

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES (SMC), JAIPUR

श्री पी.के.बंसल, लेखा सदस्य के समक्ष  
BEFORE: SHRI P.K. BANSAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 888/JP/2014  
निर्धारण वर्ष/Assessment Year : 2009-10.

Shri Rakesh Tak, C-39, Hari Marg, Malviya Nagar, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABBPT 1968 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani, C.A.  
राजस्व की ओर से / Revenue by : Shri O.P. Bhateja, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 03/11/2015  
घोषणा की तारीख / Date of Pronouncement : 4/11/2015

आदेश / ORDER

PER P.K. BANSAL, A.M.

This appeal has been filed by the assessee against the order of Id. CIT (A) dated 27.10.2014. The only issue involved in this appeal relates to the disallowance of a sum of Rs. 7,00,567/- under section 40(a)(ia) of the I.T. Act.

2. I noted that the provisions of section 40(a)(ia) has been amended by the Finance Act, 2012 by which a proviso has been added which reads as under :-

“ Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first

proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.”

The Kolkata Bench of the Tribunal in ITA No. 1278/Kol/2011 for the assessment year 2008-09 vide its order dated May 22, 2015 to which myself was the author, took the view that the second proviso inserted by the Finance Act, 2012 is curative in nature intended to supply an obvious omission, take care of an unintended consequence and make the section workable. Section 40(a)(ia) without the second proviso resulted in the unintended consequence of disallowance of legitimate business expenditure even in a case where the payee in receipt of the income had paid tax, and, therefore, the second proviso although inserted with effect from 1<sup>st</sup> April, 2013 is curative in nature and has retrospective effect. In this case, this Tribunal respectfully following the decision of Hon'ble Kolkata High Court in case No. 302 of 2011, GA 3200/2011, CIT vs. Virgin Creations took the view that where in any subsequent year in which the tax has been deducted and deposited, the intention of the legislature clearly is not to disallow the legitimate business expenditure. The allowance of such expenditure is sought to be made subject to deduction and payment of tax at source. However, in a case where the deductee/payee has paid tax and as such the person responsible for paying is no longer required to deduct or pay any tax, legitimate business expenditure would stand disallowed since the section contemplated by the first proviso viz. deduction and payment of tax in a subsequent year would never come about. Such unintended consequence has been sought to be taken care of by the second proviso inserted in

section 40(a)(ia) by the Finance Act, 2012. The Memorandum explaining the second proviso as introduced in Finance Bill, 2012, reported in 342 ITR (Statutes) 234 at pages 260 & 261 even though state that the amendment will take effect from 1<sup>st</sup> April, 2013 but this amendment, in my opinion, is retrospective in operation. The Hon'ble Delhi High Court has also taken the similar view in the case of Ansal Land Mark Township (P) Ltd. vs. CIT [CM Appl. No. 3774 of 2015 in ITA No. 160 of 2015]. The AO while passing an order under section 201(1)/201(1A) of the IT Act for the impugned assessment year 2009-10 took the view that the assessee is not in default in respect of TDS on the payment of Rs. 7,00,567/- to M/s. Reliance Capital as the assessee has produced Certificate of the Accountant/declaration that the duty has included the charges received from the assessee in his return and has paid entire taxes on the same. Copy of the order is placed before us. In view of the said decision of the AO of the assessee, I am of the view that if the assessee is not in default for the purpose of the provisions of section 201(1)/201(1A), the assessee cannot be denied deduction in respect of the said expenditure under section 40(a)(ia). I, accordingly delete the disallowance.

3. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 4/11/2015.

Sd/-

( पी.के.बंसल )

( P.K. Bansal )

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 4/11/ 2015

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Rakesh Tak, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO Ward-6(1), Jaipur.
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 888/JP/2014)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar