

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'D'

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

ITA No.247/AHD/2012

निर्धारण वर्ष/ Asstt.Year: **2008-09**

Agrawal Khurana (JV) MSK House Nr. Passport Office Ambawadi. AAAAA 8372 Q	Vs.	ITO (OSD) Range-9 Ahmedabad.
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ITA No.248/AHD/2012

निर्धारण वर्ष/ Asstt.Year: **2008-09**

NCC MSKEL(JV) MSK House Nr. Passport Office Ambawadi. AAAAN 4514 J	Vs.	ITO (OSD) Range-9 Ahmedabad.
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(Applicant)		(Responent)
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Assessee by :	Submission
Revenue by :	Sonia Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 29/08/2019

घोषणा की तारीख /Date of Pronouncement: 11/09/2019

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present two appeals are directed at the instance of the assesseees against separate orders of the Id.CIT(A)-XV, Ahmedabad dated 15.12.2011 passed in the Asstt.Yar 2008-09 on respective appeals of the appellants. Since common issue is involved in both the appeals, therefore, we heard them together and dispose of by this common order.

2. Solitary grievance of the assessee is that the Id.CIT(A) has erred in confirming the disallowance of Rs.39,85,391/- in the case of Agrawal Khurana (JV) and Rs.16,27,516/- in the case of NCC-MSKEL(JV) which were disallowed by the AO on the ground that the assessee failed to deposit TDS with respect to the above expenditure, and therefore, these amounts deserves to be disallowed under section 40(a)(ia) of the Act.

3. Brief facts of the case are that in the case of Agrawal Khurana (JV), the assessee has deducted the TDS from April to February for the Asstt.Year 2007-08. This amount was deposited in the Government account in the month of May, 2008 i.e. before the due date of filing of return under section 139(1). Similarly, in the case of NCC-MSKEL(JV), the assessee has deducted TDS from April 2007 to February, 2008 which were deposited in the month of May, 2008. The AO was of the view that these TDS amounts ought to have been deposited before 31.3.2008. Since they were deposited after the end of the year, therefore, the assesses were not entitled to the deduction. The stand of the assessee is that the section 40(a)(a) has been amended by Finance Act, 2010. This amendment has been held to be retrospective from the Asstt.Year 2005-06. This stand of the assessee was not accepted by both the Revenue authorities, hence, these appeals before the Tribunal.

4. It is contended that the issue in dispute is squarely covered by the decision of Hon'ble Supreme Court in the case of CIT Vs. Calcutta Export Company (2018) 404 ITR 654 (SC).

5. The Id.DR was unable controvert to this contentions of the Id.counsel for the assessee.

6. On due consideration of the above facts, we are of the view that the issue before the Hon'ble Supreme Court was whether the amendment made by the Finance Act, 2010 in section 40(a)(ia) of the Act is retrospective in nature and apply to the present facts of the case. The Hon'ble Court has held that amendment to section 40(a)(ia) by Finance Act, 2010 w.e.f. 1.4.2010 provide that TDS made during the previous year can be deposited with the Government by the due date of filing the return of income should be interpreted liberally and

equitably and applies retrospectively from the date when section 40(a)(ia) was inserted i.e., with effect from the assessment year 2005-06 so that an assessee should not suffer unintended consequences beyond what the object and purpose of the provision mandates. In view of this judgment of Hon'ble Supreme Court, it would reveal that both the assesseees have deposited TDS deducted by them before the due date of filing of the return, and therefore, no disallowance can be made. Accordingly, we allow both the appeals and delete impugned disallowance.

7. In the result, appeals of the assesseees are allowed.

Order pronounced in the Court on 11th September, 2019 at Ahmedabad.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**