IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1981/Mum./2022

(Assessment Year : 2012–13)

M/s. Vivek Bhole Architects Pvt. Ltd.
Ahura Centre, First Floor, Pinnacle
Business Park, Mahakali Caves Road ..... Appellant
Next To MIDC, Andheri (East)
Mumbai 400 093 PAN – AACCV4862C

v/s

Dy. Commissioner of Income Tax
Circle–13(3)(2), Mumbai ..... Respondent

Assessee by : None
Revenue by : Ms. Vranda U. Matkari

Date of Hearing – 16/05/2023	Date of Order – 17/05/2023

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 05/06/2017, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)–21, Mumbai, [*"learned CIT(A)"*], for the assessment year 2012–13.

2. The present appeal is delayed by 1862 days. In the affidavit sworn by the Director of the assessee company, it has been submitted that the impugned order was issued online and the assessee received no communication regarding the same. Further, the assessee also did not receive

the physical copy of the impugned order. It is further submitted that it is on the appointment of another Chartered Accountant, the assessee was advised that the impugned order is available on the Income Tax portal. Pursuant thereto, the assessee immediately filed the appeal on 10/08/2022 against the impugned order and thus the aforesaid circumstances resulted in the delay in filing the present appeal. The assessee further submitted that 1862 days includes 807 days of Covid period, which is to be excluded for computation of the limitation period in view of the order passed by the Hon'ble Supreme Court. The assessee has also filed the affidavit of the Authorised Representative who appeared on behalf of the assessee before the learned CIT(A). In the said affidavit, it has been submitted that he had attended the proceedings before the learned CIT(A) on the date fixed for the hearing and he did not follow up with the learned CIT(A) for the order and assumed that the same will be received. In view of the above, the assessee has requested to condone the delay as the same is unintentional and due to circumstances beyond the control of the assessee. On the other hand, the learned Departmental Representative ("*learned DR*") opposed the application seeking condonation of delay and submitted that the assessee did not get its address updated in the PAN database nor the change in address was intimated to the learned CIT(A).

3. Having perused the affidavit, we find that the impugned order dated 05/06/2017 has been claimed to be received by the assessee on 14/06/2022. As per the assessee, neither the physical copy of the impugned order was received by it nor there was any intimation regarding the uploading of the

impugned order on the Income Tax portal. Undoubtedly, the assessee was supposed to intimate the change in address to the learned CIT(A), however, as per the provisions of section 253(3) of the Act, the assessee is required to file the appeal within 60 days from the date of receipt of the order, which in the present case is claimed to be 14/06/2022. The Revenue has not brought any evidence on record to rebut the aforesaid claim. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit by the late filing of the appeal. In view of the above and having perused the affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee and we proceed to decide the appeal on merits.

4. In this appeal, the assessee has raised the following ground:–

> *"The Grounds of Appeal mentioned hereunder are without prejudice to one another:-*
>
> *1. On the Facts and in the circumstance of the case, the disallowance of Rs.40,42,961/-being the interest component of the EMI paid to Tata Capital, Kotak Mahindra Private Limited, Reliance Capital and Shagun Corporation, who also offered for taxation in their return, in terms of section 40(a)(ia) of the IT Act, is arbitrary, unjust and bad in law.*

The Appellant Company craves the leave to add, amend, alter and/or delete any of the above grounds of appeal at/or before the time of hearing."

5. The only dispute raised by the assessee, in the present appeal, is against the disallowance of interest component on EMI paid to Non-Banking Financial Companies ("*NBFCs*") under section 40(a)(ia) of the Act.

6. The brief facts of the case as emanating from the record are: The assessee is a private limited company and is engaged in the profession of providing architectural services. For the year under consideration, the assessee e-filed its return of income on 29/09/2012 declaring a total income of Rs.46,00,720. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act alongwith a questionnaire was issued and served on the assessee. During the assessment proceedings, on perusal of the details of interest expenses furnished by the assessee, it was observed that the assessee has claimed interest on vehicle loans/other loans of Rs.40,42,961 as interest expenses. It was further observed that the aforesaid interest has been paid to Tata Capital, Kotak Mahindra P. Ltd., Reliance Capital Ltd., and Shagun Corporation without deduction of tax at source. Accordingly, the Assessing Officer vide order dated 31/03/2015 passed under section 143(3) of the Act disallowed the interest on vehicle loans/other loans of Rs.40,42,961 under section 40(a)(ia) of the Act for non-deduction of tax at source. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of the learned DR and perused the material available on record. In the present case, it has not been disputed that the assessee had availed loans from aforesaid NBFCs, and on such loans interest was paid by the assessee. The Assessing Officer disallowed the interest payment under section 40(a)(ia) of the Act on the basis that the assessee had failed to deduct tax at source while making the payment of interest to the NBFCs. However, second proviso to section 40(a)(ia) of the Act, inserted by Finance Act, 2012 w.e.f. 01.04.2013, provides 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 section 201(1), then, for the purpose of this sub-clause, it shall be deemed that assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee.

8. From the facts available on record, it is evident that the assessee though has taken the plea on the basis of the second proviso to section 40(a)(ia) of the Act, however, failed to establish or prove that NBFCs had paid income tax on interest received from the assessee. Now, in the present appeal, the assessee by way of additional evidence has produced a copy of Form No.26A issued by the Chartered Accountant under the first proviso to sub-section (1) of section 201 of the Act in respect of interest paid by the assessee to Reliance Capital Ltd., wherein it has been certified that Reliance Capital Ltd. has taken into account the sum received as interest from the assessee while computing its taxable income in the return of income filed. In view of the above, we deem

it appropriate to admit the additional evidence filed by the assessee before us. We are further of the view that in the interest of justice, this issue be remanded to the Assessing Officer for *de novo* adjudication as per law after necessary verification of details as submitted by way of additional evidence before us. Before concluding on this issue, we may add that in respect of interest paid to the other NBFCs, i.e, Tata Capital, Kotak Mahindra P. Ltd., and Shagun Corporation, if the assessee is able to furnish similar details before the Assessing Officer, same shall be taken into consideration while deciding the issue as per law. Accordingly, ground no.1 raised in assessee's appeal is allowed for statistical purposes.

9. Vide application dated 17/10/2022, the assessee has filed an application seeking admission of the following additional ground of appeal:-

> *"On the facts and circumstances of the case, the disallowance if any has to be restricted to 30% of the amount on which TDS has not been deducted due to amendment made in section 40(a)(ia), which has been introduced to avoid undue hardship and therefore is applicable retrospectively."*

10. Since, the issue raised by way of additional ground is a legal issue, which can be decided on the basis of material available on record, we are of the view that the same can be admitted for consideration and adjudication in view of the ratio laid down by the Hon'ble Supreme Court in NTPC Ltd v/s CIT: 229 ITR 383.

11. We find that the Finance (No.2) Act, 2014 substituted the provisions of section 40(a)(ia) of the Act as under:-

> *"(ia) thirty per cent of any sum payable to a resident, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted*

or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139 :"

12. CBDT, while explaining the provisions of the Finance (No.2) Act, 2014, vide Circular No.1 of 2015 dated 21/01/2015 clarified that the amendment by the Finance (No.2) Act, 2014 to the provisions of section 40(a)(ia) of the Act takes effect from 1st April 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years. We further find that the Hon'ble Supreme Court in Shree Choudhary Transport Company vs ITO, [2020] 426 ITR 289 (SC) held that the amendment by the Finance (No.2) Act, 2014 is with effect from 01/04/2015 and shall be applicable from the assessment year 2015-16. Since the amendment to section 40(a)(ia) of the Act by the Finance (No.2) Act, 2014 is with effect from the assessment year 2015-16, therefore, the said amendment is not applicable to the year under consideration. As a result, the additional ground raised by the assessee is dismissed.

13. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 17/05/2023

Sd/-	**Sd/-**
B.R. BASKARAN	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 17/05/2023

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Mumbai; and

(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai