

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'SMC-1', NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

ITA No.114/Del/2019
Assessment Year: 2014-15
(THROUGH VIDEO CONFERENCING)

Muradul Haque, D-94 B, Hastal Vihar, Uttam Nagar, New Delhi-110059 PAN No. AEDPH 8229 R	Vs.	Income Tax Officer Ward- 44 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Rano Jain, Advocate
Respondent by	Sh. R. K. Gupta, Sr. DR

Date of hearing:	16/06/2020
Date of Pronouncement:	18/06/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 15.10.2018 of the Commission of Income Tax (A)-15, Delhi relating to A. Y. 2014-15.

2. The relevant facts as culled from the material on records are as under:

3. The assessee is an individual and is stated to be engaged in the business of trading in fabric and job work. Assessee electronically filed his return of income for AY 2014-15 on 28.11.2014 declaring total income of Rs. 8,07,670/-. The case was selected for scrutiny and thereafter the assessment was framed u/s.143(3) vide order dated 23.12.2016 and the total income was determined at Rs. 32,33,420/- by inter alia disallowing Rs.24,25,747/- u/s. 40(a)(ia) of the Act. Aggrieved with order of the AO, assessee carried the matter before the CIT(A) who vide order dated 15.10.2018 (in appeal No. 114/Del/2019) dismissed the appeal of the assessee.

4. Aggrieved by the order of the CIT(A), the assessee is now in appeal before us and raised the following grounds :-

“1. That on facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in upheld the disallowance of commission/ incentives paid to employees and parties to the tune of Rs. 24,25,747/-.

2. That on facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in not giving reasonable opportunity of being heard.

3. That on facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts on followings

a) Not providing copy of the Assessing officer remand report to the Assessee for rebuttal and alleging that not served on Assessee address when earlier notices were duly served on same address and further Ld CIT (A) also sent the notices by e-mail but have not made it possible in case of remand report to send by e-mail.

b) Holding, that various notices alleged to have been sent to Assessee by ITO were not at all delivered in remand proceedings, Whereas AR of the Assessee had been following up with the assessing officer and duly provided documents and information and that is on record.

c) Finding, that documents have not filed before AO in remand proceedings to justify commission paid which is against the factual matrix of the assessment record.”

5. Before us the Ld. AR at the outset inter alia submitted that though the assessee has raised various grounds but the Assessee wishes to press only ground No. 1 which is with respect disallowance of Rs.24,25,747/-.

6. Before us the Ld. AR on the facts of the matter submitted that during the year assessee had paid commission of Rs.24,25,747/- to various persons on which no TDS was deducted. In the computation of income the amount of commission on which the TDS was not deducted was not disallowed u/s. 40(a)(ia) of the Act for the reason that the Assessee was of the view that the disallowance u/s. 40(a)(ia) of the Act was attracted only where the amount of expenditure on which the TDS, was payable at the end of the financial year and not when the amount of such expenditure has already been paid during the financial year. The submission of the assessee for non applicability of provisions of s. 40(a)(ia) was not found acceptable to AO. AO was of the view that the non deduction of TDS would

attract provision of u/s. 40(a)(ia) of the Act. He accordingly made disallowance of the entire amount of commission of Rs.25,24,747/- . When the matter of disallowance was carried by the Assessee before CIT(A), the action of disallowance was upheld by CIT(A). Aggrieved by the order of CIT(A), Assessee is now before us.

7. Before us the Ld. AR pointed to the person-wise details of the payment of commission which is placed at 5 of the paper book. Pointing to the aforesaid details, she submitted that out of the total payment to 21 persons, the payment of the persons at Sr. No. 17, 18, 19 and 20 are less than Rs 10,000 each and therefore as per the provisions of section 194H, the assessee was not required to deduct any TDS on such payments and therefore no disallowance u/s 40(a)(ia) was called for. With respect to the payments to other parties of the list, she submitted that the disallowance of expenses on account of non deduction of TDS be restricted to 30% of the expenses in view of the fact that the amendment made by the Finance Act (2) to section 40(a)(ia) is curative in nature. In support of her contention that provision is curative in nature and is therefore also applicable to the assessment year 2014-15 she relied on the following decisions :-

1. M/s. R. H. International Vs. ITO ITA No. 6724/Del/2018 dated 20.03.2019

2. ITAT, Jaipur Bench in the case of Rajendra Yadav Vs. ITO for the A.Y. 2007-08 order dated 29.01.2016
3. Smt. Kanta Yadav Vs. ITO, ITA No. 6312/Del/2016 dated 12.05.2017
4. Umaxe Projects (P) Ltd. Vs. DCIT , ITA No. 206/Del/2019

8. She submitted that in the case of R.H. International (supra) the Delhi Benches of the tribunal have held that the disallowance u/s 40(a)(ia) should be restricted to 30% only as against 100% because the amended provision made to section 40(a)(ia) by Finance (No 2) Act is curative in nature and should be applied retrospectively. She therefore submitted that in view of her aforesaid submissions the disallowance be restricted to 30% of the commission.

9. The Ld. DR on the other hand supported the orders of the lower authorities.

10. We have heard the rival submissions and perused the material available on record. The issue in the present appeal is with respect to disallowance to section 40(a)(ia) of the Act. The perusal of the details of the commission paid by the assessee, which is placed in the paper book reveals that out of the total commission of Rs. 25,24,747/- which has been disallowed u/s

40(a)(ia), includes the amounts paid to Anuj Kumar, Surya Kumar, Mukesh Tyagi and Krishna Dayal which individually are below Rs. 10,000/- each and therefore we find force in the argument of the Ld AR that on those payments assessee was not required to deduct TDS u/s. 194H of the Act. We therefore hold that the same cannot be disallowed u/s 40(a)(ia) of the Act. We accordingly direct its deletion.

11. As far as the amounts paid to other persons in the list are concerned, we find the payments to be in excess of Rs 10000/- each. We find that Finance (No.2) Act has made amendment to section 40(a)(ia) of the Act w.e.f. 01.04.2015. 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 Vs. ITO (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. Before us no contrary binding has been point out by the Revenue nor could the DR point any distinguishing feature in the cases relied upon by Ld. AR. We, therefore, hold that the disallowance of expenses on account of non deduction of TDS be restricted to 30% of the expenses where the amounts paid are in excess of Rs. 10,000/-. We thus hold so.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 18.06.2020

Sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

Neha

Date:- 18.06.2020

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI