

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.2351/Del/2024**

**निर्धारणवर्ष/Assessment Year: 2012-13**

Abdul Wahab H.No.542, Village-Nahal Khas, Dasna, Masoori, Ghaziabad, Uttar Pradesh.	<u>बनाम</u> Vs.	Income Tax Officer Ward-1(5), Room No.224, CGO Complex-1, Hapur Chungi, Ghaziabad, Uttar Pradesh.
<b>PAN No. AAQPW5266N</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओरसे /Assessee by	<b>Shri Sahil Sharma, Adv. &amp; Shri Sanjay Parashar, Adv.</b>
राजस्वकीओरसे /Revenue by	<b>Shri Sanjay Sharma, Sr. DR</b>

सुनवाईकीतारीख/ Date of hearing:	05.12.2024
उद्घोषणाकीतारीख/ Pronouncement on	06.12.2024

**आदेश /ORDER**

This appeal is filed by the assessee against the order of the Ld. Addl./JCIT(Appeals)-9, Mumbai for the AY 2012-13 in sustaining the disallowance made by the Assessing Officer u/s 40(a)(ia) of the Act in respect of interest paid on loans. The assessee has raised the following grounds in his appeal: -

*"1. That on the facts and circumstances of the case and in law, the impugned order passed by the Ld. Assessing Officer ("AO") u/s 143(3) r.w.s 254 of the*

*Income Tax Act, 1961 (“the Act”) is arbitrary, bad in law and liable to be quashed.*

2. *That on the facts and circumstances of the case and in law, the Ld. A.O. erred in making a disallowance and Ld. CIT(A) erred in upholding the said disallowance u/s 40(a)(ia) of the Act qua payment of interest on loans made to finance companies amounting to Rs.5,08,969/-.*

3. *Without prejudice, on the facts and circumstances of the case and in law, the total interest amount of Rs.5,09,969/- disallowed by Ld. A.O. is erroneous. The amendment to Section 40(a)(ia) vide Finance Act 2014 mandates a restriction of the quantum addition to 30%, applicable retrospectively as supported by legal precedent.*

4. *That on the facts and circumstances of the case and in law, in the interest of substantial justice, it was imperative for the Ld. A.O. to verify with the finance companies whether the respective parties had paid the income tax on the interest payments received before imposing addition u/s 40(a)(ia) resulting in an arbitrary action that warrants dismissal.*

5. *That on the facts and circumstances of the case and in law, the Ld. A.O. has erred in initiating penalty proceedings u/s 271(1)(c) of the Act despite non-satisfaction of mandatory statutory ingredients and the legal un-sustainability of the impugned addition.”*

2. Ld. Counsel for the assessee, at the outset, submits that the issue in appeal is squarely covered by the decision of the coordinate benches of Delhi Tribunal in the case of Smt. Kanta Yadav Vs. ITO in ITA No.6312/Del/2016 for the AY 2012-13. Referring to this judgment the Ld. Counsel submits that the coordinate bench after considering the provisions of section 40(a)(ia) of the Act and the

amendment brought in by the Finance Act, 2014 restricted the disallowance u/s 40(a)(ia) to 30% instead of 100% by following the decision of the Jaipur bench in the case of Shri Rajendra Yadav Vs. ITO in ITA No.895/Jp/2012 dated 20.09.2016, wherein it was held that the disallowance u/s 40(a)(ia) is to be restricted to 30% of the disallowance. The Ld. Counsel further submits that following this judgment subsequently the coordinate bench of Delhi Tribunal in the case of Priyamda Media & Infotainment Private Limited Vs. DCIT in ITA Nos. 7489/Del/2017 & 1598/Del/2020 dated 18.12.2023 also held that the disallowance u/s 40(a)(ia) is to be restricted to 30% only.

3. Ld. DR placed reliance on the orders of the authorities below.
4. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. It is observed that the Assessing Officer while completing the assessment u/s 143(3) r.w.s. 254 of the Act dated 31.12.2018 disallowed interest of Rs.5,08,969/- paid to Kotak Mahindra Bank on the loan obtained by the assessee for the reason that the assessee did not deduct TDS. Since the assessee did not deduct TDS the said interest was disallowed u/s 40(a)(ia) of the Act. On appeal the Ld.CIT(A) sustained the disallowance.

