



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no.3746/Mum./2018
(Assessment Year : 2009-10)

Madhuri Suresh Rungta
K.P. Associate, 222-8
Godika House, Sion (East)
Mumbai 400 022
PAN - AACPR4294F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-26(2), Mumbai

..... Respondent

Revenue by : Shri Ketan Vijani
Assessee by : Shri Chaitanya Anjaria

Date of Hearing - 18.04.2019

Date of Order - 30.04.2019

ORDER

The aforesaid appeal has been filed by the assessee challenging the order dated 29th January 2018, passed by the learned Commissioner (Appeals)-38, Mumbai, pertaining to the assessment year 2009-10.

2. In ground no.1, the assessee has challenged validity of re-opening of assessment under section 147 of the Income-tax Act, 1961 (for short "*the Act*"). Whereas in ground no.2, the assessee has challenged the disallowance made under section 40(a)(ia) of the Act.

3. At the outset, I propose to deal with ground no.2, challenging the disallowance made under section 40(a)(ia) of the Act.

4. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed her return of income on 29th September 2009, declaring total income of ₹ 33,03,490. In the course of assessment proceedings, the Assessing Officer while verifying the audit report found that an amount of ₹ 1,86,662, being TDS on payment of commission was paid to the Government account on 29th September 2009. On further verification of details of payment made by the assessee and tax deducted thereon, the Assessing Officer found that on commission payment of ₹ 14,27,668, though, the assessee had deducted tax at source but the TDS amount was not paid on/or before the due date. Accordingly, invoking the provisions of section 40(a)(ia) of the Act, he disallowed the commission payment of ₹ 14,27,6683

5. Though, the assessee challenged the aforesaid disallowance before learned Commissioner (Appeals), however, he also sustained the disallowance.

6. The learned Authorised Representative submitted, as per the Assessing Officer's own admission, the TDS amount was paid to Government account on 29th May 2009, which is much before the due date of filing of return of income for the impugned assessment year.

Thus, he submitted, as per the first proviso to section 40(a)(ia) of the Act, no disallowance could be made. In support of such contention, the learned Authorised Representative relied upon the decision of the Hon'ble Supreme Court in CIT v/s Calcutta Export Co., [2018] 404 ITR 654 (SC).

7. Learned Departmental Representative agreed that the issue is covered by the decision of the Hon'ble Supreme Court.

8. I have considered rival submissions and perused material on record. It is evident, the Assessing Officer has made the impugned disallowance under section 40(a)(ia) of the Act, since, the assessee has paid the TDS amount on 29th May 2009, i.e., after the end of financial year relevant to the assessment year under dispute. However, the first proviso to section 40(a)(ia) of the Act which was brought to the statute by Finance Act, 2010, w.e.f. 1st April 2010, makes it clear that no disallowance under section 40(a)(ia) of the Act can be made if the TDS amount is paid to the Government account before the due date of filing of return of income for that assessment year as provided under section 139(1) of the Act. It is now well settled that the aforesaid amendment brought to section 40(a)(ia) of the Act will apply retrospectively. Even, in the decision of Calcutta Export Co. (supra), the Hon'ble Supreme Court has expressed the aforesaid view. That being the case, the disallowance made under section 40(a)(ia) of

the Act deserves to be deleted. Accordingly, I do so. This ground is allowed.

9. In view of my decision in ground no.2, the issue raised in ground no.1, has become academic, hence, not required to be adjudicated.

10. In the result, appeal is partly allowed.

Order pronounced in the open Court on 30.04.2019

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 30.04.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai