IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, 'SMC': DEHRADUN

(Through Virtual hearing)

BEFORE SHRI VIMAL KUMAR, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA Nos.171 & 170/DDN/2024
Assessment Years: 2018-19 & 2019-20

Kshipra Dhawan, A-7, Awas Vikas, Delhi Road, Saharanpur, Uttar Pradesh-247001	Vs	DCIT, Central Circle, Dehradun, Uttarakhand-248001
PAN-AERPD1488E		
Appellant		Respondent

Appellant by	Shri Pratiyush Jain, CA
Respondent by	Shri Amarpal Singh, Sr. DR

Date of Hearing	**15.04.2025**
Date of Pronouncement	**09.07.2025**

ORDER

PER BRAJESH KUMAR SINGH, AM,

These two appeals by the same assessee are directed against the order of ld. Commissioner of Income Tax (Appeals), Noida, both dated 06.08.2024 pertaining to Assessment Years 2018-19 and 2019-20.

2. Since, the issues are common and connected, hence, the appeals were heard together and are being consolidated and disposed of by this common order.

3. Brief facts of the case:- The Return of Income for the Assessment Year 2018-2019 was filed by the assessee on dated 31.10.2018 vide online acknowledgement 366042371311018 with AO Ward-2, Saharanpur disclosing a Net Income of Rs. 17,35,379/-. The same was processed vide intimation u/s. 143(1) dated 26.08.2019. Vide the said intimation the income was computed at Rs.95,26,996/- by making additions/disallowances of Rs.77,91,617/- on two grounds: Rs, 60,39,706/- u/s. 40(a)(i)

on account of non-compliance with the provisions of Chapter XVII-B and Rs. 17,51,912/- u/s. 40(a)(ia) on account of non-compliance with the provisions of Chapter XVII-B.

3.1. Aggrieved with the order of the AO, the assessee preferred an appeal before the Ld. CIT(A). The addition/disallowance of Rs.60,39,706/- made by the AO was deleted by the Ld. CIT(A) as the Ld. CIT(A) agreed with the submissions of the assessee that the auditor while uploading the audit report in Form 3CB and 3CD dated 31.10.2018 had inadvertently mentioned the interest amount of Rs.60,39,706/- under clause 21(b)(i)(A) and since no interest payment was made to non-resident and therefore, no amount was disallowable under section 40(a)(i) of the Act. However, the ld. CIT(A) confirmed the disallowance of Rs.17,51,912/- being 30% of the interest amounting to Rs.58,39,706/- paid to two NBFCs, namely M/s Tata Capital Housing Finance Ltd. and M/s Magma Finance Ltd..

3.2. In this regard, the ld. CIT(A) did not accept the explanation of the assessee relying upon various case laws in her support contending that no disallowance u/s 40(a)(ia) could be made in the case of the assessee without treating the assessee as assessee in default u/s 201 of the Act as no order u/s 201(1) of the Act in the case of the assessee was passed in respect of above default on account of non-deduction of TDS o the interest amount of Rs.58,39,706/- paid to the said two NBFCs. According to the ld. CIT(A), as per second proviso to section 40(a)(ia) of the Act, the assessee could be prevented from the garb of this section if and only if the assessee is not deemed to be assessee in default under the first proviso to sub-section-1 of section 201 of the Act. The ld. CIT(A) relying upon the second proviso of section 40(a)(ia) of the Act and considering the first proviso of section 201 of the Act held that as per the combined reading of both these provisions, no disallowance could be made in the case of the assessee only if the assessee furnished a certificate in Form No.26A as per Rule-31ACB

of Income Tax Rules, 1962, wherein, in the certificate issued by the Chartered Accountant certifies that the payee the two (NBFCs in this case) have taken into consideration the particular income i.e. interest of Rs.58,39,706/- paid by the assessee and the two aforesaid NBFC have duly offered the same for taxation respectively while filing their (payee) respective returns of income. The ld. CIT(A) held that the same was not filed by the assessee in this case. Accordingly, the Ld. CIT(A) held that in absence of the same, the case of the assessee does not fall under the first proviso to section 201(1) of the Act and he therefore confirmed the disallowance of Rs.17,51,912/- being 30% of the interest paid by the assessee to the tow NBFCs as per the said provisions.

4. Against the order of the Ld. CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:-

> *"1. The Ld. CIT(A) has grossly erred in law by holding that the appellant should be deemed as assessee in default under section 201 of Income Tax Act even in the absence of any proceedings being initiated or order being passed under that section.*
>
> *2. The Ld. CIT(A) has grossly erred in law and on facts by holding that the provisions of section 40(a)(ia) are applicable in the case of the appellant even in the absence of any express order under section 201 of Income Tax Act and the appellant has not furnished any judgement or court ruling to argue otherwise.*
>
> *3. The Ld. CIT(A) has grossly erred in law and on facts in sustaining an addition in section 40(a)(ia) of Income Tax Act solely on the basis of the opinion of the auditors in the tax audit report under section 44AB.*
>
> *4. The Ld. CIT(A) has grossly erred in law in passing an order under section 250(6) of the Income Tax Act and holding first appellate proceedings not in a faceless manner."*

5. The ld. AR made following three propositions for the deletion of disallowance of Rs.17,51,9112/- made u/s 40(a)(ia) of the Act supported with various case laws. The said three propositions are as under:-

> i. *"The Ld. CIT(A) has grossly erred in law by holding that the appellant should be deemed as assessee in default under section 201 of Income Tax Act even in the absence of any proceedings being initiated or order being passed under that section.*

ii. The Ld. CIT(A) has grossly erred in law and on facts by holding that the provisions of section 40(a)ia) are applicable in the case of the appellant even in the absence of any express order under section 201 of Income Tax Act and the appellant has not furnished any judgement or court ruling to argue otherwise.

iii. The Ld. CIT(A) has grossly erred in law and on facts in sustaining an addition in section 40(a)(ia) of Income Tax Act solely on the basis of the opinion of the auditors in the tax audit report under section 44AB."

6. We have considered the rival submissions and perused the material available on record. Regarding the first proposition, the submissions and the case laws relied upon by the assessee has been carefully perused but not found to be acceptable. In this case, the dispute is with respect to amount of Rs.17,51,912/- disallowed u/s 40(a)(ia) of the Act and not on account of the provisions of section 201(1) of the Act, wherein, for non-deduction of TDS, the assessee is treated as deemed to be an assessee in default in respect of such tax. Therefore, in respect of the above disallowance u/s 40(a)(ia) of the Act, there is a provision for filing of the appeal which the assessee has filed and the same is being adjudicated. Therefore, this contention of the assessee is not acceptable.

6.1. Regarding the plea at Sr.no.iii as above, the submission of the assessee along with the case laws relied upon has been carefully perused but not found to be acceptable. The facts are distinguishable in this case in as much as the non-deduction of TDS on the interest amount of Rs.58,39,706/- is an admitted fact by the assessee, whereas, as per discussion in para no.9 to 12 in the decision of Hon'ble Delhi High Court in the case of Ester Industrie Ltd. (2009) 316 ITR 260 (Del.), the fact was that the addition in the said case had been made by the AO in view of the fact the assessee had itself made such disallowances in its original and revised return of income. In the said case, referring to the fact that the observations made by the tax audit report could not have formed the basis of additions/disallowances made by the AO, the Hon'ble Court referred to the observations in the judgment of the Hon'ble Apex Court in the case

Puollangode Rubber Produce Co. Ltd. State of Kerala & Anr. (1973) 91 ITR 18 (SC), wherein, the Hon'ble Apex Court held that an admission is and extremely piece of evidence but it cannot be said that it was conclusive and its was open to the person who made the said admission to show that the admission was incorrect. Further, in the order of the Tribunal, Mumbai Bench in the case of Kalpesh Synthetics (P) Ltd. in ITA N.1785/Mum/2025, , the Tribunal in para no.9 observed that information in the Tax Audit Report ceases to be relevant in view of the law laid down by the Hon'ble Court and allowed the claim of the assessee. Similarly, in the order of the Tribunal Dehi Benches in the case of M/s Rukmini Polytubes (P.) Ltd. vs DCIT in ITA No.1855/Del/2020, in para no.7, it was noted that there was a clerical mistake in reporting by the auditor in respect of payment of Rs.1,82,543/- on account of belated payment of PF & ESI payment of bonus and GST and thus allowed the claim of the assessee. As stated above, the non-deduction of TDS on the interest amount of Rs.58,39,706/- is an admitted fact by the assessee, therefore, the submission and the case laws relied upon by the assessee does not support the case of the assessee.

6.2 Further, the assessee contends that the disallowance of Rs.17,51,912/- made u/s 40(a)(ia) of the Act was not sustainable u/s 143(1) of the Act dated 26.08.2019 as no order u/s 201(1) of the Act was passed by the AO in her case by treating her as an assessee in default for the non-deduction of TDS in regard to interest paid to NBFC. The ld. AR submitted referring to the second proviso to section 40(a)(ia) of the Act, which states 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 resident payee referred to in the said proviso. In this regard, the said proviso to

section 40(a)(ia) and section 201(1) along with the relevant sections are reproduced as under:-

Amounts not deductible

40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

xxxxxx

(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :

xxxxxx

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 resident payee referred to in the said proviso.

