

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI
BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No. 392/DEL/2014
(ASSESSMENT YEAR-2009-10)

Mohit Burman 4 th Floor, Punjabi Bhawan, 10, Rouse Avenue New Delhi AAAPB3071C (APPELLANT)	Vs	ACIT Circle-32(1) New Delhi (RESPONDENT)
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Appellany by	Sh. M.P. Rastogi, Adv
Respondent by	Sh. Rajesh Kumar, Sr. DR

Date of Hearing	16.03.2017
Date of Pronouncement	20. 03.2017

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 20/11/2013 passed by CIT(A)-XXVI, New Delhi.

2. The grounds of appeal are as follows:

- “1. That the disallowance of Rs.10,80,000/- being the rent u/s 40(a) (ia) of the Income-tax Act, 1961 (the Act) on account of non-deduction of TDS in terms of Section 194-1 of the Act by the A.O and sustained by CIT(A) is bad in law.
2. That under the Explanation to Section 191 of the Act, the assessee is not an assessee in default within the meaning of sub-section (1) of Section 201 of the Act, as the payee has already paid the tax and

consequently the disallowance of Rs.10,80,000/- made by the A.O u/s 40(a) (ia) of the Act and sustained by the CIT(A) is bad in law.

3. *That the second proviso to Section 40(ia) read with the first proviso to Section 201(1) of the Act, brought by the Finance Act, 2012 explaining that if the payee has paid tax, then the payer shall not be deemed as the assessee in default, are clarificatory, retroactive and consequently the disallowance of Rs.10,80,000/- as made by the A.O and sustained by the CIT(A) are arbitrary and bad in law.*
4. *The above grounds of appeal are independent and without prejudice to one another.*

3. The assessee, a Consultant, had professional receipts of Rs.72,00,000/-. He filed his return of income showing income of Rs.1, 14,27,829/-. The assessee failed to deduct at source on rent payment of Rs.10,80,000/- in accordance to Section 196I. Therefore, the Assessing Officer invoke Section 40(a)(ia) and disallowed the rent payment of Rs.10,80,000/- on which TDS was not calculated. Accordingly, by the same, the assessee filed appeal before the CIT(A). The CIT(A) held that:-

“I have carefully considered the submission of the appellant and perused the record. The Ld. Counsel’s contention that since the recipient of the rent has paid tax on the rent paid by the appellant; therefore, the tax on the same income cannot be levied in the hands of the payer/appellant by making disallowance of rent, has no merit as far as the disallowance u/s 40(a)(ia) is concerned though it has in respect of Section 201 and 201A. This issue has been dealt in the decision of the Hon’ble Supreme Court in the case of Hindustan Coca Cola 293 ITR 226. The ratio laid down in the case of Hindustan Coca Cola (supra) is not relevant here at all as the facts of this case are held distinguishable. The present case is in respect of the disallowance u/s 40(a)(ia) whereas the case of Hindustan Coca Cola is in respect of Section 201 and 201A. The proviso brought in, vide Finance Bill 2012, with effect from (wef) 1/4/2013 provides relief to those assesseees who are not deemed assessee in default u/s 201(1) w.e.f 1/4/2013. Here, the appellant is undoubtedly assessee in default u/s 201(1), therefore, this amendment is also of no help to him. Further, this amendment is not relevant for the year under consideration.”

4. The CIT (A) dismiss the appeal of the assessee. The Ld. AR submitted that the party whom the TDS should have been calculated and recovered has already paid the tax. The Ld. AR further submitted the amendment to Section 40(a)(ia) proviso 2 is retrospective in nature. He also relied on the jurisdictional High Court judgment in case of CIT Vs. Ansal Land Mark Township Pvt. Ltd. wherein the identical facts are put before us.

5. The Ld. DR submitted that the CIT(A) was right in dismissing the appeal of the assessee as the proviso brought in Finance Bill 2012 w.e.f 1/4/2013 and provides relief to those assessee were not deemed assessee in default u/s 201(1). The said amendment is prospective in nature and does not held to the assessee.

6. We have heard both the parties and perused all the records. The judgment cited by the Ld. AR that of Ansal Land Mark Township Pvt. Ltd. squarely covers the assessee's case as the amendment is retrospective as it is a beneficial legislation when the payment of tax is already done of the parties from who TDS has to be recovered there is nothing remains on record for the revenue to recover the same. The first proviso to Section 201(1) of the Act clearly provides that where a person fails to deduct tax at source on the sum paid to a resident or on the sum credited to the account of a resident such person shall not be deemed to be an assessee in default in respect of such tax if such resident has furnished his return of income u/s 139 of the Act. The intention of the legislature is not to treat the assessee as a person in default subject to the fulfillment of the conditions provided in the first proviso to Section 201(1). The insertion of the second proviso to Section 40(a)(ia) is beneficial legislation for assessee. As per both the provisos to Section 40(a)(ia) and Section 201(1) of the Act as long as the payee/resident (which in this case is ALIP) has filed its return of income disclosing the payment received by and in which the income earned by it is embedded and has also paid tax on such

income, the assessee would not be treated as a person in default. As far as the present case is concerned, it is not disputed by the Revenue that the payee has filed returns and offered the sum received to tax.

7. In result, appeal is allowed.

The order is pronounced in the open court on 20th of March, 2017.

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 20/03/2017

R.Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	16/03/2017	Sr. PS
2.	Draft placed before author	17/03/2017	Sr. PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	20.03.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	20.03.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		