

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 35/Srt/2023 (Assessment Year 2016-17)

(Virtual hearing)

Shri Labhubhai Ravjibhai Jasani, 17-18, Astvinayak Row House, Nr. Parshuram Garden, Adajan, Surat-395009. <b>PAN No. ABNPJ 1872 F</b>	Vs.	I.T.O., Ward-1(3)(7), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Ashwin K. Parekh, C.A.
Department represented by	Shri Minal Kamble, Sr. Dr
Date of Institution of Appeal	18/01/2023
Date of hearing	18/07/2023
Date of pronouncement	18/07/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 23/12/2022 for the Assessment Year (AY) 2016-17. The assessee has raised following grounds of appeal:

*"1. The learned Commissioner of Income Tax (Appeals) has grievously erred in law and on facts in confirming the addition of Rs. 35,34,657/- by disallowing interest u/s 40(a)(ia) of the Act without appreciating the evidence of For, 26A and other relevant explanation submitted by appellant. The addition of Rs. 35,34,657/- should therefore be deleted.*

*2. The appellant reserves the right to add, alter, modify, amend or withdraw any of the grounds of appeal before hearing."*

2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee

submits that a very short point is involved in the present appeal which relates to disallowance of interest expenditure of Rs. 35,34,657/- under Section 40(a)(ia) of the Income Tax Act, 1961 (in short, the Act). The Assessing Officer made disallowance on account of non-deduction of TDS on interest payment paid to HDB Financial Services Ltd. which is a Non-Banking Financial Company (NBFC). The assessee paid only interest of Rs. 34,86,211/- without TDS. The assessee now filed Form 26A under Rule 31ACB issued by the Chartered Accountant (Auditor) of said NBFC. The Id. AR of the assessee submits that as per First Proviso to Section 201(1) of the Act, no disallowance is warranted if the recipient of the said interest income has included such interest income in their total income and paid taxes thereon. The Id. AR of the assessee submits that only amount of interest is Rs. 34,86,211/- was paid. The correct copy of Form 26A is also filed on record. The Id. AR of the assessee submits that the issue raised in the present appeal is covered by the decision of Division Bench of Surat Tribunal in Prakashbhai Haribhai Ahir Vs ITO in ITA No. 477/Srt/2018 dated 23/08/2022 wherein on similar set of facts, the Division Bench of this Tribunal has directed the Assessing Officer to verify the fact about inclusion of interest by recipient (NBFC) in their total income and to grant relief to the assessee. Thus, the grounds of appeal is squarely covered in favour of assessee. The Id. AR submits that appropriate direction may be given to the Assessing Officer to verify the fact and to grant appropriate relief to the assessee.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue on hearing of Id. AR of the assessee submits that the matter may be restored to the file of Assessing Officer, with the direction to the assessee to file appropriate evidence including the necessary certificate of Chartered Accountant and details as per Form 26A, so that the Assessing Officer may verify such fact before passing the order in accordance with law.
4. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I find that the Assessing Officer made disallowance of interest expenses/ addition for want of TDS. Though, before the Assessing Officer, the assessee took a plea that recipient of income i.e. NBFC has included such interest income in their total income. The Assessing Officer made disallowance by taking a view that the provisions of Section 40(a)(ia) of the Act has not been complied with and the explanation given by assessee is incomplete. The Id. CIT(A) confirmed the action of Assessing Officer by holding that complete details of return of income by payee have not been filled up and certain details have been left blank. Now before me, the Id. AR of the assessee has submitted that he has filed complete details in the requirement of First Proviso to Section 201(1) of the Act, consisting Form No. 26A as per Rule 31ACB, certificate of Chartered Accountant of recipient i.e. HDB Financial Services Ltd. alongwith bank statement and statement of account of assessee with NBFC. Considering the fact that

the Id. AR is claimed that recipient of the interest income has already included this impugned interest in their total return of income, therefore, the issue is restored back to the file of Assessing Officer to verify the fact about inclusion of interest by recipient in their total income and to grant appropriate relief to the assessee in accordance with law. In the result, the ground of appeal raised by assessee is allowed for statistical purposes.

5. In the result, this appeal of assessee is allowed for statistical purposes.

Order announced in open court on 18<sup>th</sup> July, 2023 at the time of hearing.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 18/07/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat