

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.132/Rjt/2023  
(Assessment Year: 2018-19)

L. L. Electricals, Parsana Society, 50 Feet Road, Kothariya Road, Rajkot-360002	Vs.	Income Tax Officer, National E-Assessment Centre, Delhi
[PAN No.AADFL6295R]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri Sumit Shingala, A.R.
<b>Respondent by:</b>	Shri Abhimanyu Singh, Sr. DR
<b>Date of Hearing</b>	10.08.2023
<b>Date of Pronouncement</b>	23.08.2023

ORDER

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”) in Order No. ITBA/NFAC/S/250/2022-23/1050514416(1) vide order dated 08.03.2023 passed for Assessment Year 2018-19.

2. The assessee has taken the following grounds of appeals:-

“1. When appellant has complied with the provisions of u/s. 31ACB r.w.s. 40(a)(ia) r.w.s. First proviso to sub-section (1) of section 201 of the Act., no disallowance could be made u/s 40(a)(ia) of the Act.

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*Appellant craves leave to add, amend, alter or withdraw any or more grounds of appeal on / or before the hearing of appeal.”*

3. The brief facts of the case are that during the course of assessment proceedings, the AO observed that the assessee had not deducted tax while making payment of interest on loan of Rs. 5.59 lakhs. On being asked, the assessee replied that this income has been duly considered by the respective parties in their returns of income and therefore, the assessee is not an assessee in default for the purpose of Section 200 r.w.s. 40(a)(ia) of the Act. However, on perusal of the income tax returns of the respective parties, the AO noticed that neither of these parties have claimed TDS on interest paid to them. Hence, a sum of Rs. 1,67,936/- (being 30% of Rs. 5,59,788/-) was disallowed under Section 40(a)(ia) of the Act and added to the total income of the assessee.

4. In appeal, Ld. CIT(Appeals) confirmed the additions made by the Assessing Officer with the following observations:

**“5. DECISION:**

*5.1 I have duly considered the facts of the case, the order of AO and the grounds of appeal as well as statement of facts as per Form 35 uploaded by the appellant. The grounds of appeal raised by the appellant is adjudicated in the subsequent paras.*

*5.2 Ground of appeal No.1 relates to disallowance of Rs.1,67,936/- u/s 40(a)(ia). As observed earlier, during the course of assessment proceedings, the AO noticed that the assessee has*

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*not deducted tax while making payment of interest on loan of Rs.5,59,788/-. On being asked, the assessee replied that this income have been duly considered by the respective parties in their return of income and therefore, assessee is not in default for the purpose of section 200 and section 40(a)(ia) together. On perusal of the Income-tax returns of the respective parties, the AO noticed that neither of these parties have claimed TDS on interest paid to them. Hence Rs.1,67,936/- (being 30% of Rs.5,59,788/-) was disallowed u/s 40(a)(ia) and added to the total income of the assessee.*

*5.3 In appellate proceedings, the appellant reiterated it's submission made during the assessment proceedings that all the income have been duly considered by the respective parties in their return of income and Due tax have been disclosed by the respective parties while filing their ROI. And therefore, the assessee does not remain an assessee in default for the purpose of Section 200 and Section 40(a)(ia) read together. Further, on perusal of the copies of Income-tax returns of the respective parties filed by the appellant, it is noticed that neither of these parties have claimed TDS on interest paid to them. In view of the above detailed discussion, no Infirmary is found in the action of the AO of making addition of Rs.1,67,936/- **Accordingly, the Ground of appeal No.1 raised by the appellant is dismissed.***

