

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.201/Nag./2023

(Assessment Year : 2006-07)

Gopal Dineshchandra Tulshan
Prop: M/s. Tulshan World Furniture
Near Vasant Talkies, Akola 444 001
PAN – AANPT1758R

..... Appellant

v/s

Income Tax Officer
Ward-3, Akola

..... Respondent

Assessee by : None

Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 12/08/2024

Date of Order – 09/09/2023

ORDER

The captioned appeal has been filed by the assessee challenging the impugned order dated 22/03/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Dlehi, [“learned CIT(A)”], for the assessment year 2006-07.

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

“1) That the learned NFAC, Delhi has erred in sustaining the disallowance of expenditure (interest) at Rs. 2,03,227/- u/s 40(a)(ia).

2) That the learned NFAC, Delhi ought to have considered that, second proviso to Sec.. 40(a)(ia) is applicable retrospectively being procedural and curative in nature and accordingly addition is not sustainable since recipient of interest

(payee) has already paid income tax on his regular income including said interest receipt.

3) The learned NFAC, Delhi ought to have followed the decision of Jurisdictional High Court (Bombay High Court) which is in favour of the appellant while deciding the issue under consideration.

4) The learned NFAC, Delhi has erred in not appreciating the fact that, there is double taxation, once paid by the payee on interest receipt and again charged to the appellant by disallowing expenditure u/s 40(a)(ia).

5) The learned NFAC, Delhi has erred in dismissing the first appeal preferred by the appellant on the ground that, the appellant has not furnished a certificate in prescribed form from Chartered Accountant as provided u/s 201(1)(b) (iii), even though the said prescribed certificate in Form No. 26A was not provided in the Income Tax Rules 1962 for the assessment year under consideration.

6) That the order is bad-in-law and against the facts of the case.

7) That the appellant craves for leave to raise any other grounds of appeal either before or at the time of hearing of the appeal."

3. The sole issue arose out of the aforesaid grounds of appeal relates to disallowance of interest expenditure at ₹ 2,03,227, under section 50(a)(ia) of the Income Tax Act, 1961 ("*the Act*").

4. Facts in Brief:- The assessee is a proprietor of M/s. Tulshan World Furniture, Akola, dealing in readymade furniture on wholesale and retail basis. During the year under consideration, the assessee has paid interest to his brother's proprietary concern namely M/s. Kanch Ghar, Akola, and other depositors totalling to ₹ 2,03,227, on which TDS has not been deducted and hence the Assessing Officer has disallowed the pertaining expenses i.e., interest of ₹ 2,03,227, under section 40(a)(ia) of the Act. Aggrieved, the assessee preferred appeal before the first appellate authority.

5. The learned CIT(A) dismissed the appeal filed by the assessee by relying upon the judgment of the Hon'ble Kerala High Court in Prudential Logistics and Transport v/s ITO, [2014] 51 taxman.com 426 (Ker.)

6. When the case was called for hearing neither the assessee nor any of his authorised representatives appeared before us to assist the Bench in disposing off the appeal filed by the assessee. However, while going through the material available before us, I find that the assessee has filed a detailed Written Submissions which are reproduced below:-

"Appellant is proprietor of M/S Tulshan World Furniture, Akola dealing in Readymade Furniture on wholesale & retail basis. During the year under consideration assessee has paid interest to his brother's proprietary concern namely M/s. Kanch Ghar, Akola and other depositors totalling Rs. 2,03,227/- on which TDS has not been deducted and hence AO has disallowed the pertaining expenses i.e. interest at Rs. 2,03,227/- u/s 40(a)(ia). Being aggrieved, assessee has preferred an appeal before CIT(A)-1, Nagpur which has been dismissed. Being aggrieved by the order of CIT(A)- 1. Nagpur, assessee has preferred second appeal before ITAT Nagpur which has been set aside and remanded the matter back to AO to adjudicate the issue afresh after examining the applicability of second proviso to Sec. 40(a)(ia). Thereafter, AO (ITO Ward-3, Akola) has passed assessment order u/s 143(3) Dtd. 09/03/2016, in which AO has sustained the addition of Rs.2,03,227/- u/s 40(a)(ia) on the basis of, judgment of Kerala HC in the case of Prudential Logistics & Transport vrs. ITO reported in 51 taxman. com 426 (Kerala HC). Being aggrieved by the said addition of Rs.2,03,227/-, appellant has preferred the present appeal before your kind honour alongwith application for condonation of delay in filing the appeal. Your honour is most humbly requested to consider the said condonation application sympathetically and admit the same for hearing.

1) Regarding Ground no.1 to 4:-

In the assessment order A.O. has disallowed interest expenses at ₹ 2,03,227, under section 50(a)(ia), the break up of which is as under:-

<i>a) M/s. Kach Ghar, Akola (Prop. Sunil D. tulshan)</i>	<i>₹ 1,86,667</i>
<i>b) Sohanlal Ganeshlal Bilala</i>	<i>₹ 7,777</i>
<i>c) Vijay Oil Industries</i>	<i>₹ 8,783</i>
	<i>-----</i>
	<i>₹ 2,03,227</i>
	<i>=====</i>

AO has disallowed the above interest expenditure, since this appellant has not deducted TDS while making payment of above interest. During the course of hearing, this appellant has filed following documentary evidences in respect of interest paid to M/S Kanch Ghar, Akola (Prop. Sunil D. Tulshan) at Rs. 1,86,667/-:-

i) Ledger extract of interest account from the books of M/S Khanch Ghar, Akola in which interest received from the proprietary concern of this appellant namely M/S Tulshan World Furniture, Akola at Rs. 1,86,667/- is reflected on the credit side of the interest account.

