<u>आयकर अपीलीय अधिकरण,</u> दिल्ली, <u>न्यायपीठ,</u> 'जी',दिल्ली।

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G", DELHI

श्री एन.के. सैनी, लेखा सदस्य **एवं**

श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष

Before Shri N.K. Saini, Accountant Member and
Shri Joginder Singh, Judicial Member,

ITA No.5476/Del/2016
Assessment Year: 2012-13

M/s Shree Balaji Grit Udyog, Near SBI, Rao Prasad Sadan, NH8, Dharuhera Dist. Rewari-123106	**<u>बनाम</u>**/ Vs.	ITO, Ward-3, Rewari
(निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No.-ABMFS6461N		

निर्धारिती **की ओर से /** Assessee by	Shri Mahavir Singh
राजस्व **की ओर से** / Revenue by	Shri S.S. Rana CIT-DR

सुनवाई की तारीख **/ Date of Hearing :**	**09/11/2017**
आदेश की तारीख /**Date of Order:**	**09/11/2017**

आदेश / O R D E R

Per Joginder Singh, Judicial Member

The assessee is aggrieved by the impugned order dated 14/09/2016 of the Ld. First Appellate Authority, Delhi, in confirming the disallowance of interest paid to NBFCs without deduction of tax u/s 40(a)(ia) of the Income Tax Act, 1961 (hereinafter the Act) despite the fact that the assessee submitted the certificate of the C.A., in prescribed performa, in respect of each company and all these NBFCs are assessed to tax in India on their income.

2. During hearing, the ld. counsel for the assessee, Shri Mahavir Singh, advanced arguments which is identical to the ground raised by claiming that the impugned issue is covered by the decision of the Agra Bench of the Tribunal in the case of Rajeev Kumar Agarwal vs Addl. CIT (ITA No.337/Agra/2013), order dated 29/05/2013 and also from Hon'ble jurisdictional High Court in the case of Ansal Land Mark Township Pvt. Ltd. (ITA 160 of 2015 and 161 of 2015), order dated 26/08/2015. This factual matrix was not

controverted by the Ld. CIT-DR, Shri S.S. Rana, though he defended the addition/disallowance, made by the Ld. AO.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee declared income of Rs.14,78,470/- in its return filed on 29/09/2012, which was processed u/s 143(1) on 26/02/2013 at the returned income. The case of the assessee was selected for scrutiny under CASS, therefore, notices u/s 143(2), and 142(1) were served upon the assessee to which the assessee attended the assessment proceedings from time to time and furnished the details asked for along with the copy of auditor's report dated 12/09/2012. It was observed from the accounts of the assessee that a loan of Rs.3,33,24,028/- was raised and the assessee made payment of interest to the financial companies. It was observed by the AO that these organization are neither by banking company nor financial corporation, therefore, the expenses claimed on account of interest/finances charges amounting to Rs.53,75,972/- are not allowable u/s 40(a)(ia) of the Act. Thus, the disallowance

of this amount was made by the AO without deduction of TDS and added back to the returned income. On appeal before the Ld. CIT(A), the addition made by the AO sustained, which is under challenge before this Tribunal.

2.2. If the observation made in the assessment order, conclusion drawn in the impugned order, cases relied upon by the assessee and the material facts available on record, if kept in juxtaposition and analyzed, before adverting further, we are reproducing hereunder the relevant portion from the order of the Agra Bench of the Tribunal in the case of Rajeev Kumar Agrawal (supra) for ready reference and analysis:-

> 1. This appeal, filed by the assessee, calls into question correctness of learned Commissioner (Appeals) order dated 2nd September, 2013, in the matter of assessment under section 143(3) of the Income Tax Act, 1961*(hereinafter to as 'the Act')*, for the assessment year 2006-07, upholding the disallowance of Rs 5,01,872 under section 40(a)(ia) of the Act.
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> 2. The issue in appeal lies in a rather narrow compass of undisputed material facts. During the course of the scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has made interest payments, aggregating to Rs 5,01,872, without discharging his tax withholding obligations under section 194A. It was in this backdrop that the Assessing Officer, having noted the undisputed position regarding applicability of section 194 A on the facts of this case, and having noted that the scope of section 40(a)(ia) restricting deduction in respect of sums in respect of which tax withholding liability is not discharged, disallowed Rs 5,01,872 under section 40(a)(ia) r.w.s. 194 A of the Act. Aggrieved, assessee carried the matter in appeal before the

CIT(A). It was, *inter alia,* contended by the assessee that in view of the insertion of second proviso to Section 40(a)(ia) by the Finance Act 2012, and in view of the fact that the recipients of the interest have already included the income embedded in these payments in their tax returns filed under section 139, disallowance under section 40(a)(ia) could not be invoked in this case. It was also contended that even though this proviso is stated to be effective 1st April 2013, since the amendment in "declaratory and curative in nature, and, therefore, it should be given retrospective effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004". None of these submissions, however, impressed the learned CIT(A). Relying upon a Special Bench decision in the case of **Bharati Shipyard Ltd Vs. DCIT (141 TTJ 129),** herejected this plea and concluded that insertion of second proviso to Section 40(a)(ia) cannot be held to have retrospective effect. The disallowance was thus confirmed by the learned CIT(A). The assessee is aggrieved and is in appeal before us.

3. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

4. Let us first take a look at the legislative amendment of section 40(a)(ia), vide Finance Act 2012, and try to appreciate the scheme of things as evident in the amended section. Second proviso to Section 40(a)(ia), introduced with effect from 1st April 2013, provides, 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".** In other words, as long as the assessee cannot be treated as an assessee in default, the disallowance under section 40(a)(ia) cannot come into play either. To understand the effect of this proviso, it is useful to refer to first proviso to section 201(1), which is also introduced by the Finance Act 2012and effective1st July 2012, and which provides that **"any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident-(i) has furnished his return of income under section 139; (ii) has taken into**

account such sum for computing income in such return of income; and(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed." The unambiguous underlying principle seems to be that in the situations in which the assessee's tax withholding lapse have not resulted in any loss to the exchequer, and this fact can be reasonably demonstrated, the assessee cannot be treated as an assessee in default. The net effect of these amendments is that the disallowance under section 40(a)(ia) shall not be attracted in the situations in which even if the assessee has not deducted tax at source from the related payments for expenditure but the recipient of the monies has taken into account these receipts in computation of his income, paid due taxes, if any, on the income so computed and has filed his income tax return under section 139(1). There is also a procedural requirement of issuance of a certificate, in the prescribed format, evidencing compliance of these conditions by the recipients of income, but that is essentially a procedural aspect of the matter. The legislative amendment so brought about by the Finance Act, 2012, so far as the scheme of disallowance under section 40(a)(ia) is concerned, substantially mitigates the rigour of, what otherwise seemed to be, a rather harsh disallowance provision.

5. As for the question as to whether this amendment can be treated as retrospective in nature, even in the case of **Bharti Shipyard** *(supra)*– a special bench decision vehemently relied upon in support of revenue's case,the special bench, on principles, summed up the settled legal position to the effect that "**any amendment of the substantive provision which is aimed at ……** *(inter alia)* **removing unintended consequences to make the provisions workable has to be treated as retrospective notwithstanding the fact that the amendment has been given effect prospectively**". It was held that if the consequences sought to be remedied by the subsequent amendments were to be treated as "intended consequences", the amendment could not be treated as retrospective in effect. The special bench then proceeded to draw a line of demarcation between intended consequences and unintended consequences, and finally the retrospectivity of first proviso was decided against the assessee on the ground that this special bench was of the considered view that "**the objective sought to be achieved by bringing out section 40(a)(ia) is the augmentation of TDS provisions**" and went on to add that "**If, in attaining this main objective of augmentation of such provisions, the assessee suffers disallowance of any amount in the year of default, which is otherwise**

deductible, the legislature allowed it to continue". It was further observed that "**this is the cost which parliament has awarded to those assessees who fail to comply with the relevant provisions by considering overall objective of boosting TDS compliance**"*(Emphasis by underlining supplied by us)*. In other words, the amendment was held to be prospective because, in the wisdom of the special bench, the 2010 amendment to Section 40(a)(ia) by inserting first proviso thereto, which is what the special bench was dealing with, was an "intended consequence" of the provision of Section 40(a)(ia).

