

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम.सी.", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " SMC ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 3040 / मुं/ 2023 (नि. व. 2012-13)  
ITA NO.3040/MUM/2023(A.Y.2012-13)

Parasmani Roadlines Pvt. Ltd.  
306, Popatlal Chamber, 4<sup>th</sup> Cross Lane,  
Dana Bunder, Masjid,  
Mumbai – 400 009

PAN: AAACP-6097-K

..... अपीलार्थी / Appellant

बनाम Vs.

ITO 7(3)(2),  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri K.J.Bafna  
प्रतिवादी द्वारा / Respondent by : Shri Dharmvir Yadav

सुनवाई की तिथि / Date of hearing : 15/01/2024  
घोषणा की तिथि / Date of pronouncement : 18/01/2024

आदेश / ORDER

**PER VIKAS AWASTHY, J.M:**

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [ in short 'the CIT(A)'] dated 24/07/2023, for the Assessment Year 2012-13.

2. Shri K.J.Bafna appearing on behalf of the assessee submitted that the short issue in this appeal is against disallowance of interest expenditure. The assessee is a transporter. The assessee had taken loans from private parties. During the period relevant to assessment year under appeal, the assessee had

paid interest on unsecured loans without deducting tax at source. The Assessing Officer in assessment proceedings consequent to the order of Principal Commissioner of Income Tax (PCIT) u/s. 263 of the Income Tax Act, 1961 [in short 'the Act'] dated 29/03/2017 completed the assessment disallowing interest paid on unsecured loans without TDS. During the course of assessment proceedings the assessee furnished certificates from the lenders indicating that the lenders have filed return of income for Assessment Year 2012-13 and have offered to tax interest income including interest received from the assessee in their respective return of income. The Assessing Officer without considering the submissions of the assessee disallowed interest u/s. 40(a)(ia) of the Act aggregating to Rs.28,28,580/-.

Aggrieved by the assessment order dated 26/09/2017 passed u/s. 143(3) r.w.s. 263 of the Act, the assessee filed appeal before the CIT(A). Before the First Appellate Authority, the assessee again furnished certificates from the respective parties stating that the interest income has been offered to tax by the payees, hence, no disallowance u/s. 40(a)(ia) of the Act should be made. The CIT(A) disregarding the submissions of the assessee upheld the assessment order. Hence, the present appeal.

2.1 The Id. Authorized Representative of the assessee submitted that once the recipient of the amount has offered the amount to tax in the return of income, no disallowance u/s. 40(a)(ia) of the Act should be made. In support of his submissions he placed reliance on the following decisions:

- (i) Hindustan Coca Cola Beverage (P) Ltd. vs. CIT, 293 ITR 226(SC)
- (ii) DCIT vs. A.P. Industrial Infrastructure Corporation Ltd.,  
64 taxmann.com 331 (Hyd-Trib)
- (iii) New Alignment vs. ITO, 69 taxmann.com 122 (Kolkata –Trib)

iv) Rajeev Kumar Agarwal vs. Addl.CIT, 45 taxmann.com 555 (Agra-Trib)

4. Shri Dharmvir Yadav representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee has taken unsecured loans from seven parties. During the period relevant to the assessment year under appeal the assessee paid interest on said unsecured loans. Admittedly, the interest was paid without deducting tax at source. The details of the parties along with loan amount and interest paid during the relevant period is tabulated herein below:

Sr.No.	Name of the parties	Loan amount (in Rs.)	Interest Paid( in Rs.)
1.	Sunderam Finance	1,48,39,640	Not shown separately
2.	Magam Finance	80,29,800	
3.	Navita Jain	50,000	7,800
4.	Nirmal Kumar Jain	50,000	7,800
5.	Nirav Jain	60,000	9,360
6.	Ekta Jain	1,07,965	14,047
7.	Manju Jain	3,22,585	42,240
	Total	2,34,59,720	84,247

The contention of assessee is that the aforesaid parties have offered to tax interest income including interest received from assessee in their respective return of income for Assessment Year 2012-13. The assessee has also placed on record certificate from the Chartered Accountants of the six parties at pages 11 to 26 of the Paper Book viz.:

- (i) Sunderam Finance Ltd.
- (ii) Navita Rakesh Jain
- (iii) Nirmal Kumar Jain HUF
- (iv) Ekta Paras Jain
- (v) Mrs Manju Jain

(vi) Magma Finance Corp Ltd.

6. Section 40(a)(ia) of the Act has been amended by way of insertion of 2<sup>nd</sup> proviso by the Finance Act 2012 w.e.f. 01/04/2013 The second proviso inserted reads as under:

*“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 resident payee referred to in the said proviso.”*

In the case of Rajiv Kumar Agarwal vs. Addl.CIT(Supra), the Tribunal has held that insertion of 2<sup>nd</sup> proviso to section 40(a)(ia) of the Act is declaratory and curative in nature and hence, would apply retrospectively w.e.f. 01/04/2005, the date from which sub-clause(ia) to section 40(a) was inserted by the Finance (No.2) Act, 2004. Thus, considering facts of the case and second proviso to sub-clause (ia) we deem it appropriate to restore this issue back to the file of Assessing Officer to verify the certificates furnished by the assessee. If, the payee has discharged tax liability on interest paid by the assessee, no disallowance u/s. 40(a)(ia) of the Act, to the extent interest offered to tax is warranted.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on Thursday the 18<sup>th</sup> day of January, 2024.

Sd/-

(AMARJIT SINGH )

लेखाकार सदस्य / ACCOUNTANT MEMBER  
मुंबई/ Mumbai, दिनांक/ Dated 18/01/2024  
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Mumbai