

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2537/Mum/2024
Assessment Year: 2012-13

Suleman Husai Kalu, Dahisar Shop No. 1/2, Arif Manzil L.T. Road, Dahisar Mumbai - 400068 [PAN: AANPK4830H]	Vs	Circle-42(1)(1), Mumbai, BKC, Bandra East, Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Rajesh Shah, A/R
Revenue by :	Shri Sunil K. Agwane, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 25/07/2024
घोषणा की तारीख /Date of Pronouncement: 25/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Id. CIT(A), Addl./JCIT(A)-1, dt. 27/03/2024, pertaining to AY 2012-13.

2. The grievance of the assessee is that the Id. CIT(A) erred in confirming the additions in respect of rent and interest for non-deduction of tax at source u/s 40(a)(ia) of the Act.

3. Briefly stated the facts of the case are that while scrutinizing the return of income the AO notice that the assessee paid rent of Rs.3,60,000/- for Gala No. 1 was paid to two persons, Rs.1,80,000/- each and Rs.2,88,000/- as rent for Gala 2 also paid to two persons, Rs.1,80,000/- and Rs.1,08,000/- respectively. It was strongly contended that the provisions relating to TDS did not apply on the impugned payments. The contention of the assessee was dismissed by the AO who

was of the firm belief that the assessee has bifurcated the payment of rent to avoid liability for deduction of tax at source. The AO disallowed the entire rent of Rs.6,48,000/- u/s 40(a)(ia) of the Act. Proceeding further, the AO noticed that the assessee has paid interest to Magma Fincorp Ltd. at Rs.1,53,336/- and to Religare Finvest Ltd. at Rs.2,03,268/-. Since no tax was deducted at source, the AO made addition of Rs.3,56,604/-.

4. The assessee carried the matter before the Id. CIT(A) but without any success.

5. Before us, the Id. Counsel for the assessee reiterated that rent has been paid to four persons and payment to each party was below the limit, attracting the provisions of TDS. Insofar as, interest payment is concerned, the Id. Counsel stated that the recipient has shown the income in their computation of income, therefore, the liability to deduct tax at source cannot be put on the assessee.

Per contra, the Id. D/R strongly supported the findings of the AO.

5. We have carefully perused the orders of the authorities below. There is not dispute that the rent of two galas were paid to four persons and payment to each person was less than the liability to deduct tax at source. The AO has presumed that the assessee has bifurcated the rent to avoid TDS liability. We are of the considered view that disallowance/additions cannot be made on presumption. Finding that the payment to each party does not attract the provisions of TDS, the AO is directed to delete the addition of Rs.6,48,000/-.

6. Insofar as the payment of interest is concerned, the assessee has filed the certificate of Chartered Accountant in case of Magma Fincorp. Ltd., which shows that Magma Fincorp has included the interest in its

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computation of income. The AO is directed to verify the same and if found correct, the addition of Rs.1,53,336/- should be deleted. Insofar as interest payment to Religar Finvest Ltd. is concerned, if the assessee is able to furnish the details of income being offered for taxation by Religare Finvest Ltd., the AO is directed to delete the interest of Rs.2,03,268/- also, after verification.

7. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 25th July, 2024 at Mumbai.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 25/07/2024

SR SR

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai