

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K.N.CHARY, JUDICIAL MEMBER (Through Video Conferencing)

ITA No. 4999/Del/2018  
(Assessment Year: 2014-15)

Shivam Industrial Corporation, H. No. 1668, Sector-10A, Gurgaon, Haryana PAN: AALFS5502Q	Vs.	ITO, HSI IDC Building, Udyog Vihar-V, Gurgaon
(Appellant)		(Respondent)

Assessee by :	Shri Lalit Mohan, CA
Revenue by:	Shri Prakash Dubey, Sr. DR
Date of Hearing	25/08/2021
Date of pronouncement	15/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee for assessment year 2014-15 against the order passed by the learned Commissioner of Income Tax (Appeals)-1, Gurgaon dated 6th March 2018 raising following grounds of appeal:-

- “1. The learned Assessing officer grossly erred to disallow Rs. 77,53,340/- on account of interest on loan for the reason of non-deduction of tax at source. The disallowances of interest expenses of Rs. 77,53,340/- is unfounded, uncalled for and in any case extremely exorbitant.
2. The following observations/ findings of the learned Assessing Officer are misconceived and incorrect.
  - (a) The appellant paid interest of Rs. 7426351/- to M/s. Future Capital Holding Ltd (NBC) without deduction of TDS as required u/s 194 A of the Income Tax Act, 1961.
  - (b) The issue was confronted with the AR but no satisfactory explanation was furnished on behalf of the assessee.
  - (c) The interest paid without deduction of TDS is disallowed u/s 40a(ia) of the Income Tax Act, 1961. ”

2. The brief facts of the case shows that the assessee is a partnership firm engaged in the business of industrial and general supplies of engineering and office equipment and consumables. It filed its return of income on 28/11/2014 declaring an income of Rs. 2,26,990/-. During the course of assessment proceeding it was noted by the learned Assessing Officer that assessee has paid interest to M/s. Future Capital Holdings Ltd

which is an NBFC of Rs. 7,426,351/- on which tax should have been required to be deducted u/s 194A of the act. The learned Assessing Officer noted that there is no exemption to the above recipient and the assessee also did not explain the same, therefore, the interest amounting to Rs. 7,426,351/- paid without deduction of tax deduction at source was disallowed u/s 40(a)(ia) of the income tax act. Consequently, the total income of the assessee was assessed at Rs.7,753,341/- again the returned income of Rs. 226,990.

3. The assessee preferred an appeal before the learned CIT(A) who also dismiss the appeal of the assessee. Therefore the assessee is in appeal before us. \*
4. The learned that AR Mr. Alit Mohan, Chartered Accountant and Sheri Parkas Dubai, senior departmental representative are heard on this issue.
5. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, the assessee has paid interest to a nonbanking financial company future capital Holdings Ltd of? 7,426,351/- without deduction of tax at source as required under the provisions of Section 194A of the income tax act. This is the solitary issue raised in this appeal as per ground number 2 of the appeal. During the course of hearing before us the assessee has submitted annexure A being a certificate of account and Under the first proviso to subsection (1) of Section 201 of the income tax act, 1961 for certifying the furnishing of return of income, payment of tax et cetera by the payee. Such certificate is dated 21 January 2017. The annexure A certified by a chartered accountant clearly shows that the income paid to the recipient of the interest has already been shown by it in its books of account as income and also the payee has furnished the return of income. The above annexure A was not before the lower authorities. Even form number 26A to which this annexure A is required to be attached is also not available before us. Naturally when the assessee has complied with the rule 31ACB in terms of the first proviso to subsection (1) of Section 201 of the income tax act, 1961 there should not have been any disallowances made. However, as the assessee has not filed form number 26A either before us or before the lower authorities. Therefore, we set-aside the whole issue back to the file of the learned Assessing Officer with a direction to the assessee to submit form No. 26A along with the annexure A prescribed in terms of the provisions of Rule 31ACB as provided Under the first proviso to subsection (1) of Section 201 of the income tax act 1961. If, on examination the learned assessing officer finds that the assessee has complied with the above provisions of the law, the disallowance deserves to be deleted. In view of this, the ground number 2 of the appeal of the assessee is allowed for statistical purposes.

6. Ground No. 1 is general in nature and therefore, it is dismissed.

Order pronounced in the open court on 17/09/2021.

-Sd/-  
(K.N.CHARY)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 15/09/2021  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi