

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI PRASHANT MAHARSHI (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 350/MUM/2020 (A.Y.2010-11)

Deputy Commissioner of Income Tax, Circle-15(3)(1), Mumbai Room No.451, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	vs	3i Infotech Consultancy Services Limited, Tower No.5, 3 rd to 6 th Floors, International Infotech Park Vashi, Navi Mumbai – 400 703 PAN : AAACZ3181E
APPELLANT		RESPONDENT

Assessee represented by	Mr. Bhupendra Karkhanis, CA & Akash
Department represented by	Shri Nihar Ranjan Samal, Sr. AR

Date of hearing	29/06/2022
Date of pronouncement	20/09/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the Revenue as against the order of Ld. Commissioner of Income-tax(Appeals)-18, Mumbai dated 14/10/2019 passed under section 250 of the Income-tax Act, 1961 pertaining to assessment year 2012-13.

2. The grounds of appeal raised by the assessee are as below:-

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the Assessing Officer u/s 40(a)(ia) of the Act without appreciating the facts that factoring charges debited by the assessee-company are of the nature of interest only and TDS is liable to be deducted under section 40(a)(ia) of the Act."

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying upon the certificate by accountant under section 201(1) of the Act when the second proviso to section 40(a)(ia) was inserted by Finance Act, 2012 with effect from 01.04.2013.."

3. The brief facts of the case are that the assessee is engaged in the business of outsourcing voice management, data management, etc. The assessee filed its return of income for the assessment year under consideration on 29/11/2012 declaring total loss at Rs.2,04,88,580/-. The assessee revised its return of income on 26/03/2014 declaring total income at Rs.2,79,50,780/-. The assessee's case was selected for scrutiny through CASS and assessment order under section 143(3) dated 12/03/2015 was passed determining total income at Rs.4,35,61,338/- by making disallowance of Rs.1,56,10,554 under section 40(a)(ia) and also made other additions. Aggrieved by this, the assessee was in appeal before the Ld.CIT, who deleted the said addition by relying upon the decision of Hon'ble Supreme Court in the case of Bombay Steam Navigation Com. Pvt Ltd vs CIT (1963) 56 ITR 52 (SC) wherein it was held that interest on unpaid purchase price was not to be treated as interest on loan and also on the ground that the discounting charge of bills of exchange or factoring charges of sale cannot be termed as interest. The Revenue is in appeal before us as against the deletion of the said addition by the Ld.CIT(A).

4. The Ld.DR contended that the Ld.CIT(A) has deleted the impugned addition without considering the fact that factoring charges are of the nature of interest only and TDS is liable to be deducted under section 40(a)(ia) of the Act. The Ld.DR further stated that mere obtaining certificate from the Chartered Accountant is not suffice to prove that the assessee cannot be treated as an assessee in default under section 201(1) of the Act and that the

Second Proviso to section 40(a)(ia) was inserted by the Finance Act, 2012 with effect from 01/04/2013. The Ld.DR relied on the order of the Assessing Officer.

5. The Ld.AR, on the other hand, contended that the assessee company has entered into a factoring agreement with M/s SBI Global Factors Ltd thereby incurring factoring expenses of Rs.1,56,10,554/-. The Ld.AR further stated that the factoring charges incurred are not in the nature of interest and that section 194A is not applicable in assessee's case. The Ld.AR further stated that the certificate of Chartered Accountant in Form 26A certifies that the impugned amount of factoring charges paid by the assessee company has been offered by M/s SBI Global Factors Ltd as taxable income thereby denying the fact that the assessee company is to be treated as assessee in default. The Ld.AR relied on the decision of the Ld.CIT(A).

6. We have considered the rival submissions and perused the materials on record. It is evident that the assessee company has incurred factoring expenses of Rs.1,56,10,554/- and the same was clubbed under interest expenditure account. The Assessing Officer treated the factoring expenses as interest expenditure and disallowed the same on the ground that the assessee has failed to deduct tax under the provisions of section 40(a)(ia). Pursuant to the factoring agreement with M/s SBI Global Factors Ltd, the debt arising on sale made by the assessee for whom payment is to be received is discounted with M/s SBI Global Factors Ltd. M/s SBI Global Factors Ltd paid the bill amount when the same was discounted after deducting its factoring charges. The assessee had claimed the said factoring charges as expenditure. It is observed that the assessee has sold its assets to M/s SBI Global Factors Ltd and the ownership of the assets which are in the form of debtors is passed on to

M/s SBI Global Factors Ltd. The assessee from the said transaction is catered to the extent of default of Rs.12,50,00,000/- of M/s SBI Global Factors Ltd, whether or not the assessee company received the bill amount from customers. This, according to the assessee, is no way a debt incurred by the assessee from M/s SBI Global Factors Ltd. The amount paid to the assessee by M/s SBI Global Factors Ltd as bill discounting is akin to a sale proceeds pertaining to debts purchased by M/s SBI Global Factors Ltd from the assessee. The assessee has differentiated the factoring charges with that of the definition of "interest on securities" under section 2(28A). The assessee further stated that it is only in the nature of discounted sale consideration which is receivable on sale of goods and there is no borrowal of money resulting in debt or credit facility. It is further submitted that since the expenses incurred are only of factoring charges and not as interest, the assessee is not under the obligation to deduct and pay TDS as per provisions of section 194A. The Ld.CIT(A) has relied on the CBDT circular No.65 dated 02/09/1971 and has held that bill discounting charges received by M/s SBI Global Factors Ltd are not in any way in the nature of interest and that the assessee is not under an obligation to deduct tax at source. The Ld.CIT(A) has further relied on the decision of Hon'ble Delhi High Court in the case of ACIT vs Kargil Global Trading (P) Ltd in Income Tax Appeal No.231 of 2011 & 204 of 2011 judgement dated February 17, 2011 wherein it was held that the discounting charges were not in the nature of the interest paid and that the assessee was not under an obligation to deduct tax at source under section 195 of the I.T. Act, 1961 and the same is to be disallowed as per provisions of section 40(a)(ia) of the Act. The Ld.CIT(A) has further stated that the assessee company has submitted certificate of Chartered Accountant in form 26A

enclosed as Annexure I which certifies that the amount of factoring charges paid by the assessee company is considered by M/s SBI Global Factors Ltd while calculating its taxable income and that the same was offered for tax. It is observed that as tax has been paid by the payee, the assessee cannot be treated as an assessee in default under the First Proviso to section 201(1).

7. From the above observation, we are of the view that the factoring charges incurred by the assessee company is not in the nature of interest and that the assessee was not under the obligation to deduct TDS as per the provisions of section 40(a)(ia) of the I.T. Act. For this, we would like to place our reliance on the decision of Hon'ble Supreme Court in the case of Bombay Steam Navigation Co. P. Ltd vs CIT (1963) 56 ITR 52 (SC) which held that interest on unpaid purchase price is not in the nature of interest on loan and for any amount which is to be categorised as "interest" it is essential that the same is payable in respect of money borrowed or debt incurred. Upon perusal of the definition of 'interest' as per section 2(28A) which is extracted below section 2(28A):-

" interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised."

8. From the above definition, interest pertains only to monies borrowed or debt incurred or for any credit facility. In the present case in hand, there is no such classification of money involved which attracts the said "interest". The transaction entered into by the assessee is with M/s SBI Global Factors Ltd is only a discounted sale consideration arising out of debts purchased by M/s SBI Global Factors Ltd from the assessee. This does not extend to the nature of

debt thereby establishing that discounting / factoring charges are not in the nature of "interest" as defined in section 2(28A) of the I.T. Act. We would also rely on the decision of the co-ordinate bench in the case of M/s MKJ Enterprises Ltd in ITA No.729/Kol/2011 which has supported this principle on similar facts.

9. From the above observation, we find no merits in the contention of the Revenue and thereby dismiss ground 1 of the appeal filed by the Revenue.

10. Ground 2 pertaining to applicability of Second Proviso to section 40(a)(ia) inserted by Finance Act, 2012 was with effect from 01/04/2013 as contended by the Revenue, we place our reliance on the decision of the Hon'ble jurisdictional Bombay High Court in the case of Pr. Commissioner of Income-tax-5 vs Perfect Circle India P. Ltd in which the Hon'ble High Court has held that the Second Proviso to section 40(a)(ia) has retrospective effect from 01/04/2005, the date from when the impugned Proviso to section 40(a)(ia) was inserted. The Hon'ble High Court also relied on the decision of Hon'ble Delhi High Court in the case of CIT vs Ansal Landmark Township P Ltd (2015) 377 ITR 635 (Del) which held that section 40(a)(ia) is not a penalty and insertion of Second Proviso is declaratory and curative in nature and would have retrospective effect from 01/04/2005 and not with effect from 01/04/2013. From the above observation, by respectfully following the decisions cited above, we accept the contention of the assessee. Since the payee has already paid the said tax the assessee cannot be treated as an assessee in default as per the provisions of section 201(1) of the Act, we thereby dismiss this ground of appeal filed by the Revenue.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 20th September, 2022.

Sd/-

sd/-

(PRASHANT MAHARSHI)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 20/09/2022

Pavanan

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

(Dy./Asstt. Registrar)
ITAT, Mumbai