IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES **"A"** BENCH: HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA. No.590/Hyd/2017
Assessment Year: 2012-2013

DCIT, Circle-1(1), Hyderabad.	vs.	ACP Industries Limited, Hyderabad. AABCA 4804 E
(Appellant)		(Respondent)

For Assessee:	Shri K.A. Sai Prasad
For Revenue :	Shri M. Naveen, DR

Date of Hearing :	26.03.2018
Date of Pronouncement :	26.03.2018

ORDER

PER D. MANMOHAN, VP.

This is an appeal filed at the instance of the Revenue and it pertains to Assessment Year 2012-2013. Following grounds were urged before the Tribunal:-

> *"1. Ld. CIT(A) erred in deleting the addition made by the Assessing Officer on account of disallowance of interest claimed by the assessee holding that the recipient had offered the same in his income tax return.*
>
> *2. Ld. CIT(A) ought to have appreciated that the second proviso to section 40(a)(ia) of the Act inserted w.e.f. 01.04.2013 in the statute, which states that if the assessee is not found to be in default u/s 201(1) of the I.T. Act, no disallowance u/s 40(a)(ia) of the I.T. Act can be made, is not applicable to the year under consideration."*

2. Facts necessary for disposal of the appeal are stated in brief. Assessee is engaged in the business of manufacture and sale of incense sticks (agarbathis). For the year under consideration, the assessee declared income under normal provisions as well as u/s 115JB of the Act. The case was selected for scrutiny under CASS and accordingly notices were issued u/s 143(2) and 142(1) of the Act. During the course

of proceedings it was noticed that the assessee paid an amount of Rs. 49,08,441/- towards interest on ICDs received from Ambica Agarbathis. TDS was however remitted after the date of filing of return of income; Therefore the A.O. was of the opinion that the assessee is a defaulter within the meaning of section 201(1) of the Act and the provisions of section 40(a)(ia) are applicable.

3. The case of the assessee, on the other hand, was that the recipient of interest filed its return of income and hence assessee cannot be treated as a defaulter. It was also contended that the second proviso to section 40(a)(ia) of the Act is clarificatory and retrospective in operation and, if the recipient files its return of income, assessee cannot be treated as defaulter u/s 201(1) of the Act.

4. A.O. rejected the contention of the assessee on the ground that the insertion of second proviso was w.e.f 01.04.2013 whereas, the assessment year involved herein is 2012-13.

5. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) and reiterated its submissions which are summarised as under:

> "*Appellant also submitted that the addition made in this regard resulted in double taxation, one in the hands of the appellant itself by making a disallowance of expenditure and the same income was offered by the payee in its hands and thereby the same income is taxed twice. The provisions of section 40(a)(ia) as they existed prior to insertion of second proviso thereto, created undue hardships even in cases in which the appellant's withholding tax lapses did not result in any loss to the exchequer as the payee had included the sum received in its taxable income by filing the return. Accordingly, amendment by way of insertion of second proviso to section 40(a)(ia) which provided that the payer shall be deemed to have deducted and paid the tax on such sum (paid to the payee) on the date of furnishing of the return by the resident payee, including that sum as its income, is declaratory of the intention of the legislation. The appellant submitted that no discrimination is intended by the Legislature while inserting the second proviso between two classes of payers. The appellant placed Reliance on the following case laws for the proposition that proviso to section 40(a)(ia) is retrospective in application.*
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> - *CIT vs. Ansal Land Mark Township P Ltd (2015) 377 ITR 635 (Del.HC)*
> - *PVRPL-APRCL (JV) vs. ITO (ITA No. 736/Hyd/2015) dated 09.10.2015, ITAT, Hyderabad."*

6. Ld. CIT(A) verified the fact that the Ambica Agarbathis Aroma & Industries Ltd., filed its return and, since the amount paid by the assessee has been offered to tax by the recipient, the Ld. CIT(A) was of the opinion that the same cannot be disallowed in the hands of the assessee, by applying the provisions of section 40(a)(ia) of the Act, since identical issue has come up before the Hon'ble Delhi High Court which in turn was followed by the Tribunal wherein it was held that the second proviso was clarificatory and retrospective in operation. Ld. CIT(A) followed the aforecited decisions and held that the assessee cannot be treated as defaulter and thus the case falls outside the ken of section 40(a)(ia) of the Act. Aggrieved, Revenue is in appeal before the Tribunal.

7. Ld Departmental Representative strongly supported the order of the Assessing Officer, on the strength of the decision of the Hon'ble Kerala High Court in the case of Prudential Logistics & Transports vs. ITO (364 ITR 689) wherein the Court observed that the second proviso was inserted w.e.f. 01.04.2013 and hence it will not be retrospective in nature.

8. Learned Counsel for the Assessee, on the other hand, strongly relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township P Ltd (377 ITR 635) to contend that the second proviso is retrospective in operation. It was also submitted that the same income was offered by the payee in its hands in which event the same cannot be taxed twice – once in the hands of the assessee and the second time in the hands of the recipient. The second proviso was inserted only to avoid undue hardship to the assessee and hence it has to be treated as declaratory in character and applies retrospectively. He also referred to a decision of the ITAT Hyderabad "B" Bench in the case of PVRPL – APRCL (JV) vs. ITO (ITA No.

736/Hyd/2015) dated 09.10.2015 wherein the Bench referred to the issue in great detail and held that where two views are possible on an issue, the view in favour of the assessee has to be preferred and accordingly allowed the claim of the assessee in the light of the decision of the Hon'ble Delhi High Court (supra). Learned Counsel for the Assessee submitted that the decision of the Hon'ble Delhi High Court is later in point of time and hence the view taken by the Hon'ble Delhi High Court has to be preferred over the view taken by the Hon'ble Kerala High Court and at any rate, identical issue having been considered by the ITAT Hyderabad Bench, consistent with the view taken therein the order passed by the Ld. CIT(A) deserves to be affirmed.

9. We have carefully considered the rival submissions and perused the record. As rightly pointed out by the Learned Counsel for the Assessee, the view taken by the Ld. CIT(A) is consistent with the view taken by the Hon'ble Delhi High Court, which is a decision rendered in 2015 whereas, the decision of the Hon'ble Kerala High Court was rendered in 2014. Apart from this, ITAT Hyderabad Bench had considered identical issue wherein it was held that realisation of legitimate tax due is the main object of section 40(a)(ia) of the Act and it is met if the second proviso to section 40(a)(ia) of the Act is held as retrospective in character. We are in complete agreement with the order of the ITAT. Since the view taken by the Ld. CIT(A) is in consonance with the order of the ITAT, we uphold the order of the Ld. CIT(A) and dismiss the appeal.

10. Order pronounced in the open court on 26th March, 2018.

Sd/-	**Sd/-**
(S. RIFAUR RAHMAN)	**(D. MANMOHAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Hyderabad, Dated: 26th March, 2018.

OKK, Sr.PS

Copy to

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4.	Pr. CIT-1, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File