

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "SMC" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No. 4771/Mum/2024  
Assessment Year 2014-15

M/s. Sunil Traders, House No. 378, Kaneri, Kalyan Road, Opp: Shanti Nagar Police Station, Bhiwandi, Mumbai PAN : AAUFS2608G	vs.	Income Tax Officer, Ward-1(4), 1 <sup>st</sup> Floor, Mohan Plaza, Wayale Nagar, Khadakpada, Kalyan West.
(Appellant)		(Respondent)

Assessee by : Shri Prakash Jotwani  
Revenue by : Ms. Smitha V. Nair, Addl.CIT

Date of Hearing : 07/11/2024  
Date of Pronouncement : 07/11/2024

**PER B.R. BASKARAN, A.M :**

The assessee has filed this appeal challenging the order dt.25-07-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2014-15. The only issue urged in this appeal relates to disallowance of Rs.26,98,048/- made u/s.40(a)(ia) of the Income Tax Act, 1961 (‘the Act’) for non-deduction of tax at source from the interest payment made by the assessee.

2. The Ld.AR submitted that the assessee is a partnership firm and the original assessment was completed u/s.143(3) of the Act on 30-11-2016. Thereafter, the above original assessment was revised by the Ld. Pr.CIT u/s. 263 of the Act, since the AO had not made any disallowance u/s. 40(a)(ia) of the Act on account of non-deduction of tax at source from the interest payments made by the assessee. Accordingly, the present assessment order came to be passed by the AO on 30-12-2019 u/s. 143(3) r.w.s. 263 of the Act, wherein the AO disallowed interest expenditure of Rs.26,98,048/- u/s. 40(a)(ia) of the Act. The Ld.CIT(A) also confirmed the addition and hence, the assessee has filed this appeal before the Tribunal.

3. The main contention of the assessee is that the disallowance u/s.40(a)(ia) of the Act is not required to be made in the hands of the assessee as per second proviso to section 40(a)(ia) of the Act. The Ld.AR submitted that the second proviso to section 40(a)(ia) of the Act deems that the assessee has deducted and paid the tax of such sum on the date of furnishing of return of income, if the assessee is not deemed to an assessee in default under first proviso to sub-section (1) of section 201 of the Act. The Ld.AR submitted that the AO has not initiated any action upon the assessee u/s. 201 of the Act and the assessee was not deemed to be the assessee in default. He further submitted that the payees of the interest have also declared the interest income in their respective return of income. Accordingly, he submitted that the Ld.CIT(A) was not justified in confirming the disallowance u/s. 40(a)(ia) of the Act.

4. The Ld.DR, on the contrary, supported the order passed by the tax authorities.

5. We heard the parties and perused the record. Admittedly, the assessee did not deduct tax at source from the interest expenditure paid by it. It is the submission of the assessee that the payees have already declared interest income in their returns of income and further, the AO has not taken any action upon the assessee u/s. 201 of the Act and accordingly, did not deem the assessee to be the assessee in default. Accordingly, by placing reliance on the second proviso to section 201 of the Act, the Ld.AR contends that the disallowance u/s. 40(a)(ia) of the Act could not be made in the hands of the assessee. The second proviso to section 40(a)(ia) of the Act 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 payee referred to in the said proviso.*

5.1. Since it is stated by Ld Counsel at the bar that the assessee has not been deemed to be the assessee in default under the first proviso to sub-section (1) of section 201 of the Act and further since it is stated that the payees have already declared the interest income in their respective returns of income, we are of the view that the above said proviso would come to the aid of the assessee. Accordingly, the AO was not right in law in disallowing the interest expenditure u/s. 40(a)(ia) of the Act.

5.2. We have rendered the above said decision on the basis of the statements made by the learned counsel at Bar. If the above said facts

were found to be incorrect by the Revenue, it may move appropriate application in accordance with law for re-call of this order.

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

Order pronounced in the open court on 07-11-2024

Sd/-  
[RAJ KUMAR CHAUHAN]  
JUDICIAL MEMBER

Sd/-  
[B.R. BASKARAN]  
ACCOUNTANT MEMBER

Mumbai,  
Dated: 07-11-2024

*TNMM*

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "SMC" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar  
I.T.A.T, Mumbai