

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC-B" BENCH : BANGALORE**

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.358/Bang/2021
Assessment Year : 2014-15

Shri. Munivenkatappa Shivanna, Prop: Maruthi Manunath Travels, No.208/1, Idasarahalli Kempegowda Main Road, Dasarahalli Near Aswath Katte, Bengaluru City – 560 027. PAN : BIXPS 0619 B	Vs.	ACIT, Circle – 7(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. Adam Kajabee, CA
Respondent by	:	Shri. Ganesh R. Ghale, Standing Counsel

Date of hearing	:	23.08.2021
Date of Pronouncement	:	24.08.2021

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the assessee against the order dated 14.09.2017 of CIT(A)-7, Bengaluru, in relation to AY 2014-15.

2. The assessee is an individual engaged in the business of running vehicles on hire. The assessee paid a sum of Rs.5,75,710 as interest on loans borrowed from a Non-Banking Finance Company M/s.Cholmandalam Investments and Finance Co.Ltd. The Assessee did not deduct tax at source as was required by the provisions of Sec.194A of the Income Tax Act, 1961 ["the Act"] The AO therefore added a sum of Rs.5,75,710 to the total income of the assessee for non-deduction of tax at source by invoking the

provisions of section 40(a)(ia) of the Act, which lays down that where tax is deductible on a payment and tax is not so deducted, then the sum in respect of which tax is not deducted at source, if it is claimed as expenditure in computing income from business, the same will not be allowed as a deduction, while computing the income from business. The AO accordingly made the impugned disallowance and addition to the total income u/s. 40(a)(ia) of the Act.

3. Before the CIT(Appeals), the assessee apart from other submissions, submitted that the recipient of payment from the assessee has included the amount received from assessee in the return of income filed for AY 2014-15. The Assessee did not file Form 26A which is the certificate of auditor certifying that the payee has included the amount received from the assessee in his return of income filed for the relevant assessment year and paid taxes thereon. The assessee pointed out that the 2nd proviso to section 40(a)(ia) of the Act which was introduced by the Finance Act, 2012 w.e.f. 1.4.2013 provided as follows:-

"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."

4. The 2nd proviso to Sec.40(a)(ia) lays down that for non-deduction of tax at source, if the Assessee is not treated as Assessee in default under the first proviso to 201(1) of the Act then no disallowance u/s.40(a)(ia) of the Act should be made. The first proviso to section 201(1) referred to the 2nd

proviso to Sec.40(a)(ia) of the Act which was also introduced by the Finance Act, 2012 w.e.f. 1.7.2012 provided as follows:-

"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:"*

5. The gist of the first proviso to Sec.201(1) of the Act is that taxes due on the payment on which tax has not been deducted at source should have been paid by the payee by inclusion of such payment as part of his income and the return of income including the payment from the payer as part of payee's income. The further requirement is a certificate of a Chartered Accountant regarding compliance of the above conditions. The provisions of section 201(1) and section 40(a)(ia) as referred to above only implement the law which has been elucidated by the various High Courts, much earlier. As per these provisions, if ultimately the tax due to the exchequer is received then no disallowance u/s.40(a)(ia) of the Act should be made. The Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages Pvt. Ltd v/s CIT 163 taxman 55 in the context of section 201(1) and 201(1A), wherein it was held that, where deductee (recipient of income) has already declared income / paid taxes on amounts received from deductor, the department could not subject the same to double taxation.

6. The CIT(A) agreed with the stand taken by the assessee but found that the certificate required to be filed was not filed and hence he refused to interfere with the order of the AO. The following were the relevant observations of the CIT(A):

“5.2 The appellant has also contended that the proviso inserted by the Finance Act, 2012 in Sec 40(a)(ia) of the Act is applicable in its case. During the scrutiny proceedings the authorized representative could not be able to submit Form 26A and certificate of accountant under first proviso to sub section (1) of section 201 of the I.T. Act, 1961, which is an exception to the deduction of taxes at source. The said certificate was received after 31st December 2016. This contention of the appellant has been considered. It could be a reasonable proposition and also according to judicial decisions that if the recipient of interest in question has already considered the same for computing their income offered to tax then the disallowance u/s 40(a)(ia) is not attracted. However, the appellant, admittedly, has not raised such a contention before the AO nor submitted any details/document in that context. During the appellate proceedings also, no such details/documents as required by the relevant provisions of the Act are furnished. Therefore, this contention of the appellant cannot be accepted.”

7. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. There is a delay of 188 days in filing this appeal by the assessee. It has been stated in the application for condonation of delay that one Shri. G. R. Reddy, CA of the assessee who represented the assessee before CIT(A) did not attend the hearing before CIT(A) which resulted in ex-party order being passed by the CIT(A). The learned Counsel for the assessee also did not inform the assessee about the out come of the appeal before the CIT(A). It is only when the refund due to the assessee were adjusted against the demand arising out of the order of the CIT(A) that the assessee came to know about the result of the appeal before CIT(A). Thereafter the assessee contacted the AR and received the order on

20.01.2021. Due to Covid lockdown the assessee could file the appeal only on 28.07.2021 resulting in a delay of about 188 days. The assessee has also filed an affidavit affirming the facts stated in the application for condonation of delay. It has further been stated that the Hon'ble Jurisdictional High Court vide order dated 28/10/2011 in the case of ISRO Satellite Centre in ITA No. 532/2008 has held that in Income Tax matters, delay in filing the Appeal on the part of the assessee should be condoned irrespective of the length of delay and the Jurisdictional ITAT in its order dated 07-08-2015 in ITA No. 1078/Bang/2014 in the case of Glen Williams v/s. ACIT Circle — 1(1) has followed the decision of the Hon'ble Jurisdictional High Court.

8. Learned Counsel for the assessee reiterated the facts stated above and prayed for condonation of delay. The DR submitted that the assessee's stand has not been supported by the affidavit of Shri. G. R. Reddy, the erstwhile Counsel of the assessee. The learned Counsel for assessee submitted that the assessee's relationship with the erstwhile Counsel is strained and hence the assessee will be unable to get any affidavit.

9. I have given a careful consideration to the rival submissions. Ultimately the purpose of tax proceedings is to ensure collection of taxes in accordance with law. So long as the assessee is not guilty of wanton negligence, delay in filing the appeal has to be condoned. I am of the view that the reasons given for the delay in filing the appeal are acceptable and accordingly the delay in filing the appeal is condoned.

10. As far as the merits of the appeal is concerned, learned Counsel for the assessee filed before us certificate of a Chartered Accountant

under the 1st proviso to sub-section 1 of section 201 of the Act certifying that M/s. Cholamandalam Investment and Finance Company Ltd., has filed the return of income for Assessment Year 2014-15 and has included the income received from the assessee in such return of income. I am of the view that in the light of the certificate of the Chartered Accountant filed by the assessee, the issue with regard to the disallowance under section 40(a)(ia) of the Act should be remanded to the AO for fresh consideration. The AO will consider the certificate filed by the assessee and decide the question whether disallowance under section 40(a)(ia) of the Act should be made or not, after affording the assessee opportunity of being heard.

11. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

**Sd/-
(N. V. VASUDEVAN)
VICE PRESIDENT**

Bangalore,
Dated : 24.08.2021.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.