ii) Copy of Part B of Audit Report of Asstt. Yr. 2007-08 highlighting the interest received in back year i.e. Asstt. Yr. 2006-07 at Rs. 1,86,667/- of Sunil D. Tulshan (Prop. Kanch Ghar, Akola).

iii) Computation of income of Sunil D. Tulshan (Prop. Kanch Ghar, Akola) for Asstt. Yr. 2006-07.

iv) Acknowledgement of return of Sunil D. Tulshan (Prop. Kanch Ghar, Akola) for Asstt. Yr. 2006-07.

v) Copy of intimation u/s 143(1) of Sunil D. Tulshan (Prop. Kanch Ghar, Akola) for Asstt. Yr. 2006-07.

vi) Copy of Assessment Order u/s 143(3) Dtd. 24/05/2007 of Sunil D. Tulshan (Prop. Kanch Ghar, Akola) for Asstt. Yr. 2006-07.

All the above documentary evidences leads to prove that, recipient of interest namely Sunil D. Tulshan (Prop. Kanch Ghar, Akola) has received interest at Rs. 1,86,667/- from the proprietary concern of this appellant namely M/S Tulshan World Furniture, Akola during FY 2005-06 and same is duly reflected on the credit side of interest account in the books of said recipient of interest. Thus, it is crystal clear that receipt of interest at Rs. 1,86,667/- has been duly considered and offered for taxation by paying taxes thereon by the said recipient of interest in his books, Audit Report & Return of income. However, this appellant could not produce any documentary evidences in respect of interest paid to other two parties as under:-

a) Sohanlal Ganeshlal Bilala	₹ 7,777/-
b) Vijay Oil Industries	₹ 8,783/-

Total	₹ 16,560/-
	=====

In the assessment order, AO has disallowed total interest expenses paid to above three parties totalling Rs. 2,03,227/-, even though, appellant has given all the above documentary evidences which leads to prove that, interest recipient at Rs. 1,86,667/- has been duly considered and offered for taxation by paying taxes in the case of said recipient namely Sunil D. Tulshan (Prop. M/S Kanch Ghar) on the basis of decision of Kerala High Court. The Hon'ble Kerala High Court has held that, second proviso to section 40(a)(ia) has been inserted by the Finance Act 2012 w.e.f. 01/04/2013 & it is prospective in nature and hence same is not applicable to Asstt. Yr. 2006-07.

However, assessee begs to submit that, Finance Act. 2012 has inserted second proviso to section 40(a)(ia) w.e.f. 01/04/2013 to remove undue hardship and to reduce the rigour of provisions of section 40(a)(ia), according to which if payee has furnished his return of income within time u/s 139, has taken into account such sum for computing his income in the return, has paid tax due on the income declared in the return and furnishes certificate in such form as may be prescribed from an Accountant. In this case, all the documentary evidences as specified in second proviso of section 40(a)(ia) rws first proviso of subsection (1) of section 201 in respect of interest paid at Rs. 1,86,667/-.

Second proviso of section 40(a)(ia) was inserted by Finance Act. 2012 is curative & declaratory in nature and hence it should be given retrospective effect right from inception of section 40(a)(ia) in view of the following case-laws:-

- a) ITA No. 707 of 2016 Dtd. 17/01/2019
PCIT Vrs Perfect Circle India Private Limited (Bombay H.C.)

The second proviso to s. 40(a)(ia) is beneficial to the assessee and is declaratory and curative in nature. Accordingly, it must be given retrospective effect.

- b) 377 ITR 635 (Delhi High Court)
CIT Vrs. Ansal Land Mark Township Pvt. Ltd.

Second proviso to s. 40(a)(ia) is declaratory and curative and has retrospective effect from 1st April, 2005.

- c) 120 taxmann.com 357 (Karnatka High Court)

The Commissioner Of Income Tax vs S M Anand Legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect.

- d) 362 ITR 241 (Delhi H.C.)
CIT Vrs Rajender Kumar

Provision should be interpreted in a fair, just and equitable manner and not in a manner which results in injustice and creates tax liabilities.

- e) ITA No. 595/PUN/2017 (Pune ITAT)
Sai Pushpa Sharda Alliance vs. IT (Pune ITAT)

We have come across the judicial pronouncements wherein majority view is that the second proviso to section 40(a)(ia) is retrospective in nature and in such circumstances, on application of that proviso if the payee has paid the tax to the government account then the payer cannot be held liable for non deduction of TDS and no disallowance would be warranted u/s 40(a)(ia) of the Act.

In view of the above facts, case-laws and decision of jurisdictional High Court, your honour is requested to direct the AO to delete the disallowance of interest expenses at Rs. 1,86,667/-, since the appellant has complied with the second proviso of section 40(a)(ia) rws first proviso of sub section (1) of section 201. It is pertinent to note here that, if there are conflicting decisions of various High Courts and there is also decision of Jurisdictional High Court on the same issue, then, the decision of Jurisdictional High Court (Bombay High Court) will prevail. In this case decision of jurisdictional High Court (Bombay High Court) is in favour of the appellant, the decisions of other high court against the assessee should not have been followed by the AO as has been done in the case while passing the assessment order."

7. The learned Departmental Representative has supported the order passed by the authorities below.

8. I have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. Before us, the assessee has demonstrated that Shri Sunil D. Tulshan, had offered for taxation the interest of ₹ 1,86,667, hence I agree with the assessee that there cannot be any addition on the same particulars in view of the fact that it has been held that the second proviso has to be given a retrospective effect. Accordingly, I delete the addition of ₹ 1,86,667. However, the addition of ₹ 16,650, is hereby confirmed in the absence of any documentary evidence.

9. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 09/09/2023

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 09/09/2024

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