

आयकर अपीलिय अधीकरण, **खंडपीठ गुवाहाटी** ,
IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.53/Kol/2017 Assessment Year :2013-14

M/s Shillong Lajong Football Club (P) Ltd., Hotel Centre Point Building, Police Bazar, Shillong-793001 [PAN No.AANCS 4360 F]	V/s.	ACIT, Circle Aaykar Bhawan, M.G Road, Shillong- 793001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Somnath Ghosh, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Sandip Sengupta, JCIT-DR
सुनवाई की तारीख/Date of Hearing	10-07-2019
घोषणा की तारीख/Date of Pronouncement	25-09-2019

आदेश /O R D E R

PER BENCH:-

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (Appeals)-Shillong's order dated 14.02.2017 passed in case No.Shill-314/2015-16, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. It transpires at the outset that the assessee has raised twin substantive grounds in challenging correctness of both the lower authorities action disallowing interest on loans and donation involving sums of ₹2.80,214/- and

₹65,000/-; respectively made during the course of assessment and affirmed in the lower appellate proceedings.

3. Learned counsel is very fair at the outset in informing us that the assessee no more wishes to press for its later substantive ground on donation issue. We therefore proceed to adjudicate upon the assessee's former grievance seeking to interest disallowance on loans to the tune of ₹2,80,214/-.

4. Relevant facts qua the instant sole surviving issue are in a very narrow compass. There is no dispute that the assessee had raised loans from one Mrs. Lalparliani and paid interest of ₹2,80,214/- in the relevant previous year without deducting TDS thereupon. Both the lower authorities are of the view that the assessee's failure in deducting the said TDS invites disallowance u/s 40(a)(ia) of the Act. The assessee's argument is that if payee/recipient of interest amount enjoys u/s 10(26) exemption as per her certificate forming part of record. The Revenue places heavy reliance on CIT(A)'s order quoting hon'ble Agartala high court's *Sri Chandra Mohan Sinku vs. Union of India* (2015) 55 taxman.com 383 (Tripura) [Full Bench] declining said petitioner exempt assessee's plea and forming the contest of sec. 197 proceedings.

5. After giving our thoughtful consideration to rival contentions, we find no merit in the Revenue's stand. We make it clear that the Assessing Officer himself has not disputed the assessee's basis assertion that its payee / recipient is not assessable u/s 10(26) of the Act. We notice in this backdrop that the tribunal's co-ordinate bench in **ITA No.100/Gau/2016** in *Komorrah Limestone Mining Co. Ltd. vs. ACIT Circle(AO), Shillong* decided on 08.03.2018 holds that the impugned disallowance does not apply in case of the payees/recipients enjoying exemption u/s. 10(26) of the Act. Learned co-ordinate bench quotes in *GE India Technology Centre (P) Ltd. vs. Commissioner of Income-tax* (2010) 327 ITR 456 (SC) holding long back that liability to deduct TDS is attracted only if the amount in question is income of

the recipient concerned. This tribunal's another decision in *Tamchikusuk vs. Additional Commissioner of Income-tax, Range, Tezpur, Assam* (2015) 155 ITD 276 (Gauhati-Trib) also holds that the impugned disallowance is not sustainable even in case of an assessee / payer who is himself exempt u/s 10(26) of the Act. We draw strong support from there two co-ordinate benches' order to observe that once the exempt assessee / payer is himself has been held to be exempt in the capacity of a deductor, the same relief must also follow when such an assessee is payee also as a necessary corollary.

6. Coming to the Revenue's argument placing reliance upon hon'ble Tripura high court's decision in *Chandra Mohan Sinku and Ors.* (supra) we find that the said *lis* involved altogether a different question. The said assessee had claimed to be exempt u/s 10(26) and for consequential relief u/s 197 of the Act as well. Their lordship settled the law that the same would be admissible to them subject to fulfilment of the statutory terms and conditions only. We conclude in these facts that this judicial precedent quoted at the Revenue's behest is altogether on a different issue. We accordingly hold that both the lower authorities have erred in confirming the assessee's interest payment amounting to ₹2,80,214/- on account of its failure in deducting TDS thereupon. This former substantive is accepted therefore.

7. This assessee's appeal is partly allowed in above terms.

Order pronounced in accordance with Rule 34(3) of the ITAT Rules by putting on Notice Board 25/09/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Guwahati,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp

दिनांक:- 25/09/2019

गूवाहाटी ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Shillong Lajong Football Club (P) Ltd., Hotel Centre Point Building, Police Bazar, Shillong-783001
2. प्रत्यर्थी/Respondent-ACIT, Circle, Aaykar Bhawan, M.G. Road, Shillong-793001
3. संबंधित आयकर आयुक्त गूवाहाटी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाटी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary (on tour)

आयकर अपीलीय अधिकरण,

गूवाहाटी ।