6. However, the stand so taken by the special bench was disapproved by Hon'ble Delhi High Court in the case of **CIT Vs Rajinder Kumar (362 ITR 241).** While doing so, Their Lordships observed that, "The object of introduction of Section 40(a)(ia) is to ensure that TDS provisions are scrupulously implemented without default in order to **augment recoveries**.....Failure to deduct TDS or deposit TDS **results in loss of revenue and may deprive the Government of the tax due and payable**" *(Emphasis by underlining supplied by us)*". Having noted the underlying objectives, Their Lordships also put in a word of caution by observing that, "**the provision should be interpreted in a fair, just and equitable manner**". Their Lordships thus recognized the bigger picture of realization of legitimate tax dues, as object of Section 40(a)(ia), and the need of its fair, just and equitable interpretation. This approach is qualitatively different from perceiving the object of Section 40(a)(ia) as awarding of costs on the "assessees who fail to comply with the relevant provisions by considering overall objective of boosting TDS compliance". Not only the conclusions arrived at by the special bench were disapproved but the very fundamental assumption underlying its approach, i.e. on the issue of the object of Section 40(a)(ia), was rejected too. In any event, even going by Bharti Shipyard decision *(supra),* what we have to really examine is whether 2012 amendment, inserting second proviso to Section 40(a)(ia), deals with an "intended consequence" or with an "unintended consequence".

7. When we look at the overall scheme of the section as it exists now and the bigger picture as it emerges after insertion of second proviso to section 40(a)(ia), it is beyond doubt that the underlying objective of section 40(a)(ia) was to disallow deduction in respect of expenditure in a situation in which the income embedded in related payments remains untaxed due to non deduction of tax at source by the assessee. In other words, deductibility of expenditure is made contingent upon

the income, if any, embedded in such expenditure being brought to tax, if applicable. In effect, thus, a deduction for expenditure is not allowed to the assessees, in cases where assessees had tax withholding obligations from the related payments, without corresponding income inclusion by the recipient.That is the clearly discernable bigger picture, and, unmistakably, a very pragmatic and fair policy approach to the issue – howsoever belated the realization of unintended and undue hardships to the taxpayers may have been. It seems to proceed on the basis, and rightly so, that seeking tax deduction at source compliance is not an end in itself, so far as the scheme of this legal provision is concerned, but is only a mean of recovering due taxes on income embedded in the payments made by the assessee. That's how, as we have seen a short while ago, Hon'ble Delhi High Court has visualized the scheme of things – as evident from Their Lordships' reference to augmentation of recoveries in the context of "loss of revenue" and "depriving the Government of the tax due and payable".

8. With the benefit of this guidance from Hon'ble Delhi High Court, in view of legislative amendments made from time to time, which throw light on what was actually sought to be achieved by this legal provision, and in the light of the above analysis of the scheme of the law, we are of the considered view that section 40(a)(ia) cannot be seen as intended to be a penal provision to punish the lapses of non deduction of tax at source from payments for expenditure- particularly when the recipients have taken into account income embedded in these payments, paid due taxes thereon and filed income tax returns in accordance with the law. As a corollary to this proposition, in our considered view, declining deduction in respect of expenditure relating to the payments of this nature cannot be treated as an "intended consequence" of Section 40(a)(ia). If it is not an intended consequence i.e. if it is an unintended consequence, even going by Bharti Shipyard decision *(supra),* "removing unintended consequences to make the provisions workable has to be treated as retrospective notwithstanding the fact that the amendment has been given effect prospectively". Revenue, thus, does not derive any advantage from special bench decision in the case Bharti Shipyard *(supra).*

9. On a conceptual note, primary justification for such a disallowance is that such a denial of deduction is to compensate for the loss of revenue by corresponding income not being taken into account in computation of taxable income in the hands of the recipients of the payments. Such a policy motivated deduction restrictions should, therefore, not come

into play when an assessee is able to establish that there is no actual loss of revenue. This disallowance does deincentivize not deducting tax at source, when such tax deductions are due, but, so far as the legal framework is concerned, this provision is not for the purpose of penalizing for the tax deduction at source lapses. There are separate penal provisions to that effect. Deincentivizing a lapse and punishing a lapse are two different things and have distinctly different, and sometimes mutually exclusive, connotations. When we appreciate the object of scheme of section 40(a)(ia), as on the statute, and to examine whether or not, on a "fair, just and equitable" interpretation of law- as is the guidance from Hon'ble Delhi High Court on interpretation of this legal provision, in our humble understanding, it could not be an "intended consequence" to disallow the expenditure, due to non deduction of tax at source, even in a situation in which corresponding income is brought to tax in the hands of the recipient. The scheme of Section 40(a)(ia), as we see it, is aimed at ensuring that an expenditure should not be allowed as deduction in the hands of an assessee in a situation in which income embedded in such expenditure has remained untaxed due to tax withholding lapses by the assessee. It is not, in our considered view, a penalty for tax withholding lapse but it is a sort of compensatory deduction restriction for an income going untaxed due to tax withholding lapse. The penalty for tax withholding lapse *per se* is separately provided for in Section 271 C, and, section 40(a)(ia) does not add to the same. The provisions of Section 40(a)(ia), as they existed prior to insertion of second proviso thereto, went much beyond the obvious intentions of the lawmakers and created undue hardships even in cases in which the assessee's tax withholding lapses did not result in any loss to the exchequer. Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. In view of these discussions, as also for the detailed reasons set out earlier, we cannot subscribe to the view that it could have been an "intended consequence" to punish the assessees for non deduction of tax at source by declining the deduction in respect of related payments, even when the corresponding income is duly brought to tax. That will be going much beyond the obvious intention of the section. Accordingly, we hold that the insertion of second proviso to Section 40(a)(ia) is declaratory and curative in nature and it has retrospective

effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.

10. In view of the above discussions, we deem it fit and proper to remit the matter to the file of the Assessing Officer for fresh adjudication in the light of our above observations and after carrying out necessary verifications regarding related payments having been taken into account by the recipients in computation of their income, regarding payment of taxes in respect of such income and regarding filing of the related income tax returns by the recipients. While giving effect to these directions, the Assessing Officer shall give due and fair opportunity of hearing to the assessee, decide the matter in accordance with the law and by way of a speaking order. We order so.

11. In the result, the appeal is allowed for statistical purposes in the terms indicated above."

2.3. The aforesaid decision of the Tribunal was affirmed by Hon'ble Delhi High Court vide order dated 26/08/2015 (ITA No.160 & 161/2015), the relevant portion of the same is also reproduced hereunder:-

" 1. Allowed, subject to all just exceptions.

2. The applications are disposed of.

ITA No. 160 of 2015 & ITA No. 161 of 2015

3. These two appeals by the Revenue under Section 260A of the Income Tax Act („Act") are directed against the common order dated 21st July 2014 passed by the Income Tax Appellate Tribunal („ITAT") in ITA No. 2972/Del/2012 and ITA No. 877/Del/2013 for the Assessment Years („AYs") 2008-09 and 2009-10 respectively.

4. At the outset, it is pointed out by learned counsel for the Revenue that the questions (a) to (e) as projected by the Revenue in para 2 of the memorandum of appeal concerning ITAT"s order deleting

certain additions stand answered in favour of the Assessee by the order dated 2 nd March 2015 in ITA No. 162 of 2015 (CIT v. Ansal Land Mark Township (P) Ltd.) concerning and earlier AY. Consequently, those questions for the present AYs also stand answered in favour of the Assessee and against the Revenue.

5. The other issue urged by the Revenue during the course of arguments pertains to the retrospectivity of the second proviso to Section 40(a) (ia) of Act 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"

6.When it was pointed out to learned counsel for the Appellant that no question as such has been sought to be urged by the Revenue in the memorandum of appeal, learned counsel stated that an application has been filed to amend the memorandum of appeal to include such a question and that perhaps the said application is lying under objection.

7. Notwithstanding the above, the Court has heard learned counsel for the Revenue on the above issue as well.

8. It is seen that the issue in these AYs arises in the context of the disallowance by the Assessing Officer of the payment made by the Respondent Assessee to Ansal Properties and Infrastructure Ltd. („APIL") which payment, according to the Revenue, ought to have been made only after deducting tax at source under Section 194J of the Act. Before the ITAT, it was urged by the Assessee that in view of

the insertion of the second proviso to Section 40(a) (ia) of the Act, the payment made could not have been disallowed. Reliance was placed on the decision of the Agra Bench of ITAT in ITA No. 337/Agra/2013 (Rajiv Kumar Agarwal v. ACIT) in which it was held that the second proviso to Section 40 (a) (ia) of the Act is declaratory and curative in nature and should be given retrospective effect from 1 st April 2005.

9. It is seen that the second proviso to Section 40(a) (ia) was inserted by the Finance Act 2012 with effect from 1st April 2013. The effect of the said proviso is to introduce a legal fiction where an Assessee fails to deduct tax in accordance with the provisions of Chapter XVII B. Where such Assessee is deemed not to be an assessee in default in terms of the first proviso to sub-Section (1) of Section 201 of the Act, then, in such event, "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".

