

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जी', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JM & SHRI ASHWANI TANEJA, AM**

आयकर अपील सं./ITA No.49/Mum/2014

(निर्धारण वर्ष / Assessment Year :2010-2011)

M/s Yes Power & Infrastructure Pvt. Ltd.(Formerly Known as Yamuna engineers & Suppliers Ltd.), Room No.173, Vijay Niwas, Near Old Water Tank, G.B.Road, Thane(West), Mumbai-606	Vs.	ACIT-4(3), Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACY 1055 A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Jitendra Jain  
राजस्व की ओर से /Revenue by : Shri Nitin R. Waghmode  
सुनवाई की तारीख / Date of Hearing : 20/01/2016  
घोषणा की तारीख/Date of Pronouncement 20/01/2016

**आदेश / O R D E R**

**PER SAKTIJIT DEY(JM)**

The aforesaid appeal of the assessee is against the order dated 9-10-2013 of the CIT(A)-8, Mumbai for the assessment year 2010-2011.

2. The only grievance raised by the assessee which reads as under :-

*"1. The Commissioner of Income Tax (Appeals)-8 erred in confirming the disallowance of Rs.10,96,728/- u/s.40(a)(ia) of the IT Act out of interest on car loan on the ground that tax has not been deducted as required under Chapter-XVII-B of the Act.*

*Your appellant submits that on the facts and circumstances of the case and as per the provision of the Act no disallowance is called for under sec.40(a)(ia) of the I.T.Act."*

3. Briefly the facts are that the assessee company filed its return of income on 15-10-2010 declaring total income of Rs.59,31,396/-. In course of assessment proceeding, while verifying the profit and loss account of

the assessee for the year under consideration, the AO noticed that assessee has claimed expenditure amounting to Rs.10,96,728/- towards interest paid on car loans. On verification he found that the interest payments were made to some non-banking financial institutions from whom loans were obtained. It was further noticed that the assessee had not deducted tax at source while making interest payment to these non-banking financial institutions. Therefore, invoking the provisions of Section 40(a)(ia) of the Act, the Assessing Officer disallowed the expenditure claimed on account of interest payment amounting to Rs.11,64,221/-. Though the assessee preferred an appeal before the CIT(A) challenging the aforesaid disallowance made by AO, the CIT(A) also sustained the disallowance by concurring with the finding of Assessing Officer.

4. Learned counsel submitted before us that in course of hearing of the appeal before the CIT(A), the assessee had specifically submitted that as the deductees/recipients have declared/offered the receipts which was subject to deduction of tax as their income in the return filed for the assessment year under consideration and paid taxes, in terms of second proviso to Section 40(a)(ia) read with first proviso to sub-section 1 of Section 201, no disallowance can be made on account of non-deduction of tax at source. He submitted that while disposing off the assessee's appeal, the CIT(A) has failed to consider the aforesaid submissions of the assessee. In this context, learned counsel drew our attention to the grounds raised and written submission filed before the CIT(A). He, therefore, submitted that matter may be remitted back to the CIT(A) for

deciding afresh. Learned counsel also submitted that to demonstrate the fact that the recipients/deductees have offered the income received from the assessee in their respective return of income and paid taxes, the assessee has obtained and filed before the departmental authorities the certificates from Chartered Accountants as prescribed u/s.201(1) of the I.T.Act. In this context, he referred to such certificates filed in the Paper Book.

5. Learned DR, on the other hand, relied upon the observations of the CIT(A) and Assessing Officer.

6. We have considered submissions of the parties and perused the materials on record. The limited grievance of the assessee in the present appeal is non-consideration of its plea relating to applicability of second proviso to Section 40(a)(ia) read with first proviso to Section 201(1) of the Act. On perusal of the order of CIT(A) it is noticed that while challenging the disallowance made u/s.40(a)(ia) of the Act, the assessee in its written submission has specifically submitted that in view of second proviso to Section 40(a)(ia) of the Act, no disallowance u/s.40(a)(ia) can be made. The assessee has further submitted that the said proviso being curative and clarificatory in nature will have retrospective effect and will be applicable to the impugned assessment year. It is evident from the order of the CIT(A) that while sustaining the disallowance u/s.40(a)(ia) of the Act, he has not at all considered the aforesaid contentions of the assessee. It is pertinent to mention here that the assessee in support of its claim that recipients/deductees have offered the income received in their return of

income and paid taxes, has submitted certificates from the concerned Chartered Accountants as prescribed u/s.201(1) of the Act before the departmental authorities. But the said evidences have been totally ignored by them. In view of the aforesaid, we are of the considered opinion that the matter is required to be remitted back to the file of CIT(A) for considering assessee's plea relating to applicability of second proviso to Section 40(a)(ia) in the light of the facts and materials brought on record as well as the relevant case laws which the assessee may rely upon. Accordingly, we set aside the impugned order of the CIT(A) and remit the matter back to him for deciding afresh in accordance with our aforesaid direction after due opportunity of being heard to the assessee.

**7. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 20/01/2016.

**Sd/-  
(ASHWANI TANEJA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 20/01/2016

प्र.कु.मि/pkm, नि.स/ PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**Sd/-  
(SAKTIJIT DEY)**

न्यायिक सदस्य / JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार  
(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai