

| आयकर अपीलिय अधिकरण न्यग्रपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

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

I.T.A. No. 4327/Mum/2024
Assessment Year: 2018-19

Olympic Oil Industries Limited 709-C, One BKC, G- Block Near Indian Oil Petrol Pump Bandra Kurla Complex Bandra East Mumbai - 400059 [PAN: AAACO5370N]	Vs	Assistant Commissioner of Income Tax, Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Ms. Aishwarya Pawar, A/R	
Revenue by :	Shri Krishna Kumar, Sr. D/R	

सुनवाई की तारीख/Date of Hearing : 17/10/2024
घोषणा की तारीख /Date of Pronouncement: 25/10/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the ld. CIT(A)/Addl./JCIT(A)-4, Delhi dated 25/06/2024, pertaining to AY 2016-17.

2. The grievance of the assessee reads as under:-

"1. That, on the facts and circumstances of the case and in law, the Lil. CIT(A) erred in passing the appellate order dated 25.06.2024 against the Assessee, without appreciating that the Assessee had suo motu made a disallowance of 30% of the expenditure, in respect of which tax was not deducted at source, while filing the income tax return, thus complying with the provisions of Section 40(a)(0) of the Act.

2. That, on the facts and circumstances of the case and in law, the Ld CIT(A) erred in not appreciating that the interest under the first proviso to s. 201(JA) of the Act is not leviable in a case where a voluntary disallowance under s. 40(a)(ia) of the Act is made by the Assessee at the time of filing of return.

3. That, on the facts and circumstances of the case and in law, the Ld CIT(A) erred in considering the there was no loss to the revenue as the recipients has paid the due taxes while filling their returns."

3. Briefly stated the facts of the case are that the assessee is a limited company deriving its income from business of wholesale and retail trading of electronic parts and equipment of other products and also derives income from other sources.

3.1. The assessee borrowed loans from Frost Infrastructure and Energy Limited and on such loan, the assessee paid interest of Rs. 1,99,65,854/-. Admittedly, no tax was deducted at source. As per the provisions of Section 40(a)(ia) of the Act, the assessee *suo moto* disallowed 30% of the interest expenditure.

3.1.1 The AO issued notice to the assessee initiating proceedings u/s 201 of the Act. The assessee submitted all details and information required during the proceedings u/s 201 of the Act and also pointed out that it has disallowed 30% of the impugned expenditure. The AO disallowed the entire interest expenditure of Rs.1,99,65,854/- and levied interest of Rs. 11,58,019/- u/s 201(1A) of the Act.

4. The assessee challenged the order before the Id. CIT(A) and the Id. CIT(A) found that since the assessee has *suo moto* disallowed 30% of the interest expenditure, he deleted the said disallowance of Rs.1,99,65,854/-. However, directed the AO to charge interest as per the 1st proviso to Section 201(1A) of the Act.

5. Before us, the Id. Counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the Id. Counsel of the assessee that since the assessee has voluntarily disallowed 30% of the expenditure, impliedly it has complied with the provisions of Section 40(a)(ia) of the Act. Therefore, any further addition is unwarranted. The Id. Counsel for the assessee further stated that interest under 1st proviso

to Section 201(1A) of the Act is not leviable in a case where voluntary disallowance u/s 40(a)(ia) of the Act is made by the assessee at the time of filing of the return.

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

6. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee has *suo moto* disallowed the interest expenditure on which no tax was deducted at source. In our considered opinion, once an amount is disallowed u/s 40(a)(ia) of the Act for non-deduction of tax, it should not be subject to TDS provisions again so as to make an assessee liable to interest u/s 201(1A) of the Act.

6.1. We draw support from the decision of the Co-ordinate Bench in the case of *Robert Bosch Engineering and Business Solutions (P.) Ltd.* reported in [2022] 137 *taxmann.com* 150 (Bangalore- Trib.). The relevant findings of the Co-ordinate Bench read as under:-

“14. Now the issue that needs to be considered is in a situation where the assessee has not been treated to be an assessee in default, interest under section 201(1A) deserves be levied.

In our humble opinion, the provision of TDS provisions cannot applicable where there is no claim of expenditure made by the assessee. In the present facts assessee made suo motu disallowance of the entire provision under section 40(a)(i)/(ia) of the Act. Once the amount is disallowed u/s. 40(a)(i)/(ia) for non-deduction of tax, it cannot be subject to TDS provisions again so as to make the assessee liable to interest u/s. 201(1A). In our considerate view, the assessee(deductor) gets exonerated from the applicability of TDS provisions on disallowance of the expenditure in question under section 40(a)(i)/(ia) of the Act. This rational is based on the scheme of section 40(a)(i)/(ia), which is aimed at ensuring that an expenditure should not be allowed as deduction in the hands of an assessee(deductor) in a situation in which income embedded in such expenditure remained untaxed due to tax withholding lapses by such assessee (deductor).”

7. Moreover, the recipients of the interest have already included the said amounts in their returns of income and paid taxes thereon and the assessee has furnished evidence for the same including an Accountant Certificate as directed in the relevant provisions of the Act and since the tax has already been paid by the recipients, no further tax recovery is necessary. For this proposition, we draw support from the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Ansal Land Mark Township (P.) Ltd.* [2015] 61 taxmann.com 45 (Del.) wherein, the Hon'ble High Court has held as under:-

"Relevant to the case in hand, what is common to both the provisos to Section 40(a)(ia) and Section 201(1) of the Act is that as long as the payee/resident (which in this case is ALIP) has filed its return of income disclosing the payment received by and in which the income earned by it is embedded and has also paid tax on such income, the Assessee would not be treated as a person in default. As far as the present case is concerned, it is not disputed by the Revenue that the payee has filed returns and offered the sum received to tax."

8. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we do not find any merit in the impugned addition and the AO is directed to delete the same.

9. In the result, appeal of the assessee is allowed.

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

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 25/10/2024

SC S.P.

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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