IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW

BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

ITA No.353/LKW/2024
Assessment Year: 2014-15

Metal Cans and Closures Pvt. Ltd. Plot No.23, Panki Indus. Area, Site-1, Panki,Kanpur-208022.	v.	**Asstt. Commissioner of Income Tax-5** Vaibhav Bhawan, 15/295-A, Civil Lines, Kanpur-208001.
PAN:AAICM2233Q		
(Appellant)		(Respondent)

Appellant by:	Shri Rakesh Garg, Adv		
Respondent by:	Shri Sunil Kumar Rajwanshi, Addl. CIT(DR)		
Date of hearing:	28	11	2024
Date of pronouncement:	29	11	2024

O R D E R

PER KUL BHARAT, VICE PRESIDENT.:

This appeal, by the assessee, is directed against the order of the Learned Addl. Joint Commissioner of Income Tax (Appeals)-2, Kolkata dated 28.03.2024 pertaining to the assessment year 2014-15. The assessee has raised the following grounds of appeal: -

> *"1. Because the CIT(A) has erred on facts and in law in upholding the disallowance of Rs. 98,578/- out of conveyance and travelling expenses made by the AO on adhoc basis, which disallowance is contrary to facts, bad in law, be deleted.*
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> *2. Because the CIT(A) has erred on facts and in law in upholding the disallowance of Rs.64,262/- out of vehicle running and maintenance expenses made by the AO on adhoc basis, which disallowance is contrary to facts, bad in law, be deleted.*
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> *3. Because the CIT(A) has erred on facts and in law in upholding the disallowance of Rs.34,033/out of telephone/fax expenses being 15% of the total claim, made by the AO on adhoc basis, which disallowance is Contrary to facts, bad in law, be deleted.*

> *4. Because the CIT(A) has failed to appreciate, that the &counts having being tax audited, details having being furnished and no defects having being pointed out therein, the AO was not justified, In disallowing the sum of Rs.98,578/out Of Conveyance and travelling expenses, Rs.64,262/- Out of vehicle running and maintenance expenses and _ Rs.34,033/out T, telephone/fax expenses on adhoc basis, the disallowances made by the AO and upheld by the CIT(A) be deleted.*
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> *05. Because the CIT(A) has failed to appreciate the facts of the case and has erred on facts and in law in upholding the disallowance of Rs.4,50,738/- being interest paid to M/s. Tata Financial Services Limited by applying the provisions of section 40(a)(ia) of the Act, overlooking that necessary evidence and confirmation was filed, the disallowance being contrary to facts and provisions of law the same be deleted."*

2. Grounds no. 1 to 4 relates to adhoc disallowance of out of various expenses treating them as personal.

3. The facts giving rise to the grounds of appeal are that the case of the assessee was selected for scrutiny assessment and while framing the assessment the Assessing Officer ("AO") made disallowance @ 15% of the total expenses related to conveyance expenses amounting to Rs.98,578/-, vehicle running and maintenance of Rs.64,262/- and telephone/fax expenses of Rs.34,033/-. Aggrieved against this, the assessee preferred an appeal before Ld.CIT(A), who sustained the additions. Now, the assessee preferred an appeal before this Tribunal apropos to the grounds of appeal no. 1 to 4. The Ld. Counsel for the Assessee reiterated the submission as made in the written submissions.

4. Further, he submitted that the accounts of the assessee are audited, the auditors have not made any adverse remark. The AO has not doubted about the correctness of the accounts of the assessee same has been duly accepted. The AO in earlier year as well had made such adhoc disallowances against which the assessee had preferred the appeal and the matter travelled up to stage of this Tribunal. And the Co-ordinate Bench was pleased to delete the additions.

5. We have heard the rival contentions and perused the material available on records. We find that the Co-ordinate Bench of this Tribunal in the case of assessee in ITA. No. 28/LKW/2021 pertaining to the assessment year 2016-17 order dated 19.07.2023 had deleted the similar disallowances by observing as under: -

> *"D. We have heard both sides. We have perused materials on record. We find from the perusal of the assessment order [relevant portion of which has already been reproduced in paragraph no. (A.1) of this order] that the AR of the assessee had stated that some expenses had to be incurred in cash on the basis of self-made vouchers. Self-made vouchers towards expenses incurred in cash are self-serving materials and are not amenable to independent verification in the absence of supporting independent evidence. Learned AR of the assessee had also stated during assessment proceedings that possibility of leakage in the claim cannot be ruled out. It is well settled that the assessee is required to adduce necessary evidence not only to the effect that the expenses claimed were business expenses, but also that the expenses were indeed incurred in the first place. In view of the foregoing, and specifically having regard to what was stated by learned Counsel for the assessee during assessment proceedings, the case laws on which reliance has been placed by the assessee side fail to advance the assessee's case due to distinguishing fact; averment made by learned Authorised Representative for the assessee during assessment proceedings. Therefore, we are of the view that some disallowance out of assessee's claim of expenses was justified. What remains to be seen is whether the quantum of disallowance made by the Assessing Officer was excessive or unreasonably high having regard to facts and circumstances of the present case. We find that the Assessing Officer and the learned CIT(A) have not pointed out any specific item of expenditure which are to be disallowed. No particular item of expenditure has been even doubted by them. The disallowance has been made by the Assessing Officer and confirmed by learned CIT(A) on the basis of generalized observation that there was possibility of leakage in the form of expenditure of personal nature. In the aforesaid facts and circumstances, we are of the view that the disallowance of a total amount of Rs.3,75,036/- is excessive and unreasonably high. In our view, a disallowance of Rs.10,000/- would be just and fair in the facts and circumstances of this specific case. Accordingly, out of total disallowance of Rs.3,75,036/-; an amount of Rs.10,000/- is sustained; and the Assessing Officer is directed to delete the remaining disallowance of Rs.3,65,036/-."*

6. The facts are identical for this year as well, the Revenue has not pointed out any change into facts and circumstances of the case. Moreover, the AO has not specifically pointed out the expenditure which was not supported by the valid evidence. In the absence of such finding disallowances made purely on ahoc basis cannot be sustained. We, therefore, respectfully following

the decision of Co-ordinate Bench of this Tribunal, direct the AO to delete the impugned disallowances made on adhoc basis.

7. Now coming to the ground no. 5, the ground no. 5 of the assessee's appeal reads as under: -

> *"05. Because the CIT(A) has failed to appreciate the facts of the case and has erred on facts and in law in upholding the disallowance of Rs.4,50,738/- being interest paid to M/s. Tata Financial Services Limited by applying the provisions of section 40(a)(ia) of the Act, overlooking that necessary evidence and confirmation was filed, the disallowance being contrary to facts and provisions of law the same be deleted."*

8. Apropos to this ground, the Ld. Counsel reiterated the written submission as made by the Ld. Counsel for the sake of clarity, the written submission made by the assessee are reproduced as under: -

> *"A sum of Rs. 4,50,738/- has been added to the income of the assessee being interest paid to M/s. Tata Capital Financial Services Ltd. As per the AO, the assessee should have deducted tax on the same as per the provisions of. Section 40(a)(ia). The assessee did not deduct tax at source. The-entire amount of Rs.4,50,738/- has been disallowed. There is no dispute with respect to the facts and figures of the case. It is an admitted position that no tax at source has been deducted. At the same time, as per the provisions of section 40(a)(ia) of the Act, only those payments need to be disallowed which have not suffered tax. The mandate: of section 40(a)(ia) is that the amount claimed as expenditure by the assessee which forms receipts in the hands of the recipient, should suffer tax. Since M/s. Tata Capital Financial Services Ltd. is a Public Limited Company and is assessed to tax (PAN No. AADCT6631L) the amount of Interest paid by the assessee amounting to Rs.4,50,738/- and claimed as deduction is bound to have been declared by M/s. Tata Capital Financial Services Ltd. as Interest received In thelr books of account. In such a situation, the obligation cast on the part of the assessee to deduct tax at source stood discharged. Section 40(a)(ia) itself speaks of Chapter XVIIB. As per Chapter XVIIB, an assessee can be held to be in default, only if the assessee fails to deduct tax at source on the payments to be made, only when it is found that the recipient has not accounted for the receipt as its income or has not paid the tax on the same. Reference in this connection be made to the decision of the jurisdictional High Court in the case of Dainik Jagran Prakashan Ltd. (2012) 345 ITR 288 (All) wherein it has been held, that the onus is on the Assessing Officer first to find out as to whether the recipient has paid the tax or not and only when it: is found that the recipient has not accounted for the said receipts as its income and has not paid the tax, then only the assessee can be held to be in default However in the present case, a certificate of accountant as prescribed under the first proviso to sub section (1) of section 201 of the Income Tax Act, 1961 certifying the furnishing of return of income, payment of tax etc. by the payee has been obtained and is attached "Annexure-A", The said Annexure 'A' is a certificate Issued by NSON & Co., Chartered Accountants, 107, 1st Floor, Aruna Apartments, Above DNS Bank,*

