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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA 9/2016**

PR. CIT-06

..... Appellant

Through: Mr. Rahul Chaudhary, Senior Standing  
counsel.

versus

M. SONS GEMS N JEWELLERY PVT. LTD. (FORMERLY: M  
SONS ENTERPRISES PVT. LTD.) C/O SSAR & ASSOCIATES,  
CHARTERED ACCOUNTANTS. .... Respondent

Through: Mr. Kapil Goel, Advocate.

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE VIBHU BAKHRU**

**ORDER**

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**25.04.2016**

1. This appeal by the Revenue is against the order dated 17<sup>th</sup> June 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5419/Del/2012 for the Assessment Year ('AY') 2009-10.
2. The question sought to be urged by the Revenue is whether the ITAT was justified in holding that the sum of Rs. 93,68,870 debited to the Profit & Loss ('P&L') account towards factoring/discounting charges ought not have been disallowed by the Assessing Officer ('AO') under Section 40(a) (ia) of the Income Tax Act, 1961 ('Act').
3. The Assessee is a private limited company engaged in the business of manufacturing and trading in gold, diamond jewellery and bullion. In its

return of income for AY 2009-10 it declared an income of Rs. 2,79,89,810. The return was picked up for scrutiny. It was noticed from the notes to the accounts that the Assessee company had availed factoring facility from Global Trade Finance Ltd. ('GTFL'). It was further noticed that in the P&L account, an amount of Rs.93,68,870 was debited under the head "factoring/discounting charges". It was clarified that the Assessee had not deducted TDS on the factoring charges as it was not an interest amount.

4. In the assessment proceedings, the AO examined the agreement entered into between the GTFL and the Assessee. The AO disbelieved the Assessee's contention that the aforementioned amount constituted factoring charges. According to the AO as per the agreement, GTFL would advance a loan to the Assessee on which the Assessee was liable to pay interest @13%. This was separate from the factoring charges. The AO proceeded to treat the entire amount of Rs. 93,68,870 as interest payable by the Assessee to GTFL under Section 194 A of the Act. The AO, therefore, disallowed the said sum since TDS was not deducted therefrom in terms of Section 40(a)(ia) of the Act.

5. After the Commissioner of Income Tax (Appeals) [CIT(A)] upheld the above order by disposing of the Assessee's appeal by order dated 27<sup>th</sup> July 2012, the Assessee went in appeal before the ITAT. In the impugned order, the ITAT relied on the order dated 12th August 2014 of the Calcutta High Court in ITA No. 74 of 2014 (*CIT v. M/s MKJ Enterprises Ltd.*) to the effect that the factoring charges on sales cannot be termed as interest. The ITAT also noted the submission of the Assessee that this Court in *CIT v.*

*Cargill Global Trading (P) Ltd. 335 ITR 94 (Del.)* also held likewise.

6. Mr. Kapil Goel, learned counsel for the Assessee, points out that the Revenue's Special Leave Petition against the judgment of this Court in *Cargill Global Trading (supra)* was dismissed by the Supreme Court on 10<sup>th</sup> May 2012 in CC No. 19572/2011.

7. The Court first notes that under Section 194A of the Act, the obligation to deduct tax at source is on the 'payer' of interest. In the instant case, the Assessee has permitted factoring and discounting charges to be deducted upfront by GTFL. In response to a query raised by the AO during assessment proceedings, the Assessee by its letter dated 12th September 2011 clarified as under:

"The assessee company had paid discount to M/s. Global Trade Finance Ltd. (GTF) for availment of Factoring facility and not interest. This fact is very clear as per the sanction letter given by the GTF which was filed before your goodself vide our letter dated 02.09.2011. The assessee company had discounted its sales invoices from GTF on a discount and it had not taken any amount in the nature of loan or debt. The factoring facility is known as synonymous for bill discounting facility. As per section 2(28A) of the Income Tax Act, 1961, discounting charges are not covered under the definition of interest."

8. Further the Court finds that the term sheet issued by the GTFL showed that the interest at 13% pa will be charged in the event of repayment of any borrowings. This is different from the factoring charges @0.10% payable to GTFL. As a matter of fact, the Assessee has debited the above sum to its P&L account towards "factoring/discounting charges". In light of the above factors, there was no factual basis for the AO to have disbelieved the

Assessee's explanation and simply treat the entire amount as interest. The question of disallowing the entire amount under Section 40(a) (ia) on the ground that the TDS was not deducted in terms of Section 194A of the Act did not arise.

9. In the facts and circumstances of the case, the Court is unable to find any legal infirmity in the view expressed by the ITAT that the factoring/discounting charges in the present case cannot be treated as interest for the purpose of 194A. No substantial question of law arises.

10. The appeal is dismissed.

**S.MURALIDHAR, J**

**VIBHU BAKHRU, J**

**APRIL 25, 2016/mg**