

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 6343/DEL/2016
[A.Y 2013-14]**

M/s Neokraft Global Pvt Ltd
D - 4, Rajouri Garden
New Delhi

Vs.

The D.C.I.T
Circle - 18(1),
New Delhi

PAN No: AAACO 1354 J

[Appellant]

[Respondent]

Date of Hearing : 02.07.2019

Date of Pronouncement : 04.07.2019

Assessee by : Shri Varunish Sachdeva, CA

Revenue by : Ms. Rinku Singh, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 6, New Delhi dated 26.10.2016 pertaining to A.Y 2013-14 .

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs. 1,64,120/- made u/s 40(a)(ia) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Briefly stated, the facts of the case are that the assessee filed its return of income electronically on 29.09.2013 declaring total income of Rs. 2.47 crores after claiming deduction u/s 10A of the Act of Rs. 1.89 crores.

3. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has deposited TDS u/s 195 of the Act amounting to Rs. 46,262/- on 27.07.2013. The TDS was made on payment of Rs. 1,64,120/- paid as testing charges to M/s Irna Distribution Services, China. The Assessing Officer was of the opinion that since the TDS has been deposited after the due date, therefore, the testing charges of Rs. 1,64,120/- is not allowable u/s 40(a)(ia) of the Act.

4. The assessee was asked to justify its claim and in its reply, the assessee stated that the TDS has been deposited before filing the return of income. Therefore, the facts are squarely covered by the

amendment brought to section 40(a)(ia) of the Act. However, this claim of the assessee was discarded by the Assessing Officer who was of the firm belief that the said amendment is w.e.f. 01.04.2015 and therefore, not applicable to the subject Assessment year.

5. The assessee carried the matter before the CIT(A) but without any success.

6. We have heard the representatives of both the sides and have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the return of income was filed on 29.09.2013 whereas the tax was deposited on 27.07.2013 i.e. tax deducted at source was deposited before filing of the return.

7. This issue is no more res integra as the same has been settled in favour of the assessee and against the revenue by the decision of the Hon'ble Supreme Court in the case of M/s Calcutta Export Company in Civil Appeal Nos 4339-4340 of 2018 with other civil appeals. The point of consideration before the Hon'ble Supreme Court reads as under:

“Whether the amendment made by the Finance Act, 2010 in section 40(a)(ia) of the I.T. Act is retrospective in nature to apply to the present facts and circumstances of the case.”

8. After considering various judicial decisions, the Supreme Court held as under:

*“Hence, in light of the forgoing discussion and the binding effect of the judgment given in **Allied Motors (supra)**, we are of the view that the amended provision of Sec 40(a)(ia) of the IT Act should be interpreted liberally and equitable and applies retrospectively from the date when Section 40(a) (ia) was inserted i.e., with effect from the Assessment Year 2005-2006 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. As the developments with regard to the Section recorded above shows that the amendment was curative in nature, it should be given retrospective operation as if the amended provision existed even at the time of its insertion. Since the assessee has filed its returns on 01.08.2005 i.e., in accordance with the due date under the provisions of Section 139 IT Act, hence, is allowed to claim the*

benefit of the amendment made by Finance Act, 2010 to the provisions of Section 40(a)(ia) of the IT Act.

31) In light of the forgoing discussion, we are of the view that judgment of the High Court does not call for any interference and, hence, the appeals are accordingly dismissed. In view of the above, all the connecting appeals, interlocutory applications, if any, transferred cases as well as diary numbers are disposed off accordingly. Parties to bear cost on their own."

9. Respectfully following the decision of the Hon'ble Supreme Court, we direct the Assessing Officer to delete the addition of Rs. 1,64,120/-

10. In the result, the appeal of the assessee in ITA No. 6343/DEL/2016 is allowed.

The order is pronounced in the open court on 04.07.2019.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 04th July, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

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