Savarkar Road, Dombivll (E)-421201 of Tata Capital Financial Services Ltd. stating / certifying that the amounts paid by the assessee have been Included by Tata Capita! Financial Services Limited in their total Income and they have considered the same for purposes of payment of Income tax. Accordingly on this count also there remains no case for disallowance of the aforesaid legitimate deduction. The same be allowed.

Without prejudice to the above, the law during the year was, that the provisions of section 40(a)(la) would be applicable only when there was an outstanding amount as payable. Since there is no amount payable, provisions of section 40(a)(la) would not be applicable Reference in this connection may kindly be made to the decision of CIT vs. Vector Shipping Services (P) Ltd. ITA —CC No. 8068/2014 dt. 02.07.2014. Which decision has been upheld by the Apex Court. Moreover, there is a circular, issued by the CBDT, stating that the decision of the Apex Court is to be strictly followed in the cases of jurisdictional High Courts. Circular no. is 10 of 16% December, 2013, para 5 of which reads as under:

> *5. Where any High Court decides an issue contrary to the 'Departmental View', the 'Departmental View' thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the CBDT. The CBDT shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.*

In view of the above, the disallowance made by the AO may kindly be deleted.

In view of the above facts and submissions, It is prayed, that the appeal filed by the assessee may kindly be allowed."

9. On the other hand, the Ld. Departmental Representative ("DR") for the Revenue supported the assessment order and opposed the submissions made on behalf of the assessee.

10. Heard the Ld. Representative of the parties. There is no dispute with regard to the fact that the assessee had made payment of interest amounting to Rs.4,50,738/- to M/s. Tata Financial Services Limited. It is also not in dispute that the assessee had not deducted tax at source as mandated by law in this regard. The contention of the assessee is that the recipient of the amount has duly disclosed in its return of income and the certificate to this effect is duly enclosed with the paper book. During the course of hearing a specific query was raised whether the certificate was available with the Assessing Officer. The Ld. Counsel for the assessee could not adduce any evidence

suggesting that the certificate was placed before the lower authorities. Undisputedly law is well settled if, the recipient discloses in his accounts the amounts so received and offer for taxes in his return of income further, a certificate is given as per Section 201 of the Act, the addition made for non-deduction would not be justified. Therefore, looking to the totality of the facts, we deem it proper to set aside this issue to the file of the Assessing Officer for verifying the correctness of the certificate enclosed as Annexure-A in paper book filed by the assessee. The Assessing Officer, if, he finds that the content of the certificate are true and correct in that event he would delete the disallowance in the terms of proviso to Section 201(1) of the Act. The grounds raised by the assessee are allowed for statistical purposes. The appeal of the assessee is partly allowed for statistical purposes.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 29/11/2024.

Sd/-	Sd/-
[ANADEE NATH MISSHRA]	[KUL BHARAT]
ACCOUNTANT MEMBER	VICE PRESIDENT

DATED: 29/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard File

By order

// True Copy//

Assistant Registrar