

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

(Convened through Virtual Court)

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1858/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2012-13)

M/s. B. Nanji A. Mehta Lodha & Co. Chartered Accountants 105, Sakar-1, Near Gandhigram Railway Station, Off Ashram Road, Ahmedabad - 380009	<u>बनाम/</u> Vs.	The Income Tax Officer Ward -3(3)(12), Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKFB3025G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri P. D. Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Kamlesh Makwana, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	23/03/2021
घोषणा की तारीख /Date of Pronouncement	13/05/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax

(Appeals)-3, Ahmedabad ('CIT(A)' in short), dated 27.02.2018 arising in the assessment order dated 26.03.2015 passed by the Assessing Officer (AO) under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The grounds of appeal raised by the assessee read hereunder:

- "1. That the learned CIT(A) has erred in law and facts by passing without giving proper opportunity of hearing and considering the material on record and therefore the Id.AO should be directed to delete the addition/disallowances made and accept the returned income.*
- 2. That the learned CIT(A) has erred in law and facts by confirming the disallowance of interest of Rs. 15,00,681/- under section 40(a)(ia) of the Act and therefore, the learned AO should be directed to allow the said interest expense while computing the total income."*

3. Briefly stated, the assessee is a partnership firm engaged in construction, development and selling of real estate etc. The assessee filed return of income for AY 2012-13 declaring total income at Rs.1,17,528/-. The return filed by the assessee was subjected to scrutiny assessment under s.143(3) of the Act. In the course of the assessment, the AO *inter alia* observed that the assessee has claimed interest expenditure of Rs.50,78,412/- on deposits received. The AO noted that the assessee has not deducted TDS on interest payment of Rs.15,00,681/- required under s.194A of the Act out of aforesaid total interest payment of Rs.50,78,412/-. The AO accordingly invoked provisions of Section 40(a)(ia) of the Act and disallowed the expenses claimed towards interest expenditure to the extent of Rs.15,681/-.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) also did not entertain the grievance of the assessee and dismissed the appeal.

5. Aggrieved further, the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the learned AR for the assessee, at the outset, submitted that the appeal has been filed belatedly by 124 days. The learned AR adverted to an affidavit showing the cause which prevented the assessee to file appeal in time. We have perused the affidavit citing the reasons, such as, change of Chartered Accountant, financial crisis etc. resulting in short delay. We find the circumstances for delay to be mitigating in nature in the context of the case. The short delay of 124 days in filing appeal before the Tribunal is accordingly condoned.

7. On merits, the learned AR submitted that the assessee has incurred interest expenses of Rs.50,78,412/- whereas the TDS has not been deducted only for an amount of Rs.15,00,681/- for the reasons that the depositors had furnished declaration obliged under s.197A(1) in prescribed Form no.15G claiming that interest income in their respective hands does not require deduction of tax. The learned AR adverted to 15G copies so received from various parties as placed on record. The learned AR also relied upon the decision of the Hon'ble Gujarat High Court in the case of *CIT vs. Valibhai Khanbhai Mankat* 261 CTR 539 (Guj) for the proposition that once Form no.15G has been received by the assessee, disallowance under s.40(a)(ia) of the Act is uncalled for,

despite its alleged non-submission to the department. He also referred to the decision of the co-ordinate bench of Tribunal in *ACIT vs. Bansal Ship Breakers Pvt. Ltd. ITA No. 2348/Ahd/2012* order dated 23.07.2019. Learned AR accordingly urged for reversal of the action of the revenue authorities.

8. The learned DR, on the other hand, relied upon the order of the CIT(A).

9. We have heard rival submissions and perused the orders of the AO and CIT(A). The solitary issue arises in the instant case is whether disallowance under s.40(a)(ia) of the Act can be carried out where the payee denies the liability under s.194A of the Act and has furnished requisite Form 15G so prescribed in law to the assessee in this regard. We find that the issue is abstract in nature and is squarely covered by the legal proposition laid down by the Hon'ble Gujarat High Court in the case of *CIT vs. Valibhai Khanbhai Mankat (2013) 261 CTR 539 (Guj)*. The Hon'ble Gujarat High Court held in the context of Section 194C of the Act that where the liability of the payee has ceased towards deduction of tax at source on furnishing the requisite declaration, any infraction of the requirement to furnish details of the Income Tax Authority in this regard may possibly result into some other adverse consequences to the payer if so provided under the Act but however non-fulfillment of such requirement would not attract adverse consequences provided under s.40(a)(ia) of the Act. The obligation under s.194A of the Act stands discharged for the purposes of s.40(a)(ia) of the Act where prescribed form is furnished by the payee to the assessee. When ratio of the decision of the Hon'ble Gujarat High Court is applied *mutatis mutandis* to

the fact placed before us in the context of Section 194A of the Act, we find substantive merit in the plea raised on behalf of the assessee. The disallowance under s.40(a)(ia) of the Act is thus not justified.

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

This Order pronounced in Open Court on 13/05/2021
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Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad: Dated 13/05/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।