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before us, the Counsel for the assessee submitted that the assessee is a partnership firm, which made payment of interest to 3 parties viz. Limbabhai Gajera (Rs. 1.41 lakhs), Shamjibhai Gajera (Rs. 1.98 lakhs) and Mehul Gajera (Rs. 2.20 lakhs). It was submitted before us that all the aforesaid 3 recipients of income had duly shown the aforesaid income in their returns of income and paid taxes, as may be applicable. It was submitted before us that assessee had also filed necessary Form 26A, as per Rule 31ACB(1) on 26-05-2021 (copies of the same have been the produced before us at Pages 2-3 of the Paper Book filed by the assessee). However, upon migration of old income tax portal to the new income tax portal, the aforesaid Forms are no longer visible on the Income Tax Portal. Further, the assessee has also filed copies of income tax returns and computation of income of the aforesaid 3 persons, which as per the Counsel for the assessee were filed before the Assessing Officer as well as before Ld. CIT(Appeals), during the course of proceedings (the same are reproduced at Pages 4-14 of the Paper Book). Further, the assessee placed reliance on the case of Shri Jayantilal v ACIT in ITA number 255/Rajkot/2018, wherein ITAT held that once the receipts have been shown in the income tax returns of the recipients and due taxes have been paid thereon, no disallowance is liable to be made under section 40(a)(ia) of the Act.

6. We have heard the rival contentions and perused the material on record. On going to the records produced us, we are hereby restoring the matter back to the file of Ld. CIT(Appeals) for considering the

documents produced before us, wherein the Counsel for the assessee submitted that the screenshot of Form 26A is not available on the Department website on account of migration from the old income tax portal to the new income tax portal. Accordingly, Ld. CIT(Appeals) may take into consideration the relevant documents filed by the assessee and grant relief to the assessee accordingly. It would be useful to reproduce the relevant extracts of the case of **Shri Jayantilal v ACIT in ITA number 255/Rajkot/2018** on which reliance has been placed by the Counsel for the assessee:

*“Before deciding the issue, it would be useful to reproduce the relevant extracts of the Act, for reference:*

*The second proviso to section 40(a)(ia) of the Act states as below:*

*Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum **but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201**, then, for the purpose of this sub-clause, **it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso.***

*Further, section 201 of the act states as below:*

**Consequences of failure to deduct or pay.**

*201. (1) Where any person, including the principal officer of a company,—*

*(a) who is required to deduct any sum in accordance with the provisions of this Act; or*

*(b) referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:*

***Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a payee or on the sum credited to the account of a payee shall not be deemed to be an assessee in default in respect of such tax if such 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**

*Accordingly, a combined reading of the aforesaid provisions makes it clear that once the recipient has shown the aforesaid receipts, on which tax was required to be deducted at source under section 40(a)(ia) of the Act, in its return of income and paid taxes thereon, then the payer shall not be treated as “an assessee in default” in terms of section 201 of the Act, and no disallowance in respect of aforesaid payments shall be made in the hands of the payer under section 40(a)(ia) of the Act of the Act.*

*Therefore, looking into the facts of the case and the statutory provisions with regards to the issue under consideration, in the interest of justice, this issue is being set aside to the file of Assessing Officer to carry out the necessary verification in this regard and ascertain whether the recipient/payee has offered the aforesaid income in its return of income. In the result, ground number 2 of the assessee’s appeal is being set aside to the file of Assessing Officer with the aforesaid directions.”*

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7. Accordingly, in view of the aforesaid decision, it is a well-settled principle that once the recipient of income has shown the amount in its return of income and paid due taxes thereon, then the assessee cannot be held to be an assessee in default and no disallowance is called for under Section 40(a)(ia) of the Act. Accordingly, Ld. CIT(Appeals) is directed to go through the documents which have placed before us and confirm whether the recipients of income have shown the aforesaid interest amounts in the return of income and paid due taxes thereon. In case, the recipients of income have shown the interest income in their respective returns of income and paid the due taxes thereon, no disallowance is called for under Section 40(a)(ia) of the Act.

8. In the result, the assessee's appeal is allowed for statistical purposes.

**This Order pronounced in Open Court on**

**23/08/2023**

**Sd/-**

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 23/08/2023

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार Dy./Asstt.Registrar)**

**आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot**