

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ 'A'- अहमदाबाद।

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'A'**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
& MS. MADHUMITA ROY, JUDICIAL MEMBER**

आयकरअपीलसं.ITA No. 2601/Ahd/2017

निर्धारणवर्ष/Asstt. Year: 2013-14

Hipolin Ltd. 4 th Floor, 44 Madhuban Near Madalpur Under Bridge, Ellis Bridge, Ahmedabad PAN:AAA CH3 876 J	Vs.	ITO Ward- 2(1)(3), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri P. M. Mehta, AR
Revenue by :	Shri S. K. Dev, Sr. DR

सुनवाईकीतारीख/Date of Hearing : 05/09/2019

घोषणाकीतारीख/Date of Pronouncement: 06/09/2019

आदेश/ORDER

PER MADHUMITA ROY- JM:

The instant appeal filed by assessee is directed against the order passed by the Ld. CIT(A)-2, Ahmedabad dated 22.09.2017 arising out of the order dated 28.03.2016 passed by the ITO Ward-2(1)(3), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2013-14.

2. The sole issue raised in this appeal relates to disallowance of Rs. 35,64,706/- in terms of the provision of 40(a)(ia) for non-deduction of TDS on payment made to marketing agencies on account of promotion. The case of the assessee is this that payment made to the marketing agencies are duly included in their return of income and accordingly no addition is justified in view of the amended provision of Sec. 40(a)(ia) inserted by Finance Act 2012, when the recipients have duly offered income in their return of income and paid tax thereon.

3. At the time of the hearing of the instant appeal the Ld. Counsel appearing for the assessee before us submitted that the identical issue has been decided by the Co-ordinate Bench whereby and whereunder the addition has been restricted to 30% of the total addition made under section 40(a)(ia) of the Act. The order passed by the Co-ordinate Bench in ITA No. 1079/Ahd/2016 & 1178/Ahd/2016 for A.Y. 2012-13 has also been furnished before us. He thus prays for similar relief.

4. On the contrary, the Ld. DR relied upon the order passed by the authorities below.

5. Heard the parties, perused the relevant materials available on record. We have also carefully considered the order passed by the Co-ordinate Bench on the identical issue; the relevant portion whereof is as follows:-

“3. It appears from the records that the Learned Assessing Officer has disallowed Rs.52,45,749/- u/s 40(a)(ia) for non-deduction of TDS on payment made to the Marketing Agencies towards sales promotion expenses. Disallowance of Rs.87,130/- and Rs.2,19,120/- was also made u/s 40(a)(ia) of the Act for non-deduction of TDS on the payment made to Krishna Clearing Agencies and Maheshwari Enterprise respectively towards Transportation charges. Further that, an amount of Rs.5,49,100/- was also disallowed by the Learned AO u/s 40(a)(ia) for non-deduction of TDS on payment made towards consultancy charges. Such disallowance were also confirmed by the Learned CIT(A) in appeal preferred by the assessee. Hence the instant appeal before us.

4. At the time of hearing of the instant appeal, the Learned Advocate appearing for the assessee prays before us for the addition to be restricted to 30% of the total addition made under section 40(a)(ia) of the Act. In support of his contention he has also relied upon the judgment of different Courts including the judgment passed by the Learned Tribunal, Delhi Bench in the matter of Smt. Kanta Yadav-vs-ITO in ITA No.6312/Del/2016 for A.Y. 2012-13. The Learned representative appearing for the revenue has failed to controvert such contention made by the assessee.

5. Heard the respective parties, perused the relevant materials available on record including the judgment relied upon by the authorized representative appearing for the assessee. The relevant portion of the said judgment passed by the Hon'ble Delhi ITAT Bench while dealing in the identical issue is as follows:

“6. We have considered rival submissions and find that issue is covered in favour of the assessee by order of ITAT Jaipur Bench in the case of [Shri Rajendra Yadav vs. ITO](#) and Smt. Sonu Khandelwal vs. ITO. In these orders it was held that the disallowance u/s 40(a)(ia) to be restricted to 30% of the addition. In these orders the Tribunal has considered the amended provisions of [section 40\(a\)\(ia\)](#) of I.T. Act. In these orders the assessment year's involve was 2007-08 and 2008-09. In ITA No. 6312/Del/2016 [Smt. Kanta Yadav vs. ITO](#) the present appeal the assessment year is 2012-13. Therefore facts are identical. In this view of the matter and following the above decisions of Jaipur Bench, we set aside and modify the orders of the authorities

below and direct the Assessing Officer to restrict the addition to 30% of the total addition made on account of deduction of TDS u/s 40(a)(ia) of the Act.”

We find substance in the contentions and/or submissions made by the assessee’s Counsel taking into consideration the observation made by the Hon’ble ITAT Delhi Bench as above. It also appears that the issue is squarely covered by the aforesaid judgment. Hence, respectfully following the same we set aside and modify the orders passed by the authorities below. We further direct the Learned AO to restrict the addition to 30% of the total addition made on account of deduction of TDS u/s 40(a)(ia) of the Act. We find that the identical issue has really been decided by this Co-ordinate Bench. We, therefore, respectfully modify the order passed by the authorities below by directing the Ld. AO to restrict the addition with 30% of the total addition made on account of non-deduction of TDS under section 40(a)(ia) of the Act.

6. *In the result, assessee’s appeal is partly allowed.”*

6. We find that the identical issue has really been decided by this Co-ordinate Bench. We, therefore, in the absence of any changed circumstances, respectfully relying upon the same modify the order passed by the authorities below by directing the Ld. AO to restrict the addition to 30% of the total addition made on account of non-deduction of TDS under section 40(a)(ia) of the Act.

7. In the result, assessee’s appeal is partly allowed.

[Order pronounced in the Court on 06-09-2019.]

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 06/09/2019

TANMAY

TRUE COPY

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER

उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad