

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" B" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1499/AHD/2015
निर्धारण वर्ष/Asstt. Year: 2009-10

DRAIPL-MSKEL(JV), 2 nd Floor, "MSK", Passport Officer to Panjra Pol Road, Ambawadi, Ahmedabad-380015. PAN: AAAAD3825B	Vs.	Income Tax Officer(OSD)-II, Range-9, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by	:	Shri D.M. Rindani, A.R
Revenue by	:	Shri D.B. Gohil, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **15/12/2021**
घोषणा की तारीख/**Date of Pronouncement**: **20/12/2021**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals), Ahmedabad-5, dated 30/03/2015 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal:

1. The Ld. Commissioner of Income Tax (Appeals) - 5, Ahmedabad erred in confirming the disallowance made by the A.O. of Rs. 15,44,543/- by way of non - deduction of tax at source u/s. 194A in respect of payment to SREI Infrastructure Pvt. Ltd.

2. The Ld. Commissioner of Income Tax (Appeals) - 5, Ahmedabad failed to appreciate that there was no requirement to follow the procedure under Rule 31ACB for the relevant year.

3. The Ld. Commissioner of Income Tax (Appeals) - 5, Ahmedabad erred in not appreciating that when the appellant showed that tax was paid by the payee on Its income, TDS cannot be recovered from the payee in view of settled judicial principles in this regard de hors the Proviso to Sec. 201(1).

The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.

3. The only issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by sustaining the addition of ₹ 15,44,543.00 on account of non-deduction of tax under section 194A read with section 40(a)(ia) of the Act.

4. The facts in brief are that the assessee in the present case is a joint-venture and engaged in the business of road development/construction. The assessee in the year under consideration has paid interest of ₹ 15,44,543.00 to SREI Infrastructure Private Ltd which was claimed as deduction in the profit and loss account. However, the assessee failed to deduct the TDS under the provisions of section 194A of the Act on the payment of such interest expenses. Therefore, the AO disallowed the same under the provisions of section 194A read with section 40(a)(ia) of the Act and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT (A) who also confirmed the addition made by the AO.

6. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

7. The learned AR before us contended that there was an amendment by the Finance Act (No.2) 2014 under the provisions of section 40(a)(ia) of the Act which restricted the disallowance to 30% only of the expenses in respect of which TDS was not deducted. Such amendment was held to be retrospective. In view of the above, the learned AR requested to restrict the disallowance of the impugned expenses to the tune of 30% only.

8. On the other hand the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the expense claimed by the assessee for interest was disallowed by the AO on account of non-deduction of TDS. The disallowance made by the AO was also subsequently confirmed by the learned CIT (A). Now, the issue which require consideration and the adjudication is whether the disallowance of the expense should be restricted to 30% by virtue of the amended provisions of section 40(a)(ia) of the Act which was brought in the statute by the Finance Act (No. 2) 2014. Admittedly, as per the provision of section 40(a)(ia) of the Act, the disallowance has to be restricted to the tune of 30% in respect of the expenses on which TDS was not deducted by the assessee. Such amendment was retrospective as held by the Delhi Tribunal in the case of Muradul Haque vs. ITO reported in 184 ITD 58 wherein it was held as under:

We find that Finance (No.2) Act has made amendment to section 40(a)(ia) of the Act w.e.f. 1-4-2015. Various benches of the Tribunals including the Delhi Benches of the Tribunal, have held the amendment made by Finance (No 2) Act to be curative in nature. We further finds the coordinate bench of the Tribunal in the case of R.H. International (supra) has held that disallowance u/s. 40(a)(ia) of the Act be restricted to 30% of the expenses paid as against 100% because amended provision is curative in nature and the provisions should be applied retrospectively.

9.1 Likewise, the Ahmedabad Tribunal in the case of Electronic Instrumentation & Control Pvt. Ltd. vs. ITO in ITA No. 3055 and 3056/AHD/2013 has held that the amendment brought under the provisions of section 40(a)(ia) of the Act by the

Finance Act (No. 2) 2014 is applicable retrospectively. Thus, in view of the above provisions, the 100% of the expenses incurred by the assessee without incurring the TDS cannot be disallowed. Rather disallowance shall be restricted to the tune of 30% only of such expenses. Accordingly, we direct the AO to restrict the disallowance to the tune of 30% of the interest expenses, as discussed above, incurred by the assessee. Hence, the ground of appeal of the assessee is partly allowed.

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

Order pronounced in the Court on 20/12/2021 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
20/12/2021