreciating the fact that:

- i) Filing of Form 15G/15H before Pr.CIT is only procedural in nature, which cannot result in disallowance u/s 40(a)(ia);
- ii) The recipients of income have already filed return of income and paid applicable taxes, if any.

4. The CIT(A) has erred in confirming the action of the AO in considering income under head "Income from Other Sources" of Rs.2.19,570/- while computing the assessed income, without appreciating the fact that the figure of returned loss adopted for computation was already arrived at after considering the same. This has led to double taxation.

The Appellant submits that each of the above grounds/sub-grounds are independent and without prejudice to one another.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing. of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays accordingly.”

## **2. Brief facts of the case are as under:**

2.1 Assessee is an individual and proprietor of M/s. Sankeshwar Beverages. Assessee filed his return of income for year under consideration on 05.10.2016 declaring a loss of Rs.75,72,457/-. The case was selected for scrutiny and notices u/s. 143(2) was issued along with the notice u/s. 142(1) of the act. The Ld.AO observed that assessee claimed expenses amounting to Rs.1,00,37,654/-, towards interest at 12% on unsecured loans. The Ld.AO also noted that assessee had fresh investment in Omkar Inc. amounting to Rs.52,25,000/-. After considering various submissions by the assessee, the Ld.AO was of the view that the investment made in Omkar Inc. was out of unsecured

loans taken by the assessee during the year the Ld.AO disallowed prorate interest on loan of Rs.52,25,000/- computed at Rs.6,27,000/-. The Ld.AO further called upon assessee to provide details regarding the TDS deducted on interest that exceeded Rs.5,000/-.

2.2 It was observed by the Ld.AO that assessee did not furnish any details and therefore an addition of Rs.77,74,626/- was made in the hands of the assessee.

2.3 Aggrieved by the order of the Ld.AO, assessee preferred an appeal before the Ld.CIT(A).

2.4 The Ld.CIT(A) deleted the disallowance made on interest amounting to Rs.6,27,000/- on the loan on prorate basis however disallowance of interest expenditure amounting to Rs.77,74,626/- for non-deduction of TDS by the Ld.AO was upheld. The Ld.CIT(A) observed and held as under:

*“7.4 I have carefully considered the written submission as well as case laws relied upon but respectfully decline to accept the same on the issue of filling form 15G/15H before the Ld PCIT and AO. The I.T.Act 1961 requires the forms to be submitted before the competent authority during the year under consideration and not at the time of scrutiny assessment to get the benefit of allowance u/s 40(a)(ia). Since no proof of submission of form 15G/15H could be produced before the Ld AO, therefore, this contention of the assessee is rejected. However, on the alternate ground taken by the appellant that the payee has declared the amount in its return has neither been demonstrated at the time of assessment proceeding nor at the time of appellate proceedings. The assessee should have furnished supporting evidence for the same. if he had the same in his possession. Since the assessee failed on this front also, therefore, the said argument is also rejected. Now, coming to the third contention of the appellant, i.e expenditure incurred on interest payment should have been restricted to 30% of such total expenditure, I find force in it, as section 40(a)(ia) was amended w.e.f from A.Y. 2015-16 that 30% of expenditure incurred without TDS should be disallowed. Considering*

*the new amendment that was brought in the Act from 1.4.2015 by finance Act 2014, I am of the considerate view that the disallowance should be restricted to 30% of Rs. 77,74,626/- which is Rs.23.32,387/-. Thus, appellant get relief of Rs.54,42,238/-. Therefore, the ground No. 3 to 7 is partly allowed.”*

2.5 The Ld.CIT(A) also upheld an addition of Rs.2,19,570/- under the head income from other sources without appreciating that the figure of returned loss adopted for computation was arrived at after considering the income from other sources.

2.6 Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

3. The Ld.AR submitted that **Ground no. 1** is general in nature and therefore do not require adjudication.

4. **Ground nos. 2-3** are in respect of the disallowance of interest expenditure u/s. 40(a)(ia) amounting to Rs.77,74,626/- for non furnishing Form 15G / Form 15H.

4.1 The Ld.AR submitted that the assessee had filed the necessary form 15G/15H from the unsecured creditors which is placed at pages 111 to 226 of the paper book. He submitted that in any event, principally no disallowance can be made u/s. 40(a)(ia) even though assessee failed to submit form 15G/H before the assessing authority. In support of this contention, he placed reliance on the decision of *Hon'ble Karnataka High Court* in case of *CIT vs. Sri Marikamba Transport Co.* reported in (2015) 57 *taxmann.com* 273 which was followed by the *Coordinate Bench of this Tribunal* in case of *JCIT vs. Karnataka Vikas Grameena Bank* reported in (2018) 93 *taxmann.com* 256.

4.2 On the contrary, the Ld.DR submitted that the form 15H and 15G filed by the assessee pertains to FY 2016-17 and the affidavit filed by the consultant of assessee placed at pages 267-

268 is not in accordance with law. He submitted that it is not ascertainable that the amounts mentioned in the alleged form 15G/H pertains to the same disallowance made by the Ld.AO for the year under consideration for non-deduction of TDS. It is the submission of the Ld.DR that the certificates require necessary verification by the Ld.AO.

I have perused the submissions advanced by both sides in the light of records placed before us.

4.3 At this juncture, no TDS has been deducted by the payer on the interest and no supportive documents were filed before the Ld.AO. To this, *Hon'ble Karnataka High Court* in case of *CIT vs. Sri Marikamba Transport Co. (supra)*, has held that no disallowance of interest paid to persons who furnish form 15G/H can be made in the hands of the assessee u/s. 40(a)(ia) of the Act. Further, the *Coordinate Bench of this Tribunal* in case of *JCIT vs. Karnataka Vikas Grameena Bank (supra)* has held that filing of form 15G/H with prescribed authority is only procedural and cannot result in a disallowance. This *Tribunal* also held that to the extent that payment of interest relates to the government and exempted category of persons, no disallowance is warranted. However, in the present facts, the assessee is directed to furnish Form 15G/H to the Ld.AO. The Ld.AO is directed to consider the same and to consider the claim of assessee by carrying out necessary verification after affording proper opportunity of being heard.

**Accordingly, ground nos. 2-3 raised by assessee stands allowed for statistical purposes.**

5. **Ground no. 4** is in respect of an amount that has been doubly taxed. The Ld.AR submitted that the same needs verification by the Ld.AO. We direct the Ld.AO to verify the same and to consider the claim in accordance with law.

**In the result, the appeal filed by the assessee stands allowed for statistical purposes.**

**Order pronounced in the open court on 25<sup>th</sup> April, 2023.**

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 25<sup>th</sup> April, 2023.  
/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file |                        |

By order

Assistant Registrar,  
ITAT, Bangalore