



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

DR. DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 732/RJT/2024

Assessment Year: (2014-15)

M/s. Servewell Household Appliance Plot No.16 & 20, Survey No.211, Nr. Roto Leaner Tech Pvt. Ltd. Narmada Road, Veraval (Shapar), Rajkot-360024 (Gujarat)	Vs.	The Income-tax Officer, Ward- 1(2)(1), Rajkot Aayakar Bhavan, Race course Ring Road, Rajkot-360001 (Gujarat)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABPFS3478J		
(Appellant)		(Respondent)

Appellant by : Shri Mehul Ranpura, Ld. A.R.

Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 09/10/2025

Date of Pronouncement : 30/01/2026

आदेश / ORDER

Per Dr. Dinesh Mohan Sinha, JM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY)-2014-15, is directed against the order passed by the Commissioner of Income Tax [(in short “Ld.CIT(A)”] vide order dated 18.07.2024, which in turn assessment order passed by Income Tax Department/Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short “the Act”), vide order dated 25.11.2016.



2. Grounds of appeal raised by the assessee are as follows:

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the "CIT(A)") erred on facts as also in law in retaining disallowance of interest payment of Rs.3,86,661/- to Non-Banking Financial Institutions namely Daimler Financial Service India Pvt. Ltd. u/s.40(a)(ia) of the Income-tax Act, 1961 [hereinafter referred as to the "Act"] on the alleged of non-deduction of TDS. The disallowance confirmed is totally unjustified and deserves to be deleted, may kindly be deleted.

3. The Ld. CIT(A) erred on facts as also in law in retaining disallowance of professional tax of Rs.46,025/- u/s.43B of the Act on the alleged ground that the same is not paid within the statutory time limit specified under the Act. The disallowance retained is totally unjustified and deserves to be deleted, may kindly be deleted.

4. The Ld. CIT(A) erred on facts as also in law in confirming addition of Rs.1,416/- made on account of interest on Income-tax Refund on the alleged ground that it has not been offered to tax. The addition confirmed is totally unjustified and deserves to be deleted, may kindly be deleted

5. Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”

3. Brief facts of the case are that the appellant is an individual and assessed to income tax by the Income-tax Officer, Ward-1(2)(1), Rajkot assessee engaged in the business of manufacturing of dinnerware items and trading of crockery and kitchenware items under the name and style "M/s. Servewell Household Appliance" at Rajkot Regular books of account are maintained, which are duly audited as per the provisions of section 44AB of the Income Tax Act, 1961. Return of income for the assessment year was filed on 30.09.2014 declaring total income of Rs. 36,83,450/-. The AO, by order dated 25.11.2016 u/s. 143(3) of the



Act assessed the total income of the appellant at 41,17,550/- wherein he made following variations to the returned income:

(i) Disallowed interest expenses of 3,86,661/- paid to Non-Banking Financial Institutions Namely M/s. Daimler Financial Service India Pvt. Ltd. u/s.40(a)(ia) of the Act on the alleged of non-deduction of tax at sources.

(ii) Disallowed professional tax expenses of 46,025/- u/s.43B of the Act on the alleged ground that the same is not paid within the statutory time limit specified under the Act.

(iii) Added 1,416/- on account of interest on income tax refund on the alleged ground of non-offered to tax in the year under consideration.

4. That the assessee filed an appeal against the order of AO dated 18.07.2024 before the Ld.CIT(A) which was dismissed the appeal of the assessee with following observation:

“I am therefore, of the considered opinion that there is no infirmity in the action of the AO and find that the disallowance was warranted. This disallowance is therefore confirmed.

As a result, the appeal stands Dismissed.”

5. That the assessee filed an appeal against the impugned order dated 18.07.2024 passed by the Ld.CIT(A) before this Tribunal.

(i) The Ld. AR submitted that the assessee has repaid car loan by instalment to finance company no requirement of TDS. The Ld. CIT(A)



has rejected the appeal on the account of professional tax to be paid, without any discussion in the order.

(ii) On the contrary, the Ld. DR has relied of the Ld. CIT(A).

6. We have heard rival contention of both the parties and perused material available on records. Ground of appeal related to disallowance of interest Rs. 3,86,661/- u/s 40(a)(ia) of the Act. Appellant has purchased a Motor car at the cost of Rs. 5332640/-by obtaining loan from Daimler Financial Services India Pvt. Ltd in the financial year 2012-13. The payment of instalment continued to be paid during the year. Since the EMI is inclusive of interest portion EMI paid to non-banking financial company M/s Daimler Financial Services India Pvt. Ltd is regularly assessed to tax, they have filed the return of income for the year and as such the payment of interest in the hands of the appellant has been recorded as receipt in the hands of the financial company. Reliance is placed on following case laws. S. 40(a)(ia) second proviso is curative and retrospective. Legitimate business expenditure cannot be disallowed if the payee has paid tax thereon: Section 40(a)(ia) of the Act. Without the second proviso resulted in the unintended consequence of disallowance of legitimate business expenditure. The legal position of the finance transaction if the payee has paid tax on his income, no recovery of any tax can be made from the person who had failed to deduct the income tax at source from such amount.

- Santosh Kumar Kedia vs. ITO (IA No. 1905/Kol/2014 (Kolkata). Mitra Guha Builders Co. vs. DCIT [2016] 65 taxmann.com 243
- Rakesh Tak vs. ITO (ITA No. 888/Jp/2014 (Jaipur)



7. We note that, it is the duty of AO to invoke his powers u/s 133/131 to examine payee's income and return filing status before disallowance u/s 40(a)(ia) of the Act in case of payer.

Hon'ble Calcutta High Court in the case of CIT vs. Virgin Creations in ITA No. 302 of 2011 in GA No. 3200/2011, vide its order dated 23.11.2011 has decided the issue against the Revenue, and after relying on the decision of the Hon'ble SC in the case of Allied Motors P Ltd, and Alom Extrusions Ltd It was held that the provisions which has inserted the remedy to make the provision workable, requires to be treated with retrospective operation so that reasonable deduction can be given to the section as well, and accordingly has held the said amendment is retrospective.

We further note that the finding of the Ld. CIT(A) that the appellant has failed to file these documentary evidences during appellate proceedings, the appellant has chosen to remain silent and not provided certificate in Form No. 26A from CA of the payee as per the requirements of first proviso to section 201(1) of the Act. The appellant has not availed of the provisions of Rule 46A of the Rules to bring evidences on record to controvert the findings of the AO.

Considering the facts and circumstances of the case we are of the view that the case is not properly adjudicated. Hence, one opportunity should be given to the assessee to produce all relevant document before the AO. That the order of Ld. CIT(A) set-aside and the case is restore to the file of AO to make proper adjudication of the case after giving due opportunity to the assessee and also to examine that finance company has included the amount in his own return of income.



8. Ground - 1 is general nature and ground no. 4 not pressed the same are not required adjudicated.

9. In the result, the appeal of the assessee is allowed for statical purpose.

Order is pronounced in the open court on 30/01/2026.

Sd/-
(Dr. Arjun Lal Saini)
Accountant Member

Sd/-
(Dr. Dinesh Mohan Sinha)
Judicial Member

Rajkot

दिनांक/ Date: 30/01/2026

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. DR/AR, ITAT, Rajkot
5. Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot