

आयकर अपीलीय अधिकरण  
मुंबई पीठ " डी"  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
आअसं. 4549/मुं/2018 (नि.व.2014-15)  
ITA NO. 4549/MUM/2018 (A.Y.2014-15)

DCIT, Circle -2,  
2<sup>nd</sup> Floor, Mohan Plaza,  
Khadakpada, Wayale Nagar,  
Kalyan (W) – 421 301

: अपीलार्थी/ Appellant

**बनाम/** Vs.

Shri Madhav Suresh Donde,  
Anand Nagar, Nr.Yashwant Vidyalalya,  
Ashele Pada, Ulhasnagar – 421 003  
PAN:AJLPD-2313-D

: प्रत्यर्थी/ Respondent

**Appellant by** : Shri Pankaj Kumar ,Sr.AR-CIT  
**Respondent by** : None  
सुनवाई की तारीख/ : 08/12/2021  
**Date of Hearing**  
घोषणा की तारीख / : 08/12/2021  
**Date of Pronouncement**

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-3, Thane [in short ' the CIT(A)'], dated 01/05/2018 for the Assessment Year 2014-15.

2. The solitary issue raised by the Revenue in appeal is against the findings of CIT(A) in granting part relief to the assessee for non-deduction of tax at source on

the payments made to Sub-contractors during the Financial Year 2013-14 (A.Y.2014-15).

3. The brief facts of the case as emanating from records are : The assessee is a contractor. During the period relevant to the assessment year under appeal the assessee had made payments to Sub-contractors aggregating to Rs.5,20,87,775/- without deducting tax at source. The assessee admitted that the aforesaid payments to sub-contractors were made without deducting tax at source. The assessee submitted that as per the provisions of section 40(a)(ia) of the Income Tax Act, 1961 (in short 'the Act') as amended by the Finance (No.2) Act 2014 disallowance u/s. 40(a)(ia) be restricted to the extent of 30% of the amount on which tax is deductible. The Assessing Officer rejected the contentions of the assessee and made 100% disallowance of the amount on which the assessee was required to deduct tax at source. The Assessing Officer applied unamended provisions of section 40(a)(ia) of the Act . In the First Appellate proceedings, the CIT(A) after examining the facts of the case accepted the plea of assessee and restricted the disallowance u/s 40(a)(ia) to 30% of the payments made by the assessee to the Sub-contractors on which tax was not deducted at source. Against the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

4. Shri Pankaj Kumar, Sr. A.R representing the Department submitted that provisions of section 40(a)(ia) of the Act were amended by Finance (No.2) Act 2014 w.e.f. 01/04/2015. The Id.Departmental Representative vehemently contended that amended provisions would not apply to the Assessment Year 2014-15.

5. We have heard the submissions made by Id. Departmental Representative and have examined the orders of authorities below. A perusal of the impugned order shows that the CIT(A) following the decision of Tribunal in the case of Asphalt India Corporation vs. DCIT in ITA No.1869/Mum/2014 decided on 24/05/2017, wherein it has been held that the amendment to section 40(a)(ia) of the Act being clarificatory

in nature would operate retrospectively, granted part relief to the assessee by restricting disallowance u/s 40(a)(ia) of the Act to 30%.

6. Before proceeding further it would be relevant to refer to the provisions of section 40(a)(ia) of the Act, as amended by Finance (No.2) Act 2014:

*“Section 40: Notwithstanding anything to the contrary in sections 30 to the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession”,*

*(a) In the case of any assessee -*

*(ia) thirty per cent of any sum payable to a resident on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:*

*Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, **thirty per cent of** such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.”*

Prior to amendment, the provisions of section 40(a)(ia) of the Act mandate 100% disallowance of sum on which withholding tax was not deducted.

7. The clause (ia) to section 40(a)(ia) of the Act was inserted by the Finance Act 2004 w.e.f. 01/04/2005 with a view to augment compliance of TDS provisions. Thereafter, the said clause was amended from time to time by way of insertions of proviso and amendments to provisos. The 1<sup>st</sup> Proviso to section 40(a)(ia) of the Act was inserted by the Finance Act 2008 with retrospective effect from 01/04/2005. A reference to Explanatory Notes to the Finance Act 2008 would show that the proviso was introduced with retrospective effect to mitigate hardship caused by the provisions of section 40(a)(ia) of the Act. Thereafter, the 1<sup>st</sup> Proviso to section 40(a)(ia) of the Act was further amended w.e.f. 01/04/2010. The Finance (No.2) Act 2014 further brought an amendment to the 1<sup>st</sup> Proviso to section 40(a)(ia). The rationale behind the amendment to 1<sup>st</sup> Proviso as per Explanatory Memorandum to

Finance (No.2) Bill 2014 would show that the amendment has been brought to remove the hardship faced by the assesseees. For the ready reference the relevant extract of clause 14 of Explanatory Memorandum to Finance (No.2) Bill 2014 is reproduced herein below:

*“As mentioned above, in case of non-deduction or non-payment of tax deducted at source (TDS) from certain payments made to residents, the entire amount of expenditure on which tax was deductible is disallowed under section 40(a)(ia) for the purposes of computing income under the head "Profits and gains of business or profession". The disallowance of whole of the amount of expenditure results into undue hardship.*

*In order to reduce the hardship, it is proposed that in case of non-deduction or non-payment of TDS on payments made to residents as specified in section 40(a)(ia) of the Act, the disallowance shall be restricted to 30% of the amount of expenditure claimed.”*

Amendment by the Finance (No.2) Act 2014 has brought relief to the assesseees by restricting disallowance to the extent of 30% of the sum payable on which tax was deductible at source instead of 100%. It is a well settled proposition that wherever amendments are introduced to remove hardship /mitigate the problems or remove ambiguities, the same would be clarificatory/curative in nature. [Re: CIT vs. Podar Cement (P) Ltd., 226 ITR 625(SC)] Hence, the amendment brought in by Finance (No.2) Act 2014 to the 1<sup>st</sup> Proviso to section 40(a)(ia) is clarificatory in nature and would operate retrospectively. The Co-ordinate Bench of Tribunal while dealing with similar issue in the case of Asphalt India Corporation vs. DCIT (supra) relied on decisions of Tribunal in the case of Rajendra Yadav in ITA/895/Jp/2012 decided on 29/01/2016 and Amruta Quarry Works ITA/1481/Ahd/2013 decided on 19/07/2016 to hold that amendment to section 40(a)(ia) of the Act, restricting disallowance to 30% is retrospective.

The CIT(A) following the order of Tribunal in the case of Asphalt India Corporation vs. DCIT (supra), granted relief to the assessee by restricting disallowance u/s.

40(a)(ia) of the Act to 30%. We find no infirmity in the order of CIT(A), hence, the same is upheld and the appeal of Revenue is dismissed.

8. In the result, appeal by the Revenue is dismissed.

Order pronounced in the open Court on Tuesday, the 8<sup>th</sup> day of December, 2021.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 08/12/2021

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषित**Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai