

THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 506/Mum/2017 (Assessment Year 2012-13)

DCIT-2(1)(1) Room No. 561 5 th floor Aayakar Bhavan M.K. Road Mumbai-400020. (Appellant)	Vs.	M/s. Canlinx Logistics (I) Pvt. Ltd. 29A, Contractor Building 3 rd Floor, 15 Vaju Kotak Marg, Bellard Estate Fort, Mumbai-400 038. (Respondent)
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I.T.A. No. 881/Mum/2017 (Assessment Year 2012-13)

M/s. Canlinx Logistics (I) Pvt. Ltd. 29A, Contractor Building 3 rd Floor, 15 Vaju Kotak Marg, Bellard Estate Fort, Mumbai-400 038. (Appellant)	Vs.	ACIT-2(1)(1) Room No. 561 5 th floor Aayakar Bhavan M.K. Road Mumbai-400020. (Respondent)
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PAN : AADCC1063H

Assessee by	Shri Ketan L. Vajani
Department by	Shri M. Naveen
Date of Hearing	27.8.2018
Date of Pronouncement	27.8.2018

O R D E R

Per B.R. Baskaran (AM) :

These cross appeals are directed against the order dated 10.10.2016 passed by the learned CIT(A)-4, Mumbai and they relate to A.Y. 2012-13.

2. In the appeal filed by the Revenue, violation of provision of Rule 46A of IT Rules is being pressed. The Assessing Officer made addition u/s. 68 of the I.T. Act respect of unsecured loan of ₹ 89.88 lakhs. It is the contention of the Revenue that the learned CIT(A) has deleted the addition by examining new evidences without confronting them to the Assessing Officer.

3. The Learned DR submitted that the Ld CIT(A) has considered new evidences while granting relief to the assessee. He submitted that the Ld CIT(A) should have confronted them to the AO in terms of Rule 46A of I.T Rules. The AR objected to the same. However he submitted that the assessee will not be aggrieved, if matter is restored to the file of the Assessing Officer for examining this issue afresh by considering the evidences furnished by the assessee.

4. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for examining it afresh by duly considering the evidences in accordance with law, without being influenced by observations made by the learned CIT(A).

5. In the appeal filed by the assessee, the issue urged relates to disallowance made u/s. 40(a)(ia) of the Act. The assessee submitted that application of second proviso to section 40(a)(ia) of the Act inserted by the Finance Act, 2012 has not been examined by the tax authorities and accordingly prayed that the matter may be restored to the file of the Assessing Officer for examining the issue afresh.

6. We noticed that an identical issue was considered by the Coordinate Bench in the case of Shravasti Developers & Agro Private Limited (ITA No. 2639/Mum/2016 dated 7.6.2018) and it was decided as under :-

5. With regard to the disallowance made u/s 40(a)(ia) of the Act, we notice that the assessee has taken support of the proviso to sec. 40(a)(ia) inserted by Finance Act, 2012, but the AO has taken the view that the said proviso shall be applicable from AY 2014-15 only. Before us Ld A.R placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of CIT Vs. Ansal Land mark Township P Ltd (2015)(377 ITR 635) and submitted that the Hon'ble Delhi High Court has held that the second proviso inserted in sec. 40(a)(ia) by Finance Act 2012 is declaratory and curative in nature and hence would apply retrospectively. The Ld A.R fairly submitted that a contrary view has been expressed by Hon'ble Kerala High Court in the case of Prudential Logistics and Transports (2014)(364 ITR 689). He submitted that the view in favour of the assessee is required to be followed, in case of divergent views expressed by different High Courts, as per the decision rendered by Hon'ble Supreme

Court in the case of Vegetable Products Ltd (88 ITR 192). He submitted that the Pune bench of ITAT has considered an identical issue in the case of Yamazaki Mazak India Ltd (ITA No.153/PN/2016 dated 28.10.2016). After considering the decisions rendered by Hon'ble Delhi and Kerala High Courts (referred supra), the Pune bench of ITAT has followed the decision rendered by Hon'ble Delhi High Court as per the principles laid down by Hon'ble Supreme Court in the case of Vegetable Products Ltd (supra).

Accordingly the assessee submitted that the benefit given in second proviso to sec. 40(a)(ia) should be extended to the assessee in this year. He further submitted that the Hon'ble Supreme Court has considered about the applicability of the proviso inserted in sec. 40(a)(ia) by Finance Act 2010 in the case of CIT vs. Calcutta Export Company (Civil appeal Nos. 4339 – 4340 of 2018 and others dated 24-04-2018) and the Hon'ble Supreme court has held that the above said amendment shall have retrospective Application. The Ld A.R submitted that the principles laid down by Hon'ble Supreme Court in the above said case should be applied to the amendment brought in by Finance Act 2012 in sec. 40(a)(ia) of the Act also.

6. On the contrary, the Ld D.R supported the order passed by Ld CIT(A) on this issue.

7. We have heard rival contentions on this issue and perused the record. We notice that divergent views have been expressed by Hon'ble Delhi and Kerala High Courts on applicability of second proviso inserted to sec. 40(a)(ia) of the Act, i.e., whether it will have retrospective or prospective application. As per the principle laid down by Hon'ble Supreme court in the case of Vegetable Products Ltd (supra), the view in favour of the assessee is required to be followed in case of divergent views expressed by two different non-jurisdictional High Courts. Accordingly we follow the decision rendered by Hon'ble Delhi High Court and hold that the second proviso to sec. 40(a)(ia) shall have retrospective application. Since the applicability of the second proviso to sec. 40(a)(ia) has not been examined by the AO, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh.

Consistent with the view taken in the above said case, we hold that second proviso inserted in section 40(a)(ia) of the Act by the Finance Act, 2012 shall have retrospective application. Since applicability of second proviso to section 40(a)(ia) of the Act has not been examined by the Assessing Officer, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for examining it afresh.

7. In the result, appeal filed by the assessee as well as appeal filed by the Revenue are allowed for statistical purposes.

Order has been pronounced in the Court on 27.8.2018.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 27/8/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

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