

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.46/Coch/2018 : Asst.Year 2008-2009

ITA No.47/Coch/2018 : Asst.Year 2009-2010

ITA No.48/Coch/2018 : Asst.Year 2010-2011

ITA No.49/Coch/2018 : Asst.Year 2011-2012

ITA No.50/Coch/2018 : Asst.Year 2012-2013

The Dy.Commissioner of Income-tax, Central Circle Thiruvananthapuram.	Vs.	M/s.K.K.Rocks & Granites India Private Ltd. TC-13/1635, Kottackal Pattom Thiruvananthapuram Pin – 695 004 <b>PAN : AABCK6946R.</b>
(Appellant)		(Respondent)

CO No.33/Coch/2018 : Asst.Year 2008-2009

CO No.34/Coch/2018 : Asst.Year 2009-2010

CO No.35/Coch/2018 : Asst.Year 2010-2011

CO No.36/Coch/2018 : Asst.Year 2011-2012

CO No.37/Coch/2018 : Asst.Year 2012-2013

M/s.K.K.Rocks & Granites India Private Ltd. TC-13/1635, Kottackal Pattom Thiruvananthapuram	Vs.	The Dy.Commissioner of Income-tax, Central Circle Thiruvananthapuram.
(Cross Objector)		(Respondent)

Revenue by : Sri.Santham Bose, CIT-DR

Assessee by : Sri. T.M.Sreedharan, Advocate

<b>Date of Hearing : 24.09.2018</b>	<b>Date of Pronouncement : 24.09.2018</b>
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**ORDER**

**Per Bench**

These appeals by the Revenue and the Cross Objections by the assessee are directed against the common order of the CIT(A) dated 23.10.2017. The relevant assessment years are

2008-2009, 2009-2010, 2010-2011, 2012 and 2012-2013. Since common issues are involved in these appeals and cross objections, we dispose off the same by this consolidated order.

2. The first common ground raised by the Revenue, in all its appeals is with regard to the deletion of addition u/s 40(a)(ia) of the I.T.Act for non-deduction of tax on royalty paid on the ground that the recipients of royalty have returned the royalty received as income in respective years.

3. The brief facts of the case are that while completing the assessment u/s 143(3) r.w.s. 153A of the Income-tax Act, the Assessing Officer has made additions u/s 40(a)(ia) of the I.T.Act for the assessment years as follows:-

Assessment Year	Addition (Rs.) (Royalty)
2008-2009	63,00,000
2009-2010	54,25,000
2010-2011	2,18,58,128
2011-2012	72,00,000
2012-2013	2,75,75,702

3.1 According to the Assessing Officer, the second proviso to section 40(a)(ia) was inserted by the Finance (No.2) Act, 2004 with effect from 01.04.2013 (assessment year 2013-2014) only, hence, no application for the years under consideration. However, the CIT(A) deleted the addition by placing reliance on the following judgments –

- (i) Punjab Goods Transport (P) Ltd. v. ITO (2017) Tax

- Pub (DT) 0116 (Kol.Tri.).
- (ii) CIT v. Ansal Land Mark Township (I) (P) Ltd. (2015) 377 ITR 635 (Delhi)
  - (iii) ITO v. Dr.Jaideep Kumar Sharma (2014) 52 Taxman.com 420 (Delhi-Trib.)
  - (iv) CIT v. Rajinder Kumar (2013) Tax pub. (DT) 1875 (Delhi HC)
  - (v) CIT v. Alom Extrusion Ltd. (2009) Tax Pub. (DT) 2109 (SC)

- and observed that since the recipients of the income, i.e., Directors, declared the same as income in their respective returns and paid tax on them, the disallowance u/s 40(a)(ia) for failure to deduct tax at source does not warrant.

4. Aggrieved by the orders of the CIT(A), the Revenue has come up in appeals before the Tribunal. The Departmental Representative strongly relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Thomas George Muthoot & Ors. [(2016) 287 CTR 101 (Ker.)]* wherein the Court has held that once it is found that there was a failure to deduct tax at source, the fact that the recipient has subsequently paid the tax, would not absolve the payee from the consequence of disallowance. On the other hand, the learned AR submitted that the second proviso to section 40(a)(ia) was inserted with effect from 01.04.2013 is curable in nature, and therefore, applicable retrospectively. For this purpose, he relied on the judgment of the Delhi High Court in the case of *Allied Motors Pvt. Ltd. v. CIT [(1997) ITR 677 (SC)]* and *CIT v. Alom Enterprises Ltd. (2009) 319 ITR 306*. He also relied on the judgment of the Hon'ble Supreme Court in the case of *CIT v. Calcutta Export Co. [(2018) 404 ITR 654 (SC)]*.

5. We have heard the rival submissions and perused the material on record. Admittedly, the issue has come up before the Hon'ble Supreme Court in the case of *CIT v. Calcutta Export Co. (supra)* wherein the Hon'ble Apex Court has held that amended provisions of section 40(a)(ia) of the I.T.Act should be interpreted liberally and equitably and should be applied retrospectively from the date when section 40(a)(ia) of the I.T.Act was inserted, so that the assessee could not suffer intended and deleterious consequences beyond what the object and purpose of provision mandates. However, in the present case the CIT(A) not at all verified whether the recipients of the royalty have declared the same in their respective returns of income and paid tax thereon before deleting the addition made by the Assessing Officer by invoking the provisions of section 40(a)(ia) of the I.T.Act. Therefore, we remit the disputed issue to the file of the CIT(A) to call for remand report from the A.O. to verify whether the recipients have declared the royalty in their respective returns and paid tax thereon, and decide the same accordingly.

5.1 This issue is partly allowed for statistical purposes for all the impugned assessment years.

6. The cross objections filed by the assessee are to support the deletion of addition made by the CIT(A) in respect of non-deduction of tax on royalty. Since we have remitted the issue to the file of CIT(A) for fresh consideration, the cross

objections filed by the assessee become infructuous. Accordingly, the COs are dismissed as infructuous.

7. The other issue raised by the Revenue in ITA No.49/Coch/2018 for assessment year 2011-2012 is with regard to the deletion of addition of hiring charges paid without TDS without any discussion by erroneously conflating this issue with the issue of non-deduction of tax on royalty payment. Similarly, in ITA No.50/Coch/2018 for assessment year 2012-2013, with regard to deletion of addition made towards concealed income by erroneously conflating this issue with the issue of non-deduction of tax on royalty payment.

8. We have heard the rival submissions and perused the material on record. Admittedly, the CIT(A) has not adjudicated the impugned issues in respect of assessment years 2011-2012 and 2012-2013. Hence, we remit these two issues to the file of the CIT(A) for *de novo* consideration.

9. In the result, the appeals filed by the Revenue are partly allowed for statistical purposes and the Cross objections filed by the assessee are dismissed.

Order pronounced on this 24<sup>th</sup> day of September, 2018.

Sd/-  
**(George George K)**  
JUDICIAL MEMBER

Sd/-  
**(Chandra Poojari)**  
ACCOUNTANT MEMBER

Cochin ; Dated : 24<sup>th</sup> September, 2018.  
Devdas\*

Copy to :-

1. The Appellant
2. The Respondent
3. The CIT(A)-III, Kochi
4. The CIT (Central), Kochi
5. The DR, ITAT, Cochin.
6. Guard File.

AR/ITAT-Cochin