5. I find that an identical issue came up before the Tribunal in the case of Smt. Kanta Yadav Vs. ITO in ITA No.6312/Del/2016 (supra) dated 12.05.2017 for the AY 2012-13, wherein the Tribunal restricted the disallowance u/s 40(a)(ia) to 30% observing as under:

*“3. We have heard Ld. Representatives of both the parties and perused the material on record.*

*4. Ld. Counsel for assessee though raised several grounds of appeal, has restricted his argument to one point only that addition may be restricted to 30% of the total addition as per amendment in section 40(a)(ia) of the Act. In support of its contention he has relied upon order of the ITAT, Jaipur bench in the case of Shri Rajendra Yadav vs. ITO in ITA No. 895/JP/2012 assessment year 2007-08 dated 29th January, 2016 in which in para 6.1 and 7, the appeal of the assessee has been partly allowed on this issue. The same paras are reproduced as under:*

*“6.1 Recently in the matter of P.M.S. Diesels 2015 59 taxmann.com 100 (Punjab & Haryana), Hon'ble Punjab & Haryana High Court had elaborately discussed the judgment passed by the Hon'ble Calcutta High Court and Hon'ble Gujarat High Court, Hon'ble Allahabad High Court and other judgments as available and thereafter has come to the conclusion that the provisions of section 40(a)(ia) are mandatory in nature and non compliance/non deduction of tax attracts disallowance of the entire amount. Having said so, we will be failing in our duty if we do not discuss the amendment brought in by the Finance (No.2) Act 2014 with effect from 1.4.2015 by virtue of which proviso to section 40(a)(ia) has been inserted, which provides that if any such sum taxed has been deducted in any subsequent year or has been deducted during the previous year but paid after the due. date specified in*

*sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of previous year, such sum shall be allowed as a deduction in computing the income of previous year, and further, section 40(a)(ia) has been substituted wherein the 30% of any sum payable to a resident has been substituted. In the present case, the authorities below has added the entire sum of Rs.7,51,322/- by disallowing the whole of the amount. Though the substitution in section 40 has been made effective with effect from 1.4.2015, in our view the benefit of the amendment should be given to the assessee either by directing the Assessing Officer to confirm from the contractors, namely, M/s. Garvit Stonex, M/s. Chanda Marbles and M/s. Nidhi Granites as to whether the said parties have deposited the tax or not and further or restrict the addition to 30% of Rs.7,51,322/-. In our view, it will be tied of justice if the disallowance is only restricted to 30% of Rs.7,51,322/-. Accordingly, the appeal of the assessee is partly allowed in the above said manner.*

*7. In the result, appeal of the assessee is partly allowed."*

*5. He has further submitted that said order has been followed by ITAT Jaipur Bench in the case of Smt. Sonu Khandelwal vs. ITO in ITA No. 597/JP/2013 dated 13th May, 2016. He has therefore submitted that disallowance may be restricted to 30% of the total disallowance. On the other hand Ld. DR relied upon orders of the authorities below.*

*6. We have considered rival submissions and find that issue is covered in favour of the assessee by order of ITAT Jaipur Bench in the case of Shri Rajendra Yadav vs. ITO and Smt. Sonu Khandelwal vs. ITO. In these orders it was held that the disallowance u/s 40(a)(ia) to be restricted to 30% of the addition. In these orders the Tribunal has considered the amended provisions of*

*section 40(a)(ia) of I.T. Act. In these orders the assessment year's involve was 2007-08 and 2008-09. In the present appeal the assessment year is 2012-13. Therefore facts are identical. In this view of the matter and following the above decisions of Jaipur Bench, we set aside and modify the orders of the authorities below and direct the Assessing Officer to restrict the addition to 30% of the total addition made on account of deduction of TDS u/s 40(a)(ia) of the Act.”*

6. Similar view has been taken by the coordinate bench in the case of Priyamda Media & Infotainment Private Limited vs. DCIT (supra). Facts being identical respectfully following the coordinate bench decision the Assessing Officer is directed to restrict the disallowance u/s 40(a)(ia) of the Act in respect of interest on loans to 30% of interest. Grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 06/12/2024

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Dated: 06/12/2024

\*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order  
Assistant Registrar, ITAT: Delhi Benches-Delhi