

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.59/Nag./2020
(Assessment Year : 2009-10)

Pramod Narayanrao Ghalani
Arvi Road, Pulgaon, Wardha 442 302
PAN – ADIPG7141D

..... Appellant

v/s

Income Tax Officer
Ward-1, Wardha

..... Respondent

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 07/08/2024

Date of Order – 13/08/2024

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the assessee challenging the impugned order dated 08/05/2019, passed by the learned Commissioner of Income Tax (Appeals)-2, Nagpur, [*learned CIT(A)*], for the assessment year 2009-10.

2. When the case was called for hearing neither the assessee appellant nor any if his authorised representatives appeared before us to assist the Bench and argue the matter. There is no application for adjournment also. Hence, the Bench proceeded on its own to dispose of this appeal qua the assessee and after hearing the learned Departmental Representative and on the basis

of material on record, particularly since the matter is quite old and the additions are within a narrow compass of law.

3. In its appeal, the assessee has raised following grounds:-

"1. Whether on the facts and circumstances of the disallowance made by the Assessing Officer and endorsed by the CIT(A) for disallowance under section 40(a)(ia) for late filling of Form 15G & 15H is justified.

2. Appellant craves leave to add or alter any other ground that may be taken at the time of hearing."

4. Facts in Brief:- The assessee is an individual who is a proprietor of M/s. Chintamani Construction. For the year under consideration, the assessee has filed return of income on 25/09/2009 declaring total taxable income at ₹ 4,80,280 and agricultural income of ₹ 90,000. The return of income was processed under section 143(1) of the Income Tax Act, 1961 ("*the Act*") on 15/11/2010. The order under section 143(3) of the Act was passed on 29/12/2011, and income was assessed at ₹ 4,80,280, and agricultural income was assessed at ₹ 90,000. The case was re-opened for scrutiny and notice under section 148 of the Act which was issued on 22/10/2013, and the same was served on the assessee on 24/10/2013. In response to the notice under section 148, the assessee filed return of income on 20/11/2013, declaring total income at ₹ 4,80,280. Subsequently, notice under section 142(1) and 143(2) were issued and served on the assessee. The Assessing Officer asked the assessee to file various details like copy of bank statement, copy of Balance Sheet as on 31/03/2009, and details of interest paid, etc. The Assessing Officer noted that the assessee, during the financial year, derived income from Civil Contract Business. The Assessing Officer further noted that

the assessee debited an amount of ₹ 2,81,733, in the Profit & Loss A/c on account of interest paid to the following unsecured loan lenders:-

1.	<i>Smt. Kaushalyadevi Ghalani</i>	₹ 1,48,151
2.	<i>Smt. Alka Ghalani</i>	₹ 1,31,175
3.	<i>Pramod Dilip Ghalani (HUF)</i>	₹ 20,407

5. The interest paid on unsecured loans has been claimed as deduction in the return of income so filed. Since the assessee has not deducted tax at source on the above interest payments so made by the assessee, the Assessing Officer sought explanation from the assessee as to why the interest paid on unsecured loans of ₹ 2,81,733, be not added to the total income of the assessee. The assessee furnished Form no.15G and 15H in respect of the above parties, however, the Assessing Officer stated in the assessment order that the said forms have not been filed before the CIT(TDS). The Assessing Officer, considering these facts, proceeded to disallow the amount of interest of ₹ 2,81,733, and the same was added to the total income of the assessee. Aggrieved, the assessee carried the matter before the first appellate authority.

6. The learned CIT(A) directed the Assessing Officer to verify as to whether Form no.15G and 15H were filed before the Commissioner in time and if so grant suitable relief to the assessee. The assessee being not satisfied with the order so passed by the learned CIT(A), filed appeal before the Tribunal.

7. None appeared on behalf of the assessee appellant.

8. The learned Departmental Representative supported the order passed by the Assessing Officer vehemently and prayed that the addition be sustained as it is within the four squares of the law.

9. We have heard the learned D.R. and perused the material on record. It is a matter on record that Forms no.15G and 15H, were furnished by the assessee before the Assessing Officer during the course of assessment proceedings. Under section 197A of the Act, there is no requirement of deducting tax at source once the declaration Form is furnished before the Assessing Officer under sub-section (2) of section 197A of the Act. It is the requirement of the assessee to deliver these forms before the Commissioner before the 7th day of the month next following the month in which the declaration furnished before the Assessing Officer. We do not find any representation from the side of the assessee. However, we have gone through the records. The learned Departmental Representative submitted before us that the assessment order need not be disturbed, but he failed to point out any specific provisions under which the disallowance due to non-deduction of tax can be justified once the declaration forms are submitted before the Assessing Officer. Consequently, we are of the view that even if the assessee fails to furnish the declaration forms before the concerned authority, he cannot be penalised for non-deduction of tax. Addition made under section 50(a)(ia) of the Act cannot be made when there was no requirement of deducting tax at source. Further, the Department did not verify whether the payees have declared the interest in the return of income. The direction of the learned CIT(A) is superfluous and does not rest on valid

legal foundation. Even if there is any non-compliance by the assessee, additions cannot be perpetrated simply on that basis. In view of the forgoing discussions, we set aside the impugned order passed by the learned CIT(A) and allow the grounds of appeal raised by the assessee.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 13/08/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 13/08/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur