

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA. G, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.212/Chny/2020
निर्धारण वर्ष /Assessment Year: 2013-14

Shri Gengava Naidu Jeyakumar,
D-13, CMDA Truck Terminal
Complex, Madhavaram,
Chennai – 600 010.
[PAN: ACUPJ-1992-N]

**The Dy. Commissioner of
Income Tax,**
Non Corporate Circle-10,
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri N.V. Narayanan, Advocate
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 10.08.2023

घोषणा की तारीख /Date of Pronouncement

: 16.08.2023

आदेश / ORDER

Per Mahavir Singh, Vice President :

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-12, Chennai [hereinafter "CIT(A)"] in ITA No.62/CIT(A)-12/16-17 dated 27.11.2019. The Assessment was framed by Income Tax Officer, Non Corporate Circle-10, Chennai for the relevant A.Y. 2013-14 vide order dated 21.03.2016 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the A.O in disallowing the expenses in relation to interest paid to non banking financial companies amounting to Rs. 41,847/- and interest on market loans Sedan amounting to Rs. 11,39,772/- by invoking the provisions of Section 40(a)(ia) of the Act on account of non deduction of TDS.

3. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the Ld. counsel for the assessee filed copy of auditor certificate under first proviso to Section 201(1) of the Act and enclosed the same in assessee's paper book at Pages 15-16. The Ld. counsel for the assessee stated that the recipient has included the income in the respective returns of income and paid taxes, in view of the second proviso to Section 40(a)(ia) of the Act, no disallowance can be resolved to. The Ld. counsel further stated that the relevant certificate was produced before A.O as well as before CIT(A) but none of them has considered the same. We noted that this issue now stands covered by the decision of Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd., [2015] 377 ITR 635, wherein the Hon'ble Delhi Court has considered the issue of disallowance made by AO u/s.40(a)(ia) of the Act for

failure to deduct TDS on payments and in case, if payee has offered this amount to tax, the second proviso to section 40(a)(ia) of the Act as inserted by Finance Act, 2013 w.e.f. 01.04.2013 should be treated as curative and to have retrospective effect from 01.04.2005.

4. Hence, we direct the A.O to verify the auditor certificate issued in term of second proviso to Section 40(a)(ia) of the Act and accordingly, allow the claim of assessee after verification. This issue of the assessee's appeal is partly allowed for statistical purposes.

5. The next issue in this appeal of assessee is as regards to the order of CIT(A) in confirming the disallowance of parking expenses of Rs. 8,86,218/-.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that even before us the assessee could not substantiate nor could file any reconciliation or any evidence to prove his claim. Hence, this ground of assessee's appeal is dismissed.

7. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the A.O in disallowing the expenditure of Rs. 33,48,250/- claimed being cost of improvement of flat. For this the assessee has raised the following ground No.4:

“4. The appellant is deprived of opportunity of being heard, The order of the CIT Appeals, have confirmed the addition of Expenditure of Rs. 33.48.250/- incurred on the capital asset sold, before the assessee provide the supporting documents in support of the expenditure claimed.”

8. The brief facts are that the assessee purchased one residential flat on 23.01.2012, which was sold on 09.11.2012 for a sum of Rs. 2,46,75,000/-. The assessee claimed that it has made addition and incurred cost of improvement during Financial Year 2012-13 relevant to this A.Y 2013-14 for a sum of Rs. 33,48,250/- and claimed the same while computing short term capital gain. The A.O disallowed the claim as no evidence was filed before the A.O. Aggrieved, the assessee preferred appeal before CIT(A).

9. The CIT(A) also confirmed the same in the absence of any evidence by disallowing as under:

“In appeal, the appellant stated that since the asset is sold off during the year, the asset is not reflected in the balance sheet. He stated that he engaged a contractor to carry out the improvement work and payments were made periodically to contractor. Though the expenses for improvement cannot find a place in balance sheet since

the asset was sold within the financial year, the appellant did not give any documentary evidence for the expenditure incurred for improvement work. In the absence of the above, the expenditure has to be treated as not genuine. The addition is sustained on the above ground. The addition of Rs 33,48,250/- is confirmed.”

Aggrieved, the assessee is in appeal before the Tribunal.

10. Now, before us the assessee filed some ledger account copy and one certificate from builder dated 29.06.2012 and dated 14.05.2012 depicting the expenditure of Rs.24.63 lakhs and Rs. 8,85,250/-, respectively. When a query was put to Ld. AR that why this evidence was not produced before the A.O nor CIT(A), he stated that these are being filed now as additional evidence. He filed petition for additional evidence, but he could not substantiate his petition that as to why he could not file these evidences before the A.O or before the CIT(A), when it was available to him on the date 29.06.2018 and 14.05.2012, he could not reply anything. Once, these evidences were available with the assessee before the completion of the assessment and no reasons is cited, we refuse to admit the additional evidence. This ground of assessee's appeal is dismissed.

11. The next issue in this appeal of assessee is as regards to the order of CIT(A) conforming the addition made in respect of transit losses. For this, the assessee has raised the following ground No.5:

“5. The order of the CIT Appeals, have confirmed the addition made in respect of transit shortages, the Ld.AO has erred in question of law and on facts”

12. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the A.O as well as CIT(A) has gone into wrong facts that the shortage is in transit on account of fuel shortage of Rs. 30,76,622/-. Now before us the Ld. Counsel for the assessee argued that the assessee is in the business of transport and the shortage is on account of material loss and shortage of transport receipts which is not been verified. The assessee's council drew our attention to the plea taken before A.O and CIT(A), which are as under:

- a. Variation in weightage from starting point of loading to ending point of unloading of goods at clients place. i.e., Transit losses, pilferage, petty thefts.*
- b. Delay in delivering the goods on time.*
- c. Charges levied by the corporate clients for not achieving targets given to the transporters*
- d. Periodical rate variations*
- e. Rounding off of the final transport payment*

13. We noted that neither CIT(A) nor A.O has gone into these details hence, we are of the view that let this issue be examined by A.O afresh. Hence, we set aside the order of CIT(A) as well as that of the A.O and remand the matter back to the file of the A.O for fresh

consideration of this issue. This issue of assessee's appeal is allowed for statistical purposes.

14. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 16th August, 2023.

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)
लेखा सदस्य /Accountant Member

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

चेन्नई/Chennai, दिनांक/Dated: 16th August, 2023.
EDN/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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