

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.175/Kol/2022
Assessment year: 2010-11

Purulia Central Co-Op. Bank Ltd.Appellant
Ranchi Road, Purulia-723101.
[PAN: AAAJP0148E]

vs.

ACIT, Circle-3(2), Purulia.....Respondent

Appearances by:

Shri M. Goenka, CA, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 19, 2023

Date of pronouncing the order : February 08, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 04.02.2020 of the Commissioner of Income Tax (Appeals), Asansol [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. That the Learned CIT(Appeal) Asansol erred in rejecting application under section 154 on the ground that no apparent mistake in records.

2. That mistake of law is mistake rectifiable as per decision of the honourable Supreme Court in the case M. K. Venkatarchram vs Bombay Dying & Mgg Co Ltd. 1958 ITR 143 (SC)

3. That the Finance Bill No. (2) 2014 reduced the disallowance of expenditure where no TDS has been deducted to 30% instead of 100% and effective from assessment year 2015-16

4. That it may be noted that to address the hardship caused by sec.40(a)(ca) amendment was made in Finance Act, 2010 and in Finance Act, 2012. All these amendments are stated in the Finance Act applicable prospectively. however, courts while interpreting those amendments had held that these are remedial and hence have retrospective effect. The Calcutta High Court in the case of CIT vs. Vergin Creation ITA No. 302 of 2011 held that the amendment made to sec.40(a)(a) by Finance Act, 2010 of allowing benefit of payment made before the due date of filling return is retrospective in operation. Similarly the Delhi High our in the case of the Commissioner of Income Tax XIII vs Naresh Kr.,(2013)262 CTR 289 (Delhi HC held that amendment made by the Finance Act 2010 is remedial and will have retrospective application.

In the case of Rajiv kr.Agarewal vs Addi CIT ITA No. 337 Agro 2013 dt. 29th May 2013 Agro Bench of ITAT has held that the amendment made by Finance Act, 2012 of not treating the assessee in default in case of deduction has included such as income and paid tax thereon as remedial and retrospective.

5. That in view of these judgments and particularly given in memorandum explaining the provision of the Finance No. (2) Bill 2014 that the amendment is being made to address the hardship, it is a remedial action and should be retrospective in effect.

6. That the amendment made by Finance (No. 2) Act in Sec 40 (a)(ia) in nature to reduce the hardship and should retrospective in effect.

7. That the amendment made in Finance Act No. 2 Bill 2014 was made after posing of the original order of CIT (Appeal)

8. That Agra Bench of Income Tax Tribunal held that amendment to section 40(a)(ia) by the way of second proviso is to avoid intendeds hardship and have retrospective in effect.

9. That Jaipur Bench in the case Rajendra Yadav (ITR No. 895/JP/2012 dt. 29/01/16 and Delhi Bench in the case R.H. International Ltd. ITA No.6724/Del/2018 dt. 20/03/19 that the amendment made by Finance Act 2014 shall be retrospective in effect.

10. That in views of above Judgments only 30% of Rs. 422537/- that is Rs.126751/-should be disallowed.

11. That any other grounds if any shall be urged at the time of hearing.”

3. A perusal of the above grounds of appeal reveals that the sole issue for determination before the Tribunal is ‘whether the amendment made by the Finance (No. 2) Act, 2014 to Section 40(a)(ia) of the Act is to be applied retrospectively or not’.

4. We find that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of "Shree Choudhary Transport Company vs. Income Tax Officer" [2020] 118 taxmann.com 47 (SC), wherein, the Hon'ble Supreme Court has held that the amendment made by the Finance (No.2) Act, 2014, could not be stretched anterior to the date of its substitution so as to reach the assessment year 2005-06. That the amendment by the Finance Act, 2014 was specifically made applicable *w.e.f.* 01/04/2015 and clearly represents the will of the legislature so as to what is to be deducted or what percentage of deduction is not to be allowed for a particular eventuality, for assessment year 2015-16. That the principles adopted by the Hon'ble Supreme Court in the case of *Commissioner of Income-tax, Kolkata v. Calcutta Export Company* [2018] 93 taxmann.com 51 (SC) dealing with curative amendment brought by the Finance Act, 2010, relating more to the procedural aspects concerning deposit by TDS, cannot be applied to the amendment of the substantive provisions by Finance Act (No. 2) Act, 2014.

5. Respectfully following the decision of the Hon'ble Supreme Court in the case of "Shree Choudhary Transport Company" (supra), we dismiss the appeal of the assessee.

6. In the result, the appeal of the assessee stands dismissed.

Kolkata, the 8th February, 2023.

Sd/-

[डॉक्टर मनीष बोरड /Dr. Manish Borad]
लेखा सदस्य /Accountant Member

Sd/-

[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member

Dated: 08.02.2023.

RS

Copy of the order forwarded to:

1. Purulia Central Co-Op. Bank Ltd.
2. ACIT, Circle-3(2), Purulia
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches