

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

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.2145/M/2014
Assessment Year: 2008-09**

M/s. Carol Info Services Ltd., Wockhardt Towers, Bandra Kurla Complex, Bandra East, Mumbai – 400 051 PAN: AAACW1299E	Vs.	Additional Commissioner of Income Tax – 10(3), Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ronak G. Doshi, A.R. &
Shri Abhitan Mehta, A.R.

Revenue by : Dr. S. Pandian, D.R.

Date of Hearing : 31.03.2016

Date of Pronouncement : 31.03.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 13.01.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2008-09.

2. The assessee has taken two effective grounds of appeal. Vide first ground of appeal, the assessee has agitated the finding of the lower authorities that the assessee was liable to deduct tax at source on the amount paid towards staff support services to the group company.

3. The Ld. A.R. has stated at bar that as per the instructions of his client, he does not want to press this ground. This ground is accordingly dismissed as not pressed.

4. The assessee in the second/alternate ground has taken the plea that though the assessee had not deducted the tax at source, however, recipient had offered the income in its computation in the return of income and therefore the disallowance is not attracted in the case of the assessee as per the second proviso to section 40(a)(ia) of the Act. He, while relying upon the decision of the Hon'ble Delhi High Court in the case of "CIT vs. Ansal Land Mark Township (P) Ltd." (2015) 61 taxman.com 45 (Delhi) wherein it has been held that the second proviso to section 40(a)(ia) is declaratory and curative and it has a retrospective effect from 01.04.05.

5. We have considered the above submission of the Ld. A.R. and have also gone through the decision of the Hon'ble Delhi High Court in the case of "CIT vs. Ansal Land Mark Township (P) Ltd." (supra). The Hon'ble Delhi High Court, considering the nature and scope of the second proviso to section 40(a)(ia), has categorically held that the second proviso is declaratory and curative and has retrospective effect. Under these circumstances, if the payee has taken into consideration the income received from the assessee while filing its return of income, then no disallowance would be attracted in the hands of payer i.e. the assessee before us. However, this fact needs verification at the hands of the AO. The Ld. A.R., at this stage, has stated that the payee i.e. M/s. Wockhardt Ltd. has reduced the amount received from the assessee on account of support services from its salary cost expenditure. He has also produced a copy of the form 26A issued by the director of the company along with certificate of the CA of the M/s. Wockhardt Ltd. wherein it has been mentioned that the amount of Rs.90 lakh upon which TDS was not deducted had been reduced from the salary cost. We accordingly direct the AO to verify that if the amount received from the assessee has been included by the payee in the receipts and reduced from the deductible expenditure and thus considered while computing the income, then to allow the claim of the assessee accordingly.

6. With the above observation, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 31.03.2016.

Sd/-
(Ramit Kochar)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 31.03.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.