

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 140/JPR/2023
निर्धारण वर्ष / Assessment Year : 2012-13

Deputy Commissioner of Income Tax Jaipur.	बनाम Vs.	RDB Cars Private Limited KE-09 RDB House, Kabir Marg Bani Park, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AADCR 4928 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Ms Nupur Khandelwal (C.A)
राजस्व की ओरसे / Revenue by: Ms Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 18/05/2023
उदघोषणा की तारीख / Date of Pronouncement: 24/07/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the Revenue against the order of Id. CIT(A) dated 06-02-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC/CIT(A)"] for the assessment year 2012-13 wherein the Revenue has raised the solitary ground as under:-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 42,40,572/- made by AO on account of disallowance of expenditure as per provisions of Section 40(a)(ia) of the Act."

2.1. The brief facts of the case are that the assessee company filed its return of income for assessment year 2012-13 on 29.09.2012 declaring total income at loss of (-) Rs. 1,65,98,229/- and the case of the assessee was assessed u/s 143(3) of the Act. Thereafter reassessment proceedings were initiated by issuing notice u/s 148 of the Act on 28.09.2016 after taking necessary approval on the pretext that the assessee has paid interest of Rs. 42,40,572/- to Kotak Mahindra Prime Ltd. on which TDS was not deducted. Therefore, the expenditure of Rs. 42,40,572/- are not allowable as per the provisions of section 40(a)(ia). The Notice u/s 148 dated 28.09.2016 issued was duly served upon the assessee company. In response to the notice u/s 148 of the Act the assessee company filed its return of income on 24.10.2016 wherein loss of (-) Rs. 1,65,98,229/- was declared which is as declared in the original return of income filed. Accordingly, notice u/s 143(2) and 142(1) of the Act were issued on 01.02.2017. Conclusively, the AO made addition in the hands of the assessee by holding as under:-

“3. I have carefully considered that submission of the assessee and found the same not tenable in view of first provision to Section 201(1) r.w.r. 31ACB of the I.T. Rules, 1962 as amended w.e.f. 19-02-2013. The Rule 31ACB requires that the said certificate of accountant under the first provision to section 201(1) shall be furnished to the Directors General of Income Tax (System) or to be person authorized by him. In the present case, the certificate of accountant furnished by the assessee has not been furnished in accordance with Rule

31ACB as amended w.e.f. 19-02-2013. Hence, this certificate cannot come to the rescue of the assessee for non-deduction of tax at source from interest paid of the assessee for non-deduction of tax at source from interest paid to M/s. Kotak Mahindra Prime Ltd. amounting to Rs.42,40,572/- without withholding TDS is disallowed u/s 40(a)(ia) of the I.T. Act 1961 and added to the returned income of the assessee.’

2.2 Aggrieved, from the said order of assessment, the assessee has filed an appeal before the Id. CIT(A) who after hearing the contention of the assessee allowed the appeal of the assessee by observing as under:-

“4. Decision

The present appeal arises from the order u/s 143(3) of the Income Tax Act, 1961 dated 05.04.2017 and the order was admittedly served on 02.04.2017 and the appeal has been filed within the time prescribed u/s 249(2) of the Act is disposed of on merits as under.

4.1 the only contention is that the Assessing Officer has reduced the loss claimed at Rs. 1,65,98,229/- of the assessee company of Rs. 42,40,572/- after rejecting the claim of interest paid by the assessee company on secured loans taken from Kotak Mahindra Prime Limited for business purposes. The assessing officer has applied the provisions of section 40(a)(i) for non-deduction of TDS on the interest amount paid by the assessee company to Kotak Mahindra Prime Limited and disallowed the impugned expenditure Further, the assessing officer has mentioned that the assessee has submitted a letter obtained from Kotak Mahindra Prime Limited stating that all the interest paid by the assessee have duly been accounted as interest income in the books of accounts of Kotak Mahindra Prime Limited and they have paid appropriate taxes on it. However, the assessing officer has not considered that letter/certificate obtained from Kotak Mahindra Prime Limited as the same was not furnished in accordance

with Rule 31ACB as amended w.e.f. 19.02.2013 and disallowed the claim of interest paid to Kotak Mahindra Prime Limited for non-deduction of tax at source amounting to Rs.42,40,572/-.

4.2 During the appeal proceedings, the appellant has submitted the following:

'Failure to deduct TDS on the interest payment made was on account of ignorance and not a deliberate action as the assessee has tried to ensure that there is no concealment of income and proper information has been passed to department. During the assessment proceedings, the assessee had requested Kotak Mahindra Prime Limited to issue Form No.26A along with the Annexure-A as per Rule 31ACB in regard to the claim of the interest payment. On request, a declaration letter was issued by Kotak Mahindra Prime Limited stating that all the interest paid by the assessee have duly been accounted as interest income in the books of accounts of Kotak Mahindra Prime Limited and they have paid appropriate taxes on the same and the same was produced by the assessee company before the assessing officer. The assessee claims that though the requirement of furnishing the certificate was not in the prescribed format, the declaration which was provided by Kotak Mahindra Prime Limited cannot be rejected as the same has been produced in good faith and intention.'

4.3 Submissions of the appellant and facts of the case were carefully considered. The Section 201(1) of the Act, talks about when assessee is not treated as assessee in default. Section 201(1) of the Act, states that any person liable to deduct TDS on the income distributed makes default in the deduction and/or payment of TDS, shall be treated as 'assessee in default'

However, the assessee would not be deemed to be an assessee in default if payee:

- i) has furnished his return of income under section 139,
- ii) has taken into account such sum for computing income in such return of income; and

iii) has paid the tax due on the income declared by him in such return of income,
and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

According to Board's notification No.11/2016 dated 02.12.2016, the field officers(TDS) are authorised to receive Form26A in paper mode upto & including the assessment year 2016-17 pertinent to defaults u/s. 201(1) and/or 40(a)(ia). Furnishing of Form26A in electronic mode was enabled only with effect from 15.01.2017. In the present case, though the certificate issued by the payee was not in the prescribed format, the company Kotak Mahindra Prime Limited (payee)has certified all the required data mentioned in the Annexure-A of Form-26A viz., Name and address of the payee with PAN, period of payment. nature of payment, date of payment, date of filing return with the acknowledgement number of return filed by the payee etc. The assessee has substantiated the claim with the evidence to the extent that the interest paid by the assessee company on secured loans taken has been acknowledged by the payee company Kotak Mahindra Prime Limited and the same has also been offered as income of the payee company for the same financial year. Eventually, the impugned disallowance will lead to double taxation which is against the spirit of law. Therefore, the ground raised by the appellant is allowed.”

2.3. Aggrieved from the order of the Id. CIT(A), the Revenue has preferred this appeal. To support the ground so raised by the Revenue, the Id. DR of the Revenue relied upon the written submission advanced by Shri Prateek Sharma, DCIT, Circle-1, Jaipur which is reiterated as under:-

“VIII Brief Facts of the Case - The assessee company filed its return of income for A.V. 2012-13 on 29.09.2012 declaring total income at loss of (-)Rs. 1,65,98,229/- and the case of the assessee was assessed u/s 143(3) of the

Act at loss. Thereafter, the re-assessment proceedings were initiated by issuing notice u/s 148 of the Act on 28.09.2016 after taking necessary approval on the pretext that the assessee has paid interest of Rs.42,40,572/- to Kotak Mahindra Prime Ltd. on which TDS was not deducted. In view of first provision to section 201(1) r.w.s. 31 ACB of the IT. Rules, 1962 as amended w.e.f. 19.02.2013. The Rule 31ACB requires that the said certificate of accountant under the first provision to section 201(1) shall be furnished to the Directors General of Income Tax(System) or to be person authorized by him. In this case, the certificate of accountant furnished by the assessee has not been furnished in accordance with Rule 31ACB as amended w.e.f. 19.02.2023. Hence, this certificate can not come to the rescue of the assessee for non-decuction of tax at source from interest paid of the assessee for non deduction of tax at source from interest paid to M/s Kotak Mahindra Prime Ltd. amounting to Rs.42,40,572/- without withholding TDS is disallowed u/s 40(a)(a) of I.T. Act, 1961 and hence added to the retuned income of the assessee.

IX. Copy of loan taken by the assessee from Kotak Mahendra Private Ltd.: - During the assessment proceeding, the AR of the assessee accepted that the assessee fails to deduct the TDS as per provisions of section 40a(i) of the Income Tax Act, 1961 on the said sums due: ignorance.

X. Copy of interest paid Rs.42.40.572/-1 to KMPL by assessee:- Copy enclosed, the AR of the assessee also accepted that the assessee has paid interest of Rs.42,40,572/- to Kotak Mahindra Prime Limited towards interest during the financial year 2011-12.

XI. How the non-deduction of TDS led to reduce of loss claimed by assessee alongwith documentary evidence, also the copy of relevant B/S, P/L account, computation etc.: - On perusal of computation of total income submitted by the assessee it is evident that loss as per P&L account is of Rs.-1,47,22,420/- and after disallowing depreciation of Rs. 41,78,227/- disallowance u/s 37 of Rs 1,34,636/- and disallowance u/s 40A of Rs 70,000/- loss has been reduced to Rs.1,03,39,557/ As the assessee did not deduct TDS on interest payment made to the Kotak Mahendra Prime Ltd, the assessee should reduce the loss claimed by Rs.42,40,572/ Kindly find herewith attached also the copy of relvant B/S, P/L account & computation.

XII. How section 201(1) r.w.s 31ACB of IT Rules 1961, as amended with effect from 19.02.2013 is applicable in assessee's case:- How section 201(1) r.w.s. 31ACB of IT Rules 1961, as amended with effect from 19.02.2013 is applicable in assessee's case which AD had elaborated in detail in para 3 of assessment order dated 05.04.2017, relevant part of the same is being reproduced as under-

"I have carefully considered that submission of the assessee found the same not tenable in view of first provision to section 201(1) r.w.s. 31ACB of the IT Rules, 1962, as amended w.ef 19.02.2013. The Rule 31ACB requires that the said certificate of accountant under the first provision to section 201(1) shall be furnished to the Directors General of Income Tax system) or to be person authorized by him. In the present case, the certificate of accountant furnished by the assessee has not been furnished in accordance with Rule 31ACB as amended w.ef. 1902.2013. Hence, this certificate can not come to the rescue of the assessee for non-deduction of tax at source from interest paid to M/s Kotak Mahindra Prime Ltd, amounting to Rs.42,40,572/-without withholding TDS is disallowed u/s 40(a)(la) of IT Act, 1961."

XIII. As the assessee's case pertains to A.Y. 2012-13, how this amendment is applicable:- Applicability of this amendment elaborated in detail of the above para of assessment order.

XIV. Copy of certificate of accountant(as submitted by the assessee) which is not in accordance with rule 31ACB as amended wef 19.02.2013:- Copy enclosed.

XV. Any other relevant documents to support the grounds of appeal taken by the department before ITAT:- All the relevant documents are being enclosed.

XVI. Also explain how CIT(appeal)'s decision is not acceptable alongwith documentary evidence:- The decision of Ld. CIT(A) is not acceptable on merits. As, the assessee has submitted a declaration stating that all the interest paid by the assessee have been duly accounted as interest income in the books of accounts of Kotak Mahindraa Prime Ltd. and they have paid appropriate taxes an it, but the same is not tenable in view of the first provision to section 201(1) rw.s. 31 ACB of IT. Rules, 1962, as amended w.e.f. 19.02.2013. The Rule 31ACB requires that the said certificate of accountant under the first provision to section 201(1) shall be authorized by

him. In the present case. the certificate of accountant furnished by the assessee has not been furnished in accordance with Rule 31ACB as amended w.e.f. 19.02.2013. Hence, this certificate cannot come to the rescue of the assessee for non-deduction of tax at source from interest paid of the assessee for non-deduction of tax at source from interest paid to M/s Kotak Mahindra Prime Ltd, amounting to Rs. 42,40,572/- without withholding TDS is disallowed u/s 40(a)(ia) of the I.T. Act, 1961.

XVII. If any CBDT circular regarding this amendment or any case laws to support the grounds:- Nil

XVIII. Also refer to the grounds filed by the revenue and give your comments on the ground:-As in this case assessee has not deducted TDS before payment of interest to Kotak Mahindra Prime Limited and also not submitted any documentary evidence to support that interest payment made was taxed viz ITR or computation of Total Income of wherein showing interest payment has been incorporated in the Total Income or not.”

2.4. The assessee before us relied upon the order of the Id. CIT(A) and submitted following written submissions:-

“With Respect to the Submission given by the Department to ITAT regarding Appeal No - ITA/140/JP/2023 for Asst Year 2012-13 for which hearing is scheduled on 18.05.2023 We would like to reply as under:-

The contention of the department that the interest amount of Rs 42,40,572/- paid to Kotak Mahindra Prime Limited (KMPL) during the Financial Year 2011-12 which was subject to TDS, but no TDS was deducted by the assessee over the same, encouraging department to disallow the 30% of Interest Amounting to Rs 12,72,172/-.

For the above said matter the assessee has accepted his part of negligence and had produced confirmation from Kotak Mahindra Prime Limited (KMPL) that the entire interest amount has been

considered as a part of its total income and applicable taxes have been paid by the Kotak Mahindra Prime Limited (KMPL).

Although the contention of department that the confirmation presented by the Kotak Mahindra Prime Limited (KMPL) and produced by the assessee is not as per the format of certificate as prescribed u/s 201(1) r.w.s. 31ACB of IT Rules, 1961, and hence disallowing the same, we would like to enlighten the conclusion arrived by the Ld. CIT(A), which is as under:-

“In the Case the Ld. CIT(A) has said that although the certificate issued by the payee was not in the prescribed format. The Company Kotak Mahindra Prime Limited (Payee) has certified all the required data mentioned in the Annexure of form 26A viz., Name and address of the payee with PAN, Period of Payment, Nature of payment, Date of payment, date of filling return with Acknowledgment Number of the return filled by the Payee (KMPL). The assessee has substantiated the claim with the evidence to the extent that the interest paid by the assessee company on secured loans taken has been acknowledged by the payee company KMPL and the same has also been offered as income of the Payee company for the same financial Year. Eventually the impugned disallowance will lead to double taxation which is against the spirit of law. Therefore, ground raised by the appellant is allowed.”

We would like to request you to kindly accept our submission on the above mentioned amount that the disallowance of the same would lead to double taxation which is against the intent of law.

Kindly, allow the payment of interest made by the assessee and oblige by not taxing the same amount twice.”

2.5 We have heard the rival contention and perused material available on record. In this case, the observation of the AO is that the assessee had paid

interest of Rs.42,40,572/- to Kotak Mahindra Prime Ltd. on which TDS was not deducted. Thus according to the AO, the expenditure of Rs.42,40,572/- is not allowable as per the provisions of Section 40(a)(ia) of the Act and thus the AO made addition of Rs.42,40,572/- in the hands of the assessee with following observation.

“3..... In the present case, the certificate of accountant furnished by the assessee has not been furnished in accordance with Rule 31ACB as amended w.e.f. 19-02-2013. Hence, this certificate cannot come to the rescue of the assessee for non-deduction of tax at source from interest paid of the assessee for non-deduction of tax at source from interest paid to M/s. Kotak Mahindra Prime Ltd. amounting to Rs.42,40,572/- without withholding TDS is disallowed u/s 40(a)(ia) of the I.T. Act 1961 and added to the returned income of the assessee.”

It is also noteworthy to mention that the Department has made the following narration in its submission dated 16-05-2023.

“VIII.As in this case assessee has not deducted TDS before payment of interest to Kotak Mahindra Prime Limited and also not submitted any documentary evidence to support that interest payment made was taxed viz ITR or computation of Total Income of wherein showing interest payment has been incorporated in the Total Income or not.”

In this case, it is noted that the AO has not considered that letter/certificate obtained from Kotak Mahindra Prime Ltd as the same was not furnished in accordance with Rule 31ACB as amended w.e.f. 19-02-2013 and

disallowed the claim of interest paid to Kotak Mahindra Prime Ltd for non-deduction of tax at source amounting to Rs.42,40,572/-. The assessee during appellate proceeding submitted that the assessee claims that though the requirement of furnishing the certificate was not in the prescribed format yet the declaration which was provided by Kotak Mahindra Prime Ltd. cannot be rejected as the same had been produced in good faith and intention. From the records, it is noted though the certificate issued by the payee was not in the prescribed format yet the company Kotak Mahindra Prime Limited (payee) certified all the required data mentioned in the Annexure-A of Form-26A viz., Name and address of the payee with PAN, period of payment, nature of payment, date of payment, date of filing return with the acknowledgement number of return filed by the payee etc. The assessee has substantiated the claim with the evidence before the lower authority to the extent that the interest paid by the assessee company on secured loans taken has been acknowledged by the payee company Kotak Mahindra Prime Limited and the same has also been offered as income of the payee company for the same financial year. Thus the ld. CIT(A) has rightly observed that eventually, the impugned disallowance will lead to double taxation which is against the spirit of law and he allowed the ground raised by the assessee. But the Revenue submitted that the

information was not in the prescribed format and duly signed by the Chartered Accountant. The ld. AR for the assessee fairly submitted that he will substantiate the claim by filing proper evidence and the ld. AO is directed to use judicious approach and if require may call for the confirmation u/s 133(6) with these observation, the appeal of the Revenue is allowed for statistical purposes.

3.0 In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 24/07/2023.

Sd/-

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 24/07/2023

*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- DCIT, Jaipur.
2. प्रत्यर्थी / The Respondent- RDB Cars Pvt. Ltd., Jaipur.
3. आयकरआयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 140/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar