

**आयकर अपीलिय अधिकरण, मुंबई "ए" खंडपीठ मे**  
**Income-tax Appellate Tribunal -"A" Bench Mumbai**  
सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य  
**Before S/Sh.Rajendra,Accountant Member and Amarjit Singh,Judicial Member**  
आयकर अपील सं./I.T.A./1869/Mum/2014,**निर्धारण वर्ष** /Assessment Year: 2006-07

M/s. Asphalt India Corporation 1-B, Vimal Apartments, Juhu Lane Andheri (W),Mumbai-400 058. <b>PAN:AAFA 3614 L</b>	Vs.	DCIT, 20(1) R.No.404, 4th Floor, Piramal Chambers Lalbaug, Parel, Mumbai-400 012.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by:** Shri B.C.S Naik-CIT-DR

अपीलार्थी की ओर से /**Assessee by:** Shri Vijay Mehta & Dharmesh Shah-AR

सुनवाई की तारीख / **Date of Hearing:** 27/04/2017

घोषणा की तारीख / **Date of Pronouncement:** 24 /05/2017

**लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the order dated 30.01.2014 of CIT (Appeals)-31, Mumbai, the Assessee has filed the present appeal. Assessee,-firm filed its return of income on 03.03.2007, declaring total income at Rs.24.29 lakhs. The Assessing Officer (A.O.) completed the assessment on 26.12.2007 at Rs.8.68 crores. He made disallowance 40(a)(ia) on account of late payment of TDS(Rs.7.86 crores), interest suspense account (Rs.15.91 lakhs) and sundry creditors (Rs.41.84 lakhs). The first appellate authority (FAA ) confirmed the additions made by the AO. The Tribunal vide its order dated 04.05.2012 restored back the issue to the file of the AO (ITA/3922/Mum/2009).

2.As per the AO, the Assessee produced the details of sundry creditors and same were found satisfactory. He allowed the claim made by it. He further observed that assessee had produced the TDS payment of Rs.3.99 lakhs out of the total addition of Rs.7.86 crores. Accordingly, he assessed the income of the assessee at Rs.8.06 crores.

Aggrieved by the order of the AO, the assessee preferred an appeal before the FAA. Before him, it was stated that on the balance amount tax had not been deducted and paid during the year under consideration or before the filing of the return, that as per the Circular no.10/DV/2013 dated 16.12.2013 issued by the CBDT the provisions of Section 40(a)(ia) would cover not only amounts as payable on last date of any previous year but also amounts which were payable at any time during the year, that the assessee had not furnished evidence of TDS payment with reference to the amount of Rs.7.82 Crores that no other submission was made in that regard, finally, the FAA upheld order of the AO.

3. Before us, the Authorised Representative (AR) submitted that the assessee had paid tax deducted at source before the due date of filing of return, that the provisions of section 40(a)(ia) were not applicable to the facts of the case. He referred to the judgement of Hon'ble Delhi High Court in the case of Ansal Landmark Township Pvt.Ltd. (377/635) and orders of the Tribunal in the cases of Amruta Quarry works ITA/1481/Ahd./2013 dt.19.7.2016 (08-09) and Rajendra Yadav ITA/895/Jp/2012 dt.29.1.2016 (07-08) and stated that amendment to section 40(a) were retrospective in nature, that the payee had offered the sum received from the assessee for taxation, that the disallowance made by the AO was not justified. The Departmental Representative (DR) stated that amendment to the section was prospective. He referred to the case of Thomas George Muthoot (235taxman246).

In his rejoinder the AR argued that the amendment to section 40(a)(ia) in the year 2014 was introduced to reduce hardship caused to the assessee, that the Tribunal in the case of Amruta Quarry Works (supra), had held that amendment to section 40(a) (ia) of the Act vide Finance (2), Act 2014 w.e.f. 1.4.2015 was retrospective in nature, that the disallowance must be restricted to 30% of the expenses on which tax was not deducted by the depositor within the time limit prescribed under the Act, that the assessee had made the payment of tax during the AY 2008-09, that the AO had admitted that taxes were paid in the subsequent AY, that suitable directions may be issued.

4. We have heard the rival submissions, perused the material before us. We find that the assessee itself had admitted that taxes were paid in the subsequent AY. In the cases of Rajendra Yadav (supra) and Amruta Quarry Works (supra), the Tribunal had held that amendment to section 40(a)(ia) was retrospective in nature, that the amount to be disallowed under the said section had to be restricted to 30% of the impugned expenditure. Respectfully following the above orders of the Tribunal, we hold that disallowance should be restricted to 30%. effective Ground of appeal is decided in favour of the assessee in part. As the appeal for the subsequent AY is not before us, we are not passing any order in that regard.

As a result appeal filed by the assessee stands partly allowed.

फलतः निर्धारिता द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है।

Order pronounced in the open court on 24<sup>th</sup> May, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 24 मई, 2017 को की गई।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated : 24 .05.2017.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “ ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.