**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER**
**&**
**SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.796/Mum/2021**
(**Assessment Year :2015-16**)

| | | |
|---|---|---|
| M/s. Ashwini Container Movers Private. Ltd.,<br>A-4021, Bima Complex Steel Market, Kalamboli,<br>Navi Mumbai – 410 218 | Vs. | PCIT, Thane-1<br>B Wing, Ashar IT Park<br>6th Floor, Road No.16z<br>Wagle Industrial Estate<br>Thane (W)-400 604 |
| **PAN/GIR No. AAKCA4996L** | | |
| **(Appellant**) | .. | **(Respondent**) |

| | |
|---|---|
| Assessee by | Shri Khushal Shah |
| Revenue by | Shri H.N. Singh |
| **Date of Hearing** | **20/10/2021** |
| **Date of Pronouncement** | **28/10/2021** |
| | |

## आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No.796/Mum/2021 for A.Y.2015-16 preferred by the order against the revision order of the ld. Principal Commissioner of Income Tax Thane-1 u/s.263 of the Act dated 16/03/2021 for the A.Y.2015-16.

2. We have heard rival submissions and perused the materials available on record. We find that assessee company is a transporter and

had filed its return of income for the A.Y.2015-16 on 28/09/2015 declaring loss of Rs.43,44,140/-. The assessment for the A.Y.2015-16 was completed u/s.143(3) of the Act on 30/11/2017 determining total loss at Rs.41,44,140/- after making adhoc disallowance of expenses for Rs.2,00,000/-. In the said assessment order, the ld. AO had mentioned that assessee had shown net profit of Rs.23,76,457/- against gross receipts of Rs.10,94,49,554/- and after considering the various items to be allowed and disallowed as per the Act, the assessee had declared loss of Rs.43,44,140/- in the return of income.

2.1. In para 3 of the assessment order, the ld. AO had also mentioned that various expenses debited to profit and loss account were sought to be examined by him and on verification of the same, he found that there were some expenses which were supported only by self-made vouchers and hence, the adhoc disallowance of Rs.2 lakhs was made towards expenses and assessment completed accordingly by the ld. AO. This assessment was sought to be revised by the ld. PCIT on the following two grounds:-

a) Interest paid to non-banking finance companies amounting to Rs.27,65,193/- without deduction of tax at source.
b) Hire charges paid to various transporters in the sum of Rs.5,91,42,447/- without deduction of tax at source.

2.2. The ld. PCIT observed that since the aforesaid expenses were incurred by the assessee without deduction of tax at source, the ld. AO ought to have disallowed 30% of the aforesaid expenditure in terms of Section 40(a)(ia) of the Act, failure of which would make the order of the ld. AO erroneous and prejudicial to the interest of the Revenue.

2.3. We find that assessee had stated that interest is paid to L & T Finance Limited, Tata Capital Limited and Reliance Capital Limited, all three being listed entities and that the concerned listed entities had indeed shown the corresponding interest income in their returns of income and promised to file a certificate in Form No.26A from their concerned Chartered Accountant, but did not file the same before the ld. PCIT till the completion of Section 263 proceedings. With regard to hire charges payment made to various transporters, the assessee pleaded before the ld. PCIT that sufficient enquiries were indeed carried out by the ld. AO during the course of assessment proceedings and assessee has also provided the entire names and addresses of the transporters to whom hire charges were paid. The assessee also furnished PAN of the transporters before the ld. PCIT in separate Annexure-1 which is stated in page 405 of the paper book filed before us. In this regard, we find that the ld. PCIT in para 4 had categorically noticed that though PAN of the transporters were furnished before him, the same was not available for majority of the transporters. Hence, the requirement in terms of Section 194C(6) of the Act have not been complied with. The ld. AR stated that he will submit all the PAN before the ld. AO in the set aside proceedings.

2.4. Having heard both the sides, we find that the ld. PCIT had validly invoked revisionary jurisdiction u/s.263 of the Act in the instant case by setting aside the order of the ld. AO to examine the applicability of provisions of Section 40(a)(ia) of the Act qua interest payment made to 3 NBFCs and hire charges paid to various transporters only. The ld. AO is directed to examine only these two aspects in the set aside assessment which would be in compliance to directions issued by the ld. PCIT u/s.263 of the Act. Accordingly, the grounds raised by the assessee are disposed of in the aforesaid manner.

**3. In the result, appeal of the assessee is dismissed subject to abovementioned directions.**

Order pronounced on 28/10/2021 by way of proper mentioning in the notice board.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(AMARJIT SINGH)** | **(M.BALAGANESH)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai; Dated 28/10/2021
KARUNA, *sr.ps*

**<u>Copy of the Order forwarded to</u> :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
**ITAT, Mumbai**