10. It is pointed out by learned counsel for the Revenue that the first proviso to Section 201 (1) of the Act was inserted with effect from 1 st July 2012. The said proviso reads as under:

"Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident-

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income;

And the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

11. The first proviso to Section 210 (1) of the Act has been inserted to benefit the Assessee. It also states 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 under Section 139 of the Act. No doubt, there is a mandatory requirement under Section 201 to deduct tax at source under certain contingencies, but the intention of the legislature is not to treat the Assessee as a person in default subject to the fulfilment of the conditions as stipulated in the first proviso to Section 201(1). The insertion of the second proviso to Section 40(a) (ia) also requires to be viewed in the same manner. This again is a proviso intended to benefit the Assessee. The effect of the legal fiction created thereby is to treat the Assessee as a person not in default of deducting tax at source under certain contingencies.

12. Relevant to the case in hand, what is common to both the provisos to Section 40 (a) (ia) and Section 210 (1) of the Act is that the 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.

13. Turning to the decision of the Agra Bench of ITAT in Rajiv Kumar Agarwal v. ACIT (supra) , the Court finds that it has undertaken a thorough analysis of the second proviso to Section 40 (a)(ia) of the Act and also sought to explain the rationale behind its

insertion. In particular, the Court would like to refer to para 9 of the said order which reads as under:

"On a conceptual note, primary justification for such a disallowance is that such a denial of deduction is to compensate for the loss of revenue by corresponding income not being taken into account in computation of taxable income in the hands of the recipients of the payments. Such a policy motivated deduction restrictions should, therefore, not come into play when an assessee is able to establish that there is no actual loss of revenue. This disallowance does deincentivize not deducting tax at source, when such tax deductions are due, but, so far as the legal framework is concerned, this provision is not for the purpose of penalizing for the tax deduction at source lapses. There are separatepenal provisions to that effect. Deincentivizing a lapse and punishing a lapse are two different things and have distinctly different, and sometimes mutually exclusive, connotations. When we appreciate the object of scheme of section 40(a)(ia), as on the statute, and to examine whether or not, on a "fair, just and equitable" interpretation of law- as is the guidance from Hon'ble Delhi High Court on interpretation of this legal provision, in our humble understanding, it could not be an "intended consequence" to disallow the expenditure, due to non deduction of tax at source, even in a situation in which corresponding income is brought to tax in the hands of the recipient. The scheme of Section 40(a)(ia), as we see it, is aimed at ensuring that an expenditure should not be allowed as deduction in the hands of an assessee in a situation in which income embedded in such expenditure has remained untaxed due to tax withholding lapses by the assessee. It is not, in our considered view, a penalty for tax withholding lapse but it is a sort of compensatory deduction restriction for an income going untaxed due to tax withholding lapse. The penalty for tax withholding lapse per se is separately provided for in Section 271 C, and, section 40(a)(ia) does not add to the same. The provisions of Section 40(a)(ia), as they existed prior to insertion of second proviso thereto, went much beyond the obvious intentions of the lawmakers and created undue hardships even in cases in which the assessee's tax withholding lapses did not result in any loss to the exchequer. Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was

introduced. In view of these discussions, as also for the detailed reasons set out earlier, we cannot subscribe to the view that it could have been an "intended consequence" to punish the assessees for non deduction of tax at source by declining the deduction in respect of related payments, even when the corresponding income is duly brought to tax. That will be going much beyond the obvious intention of the section. Accordingly, we hold that the insertion of second proviso to Section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004."

14. The Court is of the view that the above reasoning of the Agra Bench of ITAT as regards the rationale behind the insertion of the second proviso to Section 40(a) (ia) of the Act and its conclusion that the said proviso is declaratory and curative and has retrospective effect from 1st April 2005, merits acceptance.

15. In that view of the matter, the Court is unable to find any legal infirmity in the impugned order of the ITAT in adopting the ratio of the decision of the Agra Bench, ITAT in (Rajiv Kumar Agarwal v. ACIT).

16. No substantial question of law arises in the facts and circumstances of the present case. The appeal is dismissed."

The Tribunal in the aforesaid order held that the insertion of second proviso to section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 1st April, 2005, being the date from which sub-clause(ia) of section 40(a) was inserted by the Finance (No.2) Act 2004. Thus, following the aforesaid order of the Tribunal/Hon'ble jurisdictional High Court, the appeal of the assessee is allowed.

Finally, the appeal of the assessee is allowed.

This order was pronounced in the open court in the presence of the ld. representatives from both sides at the conclusion of the hearing on 09/11/2017.

Sd/-	**Sd/-**
(N. K. Saini)	(Joginder Singh)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य** /JUDICIAL MEMBER

Delhi; दिनांक Dated : 09/11/2017

*Shekhar, P.S.*नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, New Delhi.
4. आयकर आयुक्त / CIT(A)- , Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,/ DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण,/ ITAT, Delhi