SECTION-201

Consequences of failure to deduct or pay.

201. (1) Where any person, including the principal officer of a company,—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

6.3. As discussed above, the ld. AR relied upon several case laws in support of the above contention. In this regard, Hyderabad Bench of the Tribunal in the case of Visu International Ltd. & Ors. vs Dy. CIT & Ors. in ITA Nos.488 & 621/Hyd/2013, dated 12.11.2014 for AY 2009-10 held as under:-

"7. Grounds Nos. 2 and 3 of the assessee's appeal involve a common issue relating to disallowance of Rs.2,48,175 made by the Assessing Officer and confirmed by the learned CIT(A) under S.40(a)(ia) of the Act.

8. In the Profit and Loss Account filed alongwith its return of income, the assessee had debited a sum of Rs.2,48,175 on account of Audit Fee. According to the Assessing Officer, the assessee was liable to deduct tax at source from the payment made on account of audit fee under S.194J and since no such tax was deducted by it, he invoked the provisions of S.40(a)(ia) and made disallowance on account of audit fee. On appeal, the learned CIT(A) confirmed the disallowance made by the Assessing Officer on this issue for the same reasons, as given by the Assessing Officer.

9. We have heard the arguments of both the sides and also perused the relevant material on record. The learned counsel for the assessee has contended that the assessee company has not been treated as the assessee in default under S.201(1) of the Act for its failure to deduct tax at source from the payment made on account of audit fee and therefore, no disallowance can be made on account of audit fee, as per the second proviso to S.40(a)(ia). Although the learned Departmental Representative has contended that the said second proviso has been inserted in the statute by the Finance Act, 2012 with effect from 1.4.2013, it is noted, the same has been treated as retrospectively applicable from 1.4.2005 by the coordinate Bench(Bangalore) of this Tribunal in the case of G.Shankar V/s.ACIT(ITA No.1832/Bang/2013 for assessment year 2005-06). We, therefore, restore this issue to the file of the Assessing Officer for the limited purpose of verifying as to whether the assessee company is treated as an assessee in default under S.201(1) of the Act for its failure to deduct tax at source from the payment made on account of audit fee. If it is found on such verification that no order under S.201(1) is passed to this effect, the Assessing Officer is directed to delete the disallowance made under S.40(a)(ia) on account of audit fee. Grounds No.2 and 3 of the

assessee's appeal are accordingly treated as allowed for statistical purposes."

6.4. The facts in the case of the assessee are similar to the facts in the above cited case. We, therefore, respectfully following the above decision of the Tribunal restore this issue to the file of the Assessing Officer for verifying as to whether the assessee company is treated as an assessee in default under S.201(1) of the Act for its failure to deduct tax at source from the payment made on account of interest payment of Rs.58,39,706/- paid to the two NBFCs. If no such order has been passed, the Assessing Officer is directed to delete the disallowance made u/s 40(a)(ia) on account of interest paid to the NBFC upon furnishing of a certificate in Form No.26A as per Rule31ACB of Income Tax Rules, 1962, wherein, in the certificate issued by the Chartered Accountant certifies that the payee (NBFC) have taken into consideration the particular income (interest of Rs.58,39,706/- in this case) while filing their (payee) return of income as per the above requirement of first proviso to section 201(1) of the Act. . In this case, if so required, upon a request by the assessee, the Assessing Officer will issue notice u/s 133(6) of the Act or under any other provisions of the Act to M/s Tata Capital Housing Finance Ltd. and M/s Magma Finance Ltd. (or to any other payees) in this case after due verification of the identity of the said payees to whom interest of Rs.58,39,706/- has been paid and if after such verification, if it is found that the said payees have offered the interest income of Rs. 58,39,706/- in the return of income and paid the due taxes thereupon to delete the disallowance of Rs.17,51,912/- in the hands of the assessee. Grounds No.1 to 3 of the assessee's appeal are accordingly treated as partly allowed for statistical purposes.

7. Regarding ground no.4 of the appeal, no arguments were made and there is no illegality in passing of the order by the ld. CIT(A) in this case. Hence, this ground of appeal is dismissed.

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

9. Grounds raised in ITA No.170/DDN/2024 are similar to grounds raised in ITA No.171/DDN/2024 decided by us in earlier part of this order. Therefore, our above decision would apply *mutatis-mutandis* to this appeal also. Accordingly, this appeal of the assessee is also partly allowed for statistical purposes.

10. Finally, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 9th July, 2025.

Sd/-	**Sd/-**
[VIMAL KUMAR]	**[BRAJESH KUMAR SINGH]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 09.07.2025.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT,
(Dehradun Circuit Bench, Dehradun)