IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI RAHUL CHAUDHARY, JM

ITA Nos. 464, 465 & 496/Coch/2025
Assessment Years: 2006-07, 2013-14 & 2010-11

Muthoot Fincorp Limited .... Appellant
Miuthoot Centre, Thiruvananthapuram 695001
[PAN: AACCM1453E]

vs.

JCIT, Special Range, Thiruvananthapuram .... Respondent

Assessee by:	Shri R. Krishnan, CA
Revenue by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	19.08.2025
Date of Pronouncement:	22.08.2025

ORDER

Per: Inturi Rama Rao, AM

These are appeals filed by the assessee against different orders of Commissioner of Income Tax (Appeals)-3, Kochi [CIT(A)] dated 25.04.2025 for Assessment Years (AY) 2006-07, 2013-14 & 2010-11.

2. Since identical issues and facts are involved in these appeals, they are heard together and disposed of by this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal bearing ITA No. 464/Coch/2023 for AY 2006-07 are stated herein.

4. Brief facts of the case are that the appellant is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of power generation and NBFC. The return of income for AY 2006-07 was filed and the assessment was completed u/s. 143(3) of the Income Tax Act, 1961 (the Act) vide order dated 23.08.2008. Subsequently, the assessment was reopened by issuing notice u/s. 148 of the Act. The reassessment was completed vide order dated 28.03.2013 passed u/s. 143(3) r.w.s. 147 of the Act after making addition of Rs. 7,33,77,497/- being the amount paid to Muthoot Pappachan Consultancy & Management (hereinafter called "MPCMS") towards professional charges/consultancy u/s. 40(a)(ia) for non-deduction of TDS. On further appeal before the CIT(A), the CIT(A) confirmed the addition. However, on further appeal before this Tribunal, the Tribunal vide order in ITA Nos. 61 & 62/Coch/2014 dated 27.06.2014 remanded the matter back to the file of AO for passing fresh assessment order in view of the order of the Hon'ble Kerala High Court in assessee's own case for 2008-09. Pursuant to the remand made by the Tribunal, the AO passed assessment order dated 30.03.2016 after making addition of Rs. 6,01,34,577/- being the payment made to MPCMS for non deduction of tax at source.

5. The factual background leading to the above addition is that during the previous year relevant to the assessment year under consideration, the appellant company paid a sum of Rs.

7,33,77,497/- to MPCMS towards the services rendered by the MPCMS. Out of the above said sum, only an amount of Rs. 1,32,42,920/- was paid towards fees for services on which tax was deducted at source and on the balance amount no tax was deducted at source. It was claimed before the AO that the balance amount represents the reimbursement of expenditure. No profit element was embedded. Therefore, no tax was deducted at source. However, the AO was of the opinion that the entire payment was made in terms of the agreement entered into by the appellant company with MPPCMS on 01.04.0224 which is valid for a period of five years and, therefore, it is nothing but payment for services of contract which attracts provisions of tax deduction at source u/s. 194C of the Act. Accordingly, the AO made addition of Rs. 6,01,35,577/- invoking provisions of section 40(a)(ia) of the Act. While doing so, the AO rejected the contention of the appellant that in the assessment year 2008-09, in the assessment made pursuant to the order of remand made by the Hon'ble High Court, no addition was made by the AO on the same payment. The appellant had raised separate bills for professional services and reimbursement of charges and, therefore, it cannot be treated as a composite contract. The AO also placed reliance on the CBDT Circular No. 715 dated 08.08.1995

6. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO.

7. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

8. The learned counsel for the assessee contends that the AO, for AY 2008-09, pursuant to the remand order by the Hon'ble High Court, accepted the contention of the appellant that there was no obligation to deduct tax at source. Accordingly, no addition was made invoking provisions of section 40(a)(ia) of the Act. He submits that in the absence of any change in facts, following the principle of consistency, the AO ought not have made the addition. It is further contended that the material on record clearly indicates that it is a mere reimbursement of expenditure and, therefore, there was no obligation to deduct tax at source. He further submits that the contractor, i.e., MPCMS raised separate bills for reimbursement of expenditure on monthly basis and professional fees of annual basis. Finally, it is argued that the MPCMS, i.e. the payee had already shown this receipts as income. Therefore, in view of the second proviso inserted by Finance Act, 2013 to section 40(a)(ia) no TDS is required to be made.

9. On the other hand, ld. CIT-DR submits that the principles of *res judicata* have no application to income tax proceedings simply because the claim of the assessee was accepted in earlier years does not mean that the AO is precluded from examining the same issue again and apply the correct position of law. He also placed reliance on CBDT Circular No. 715 dated 08.08.1995. Referring to the

answer to question 30, he submits that tax deduction at source had to be made on the gross amount of the bills including reimbursement of expenditure. As regards applicability of second proviso to section 40(a)(ia), the appellant had not filed any application as envisaged in section 40(a)(ia) and, therefore the appellant cannot be granted the benefit of second proviso to section 40(a)(ia) of the Act. He further submits that this pleas has been taken for the first time and it cannot be entertained.

10. We have heard the rival contentions and perused the material available on record. The solitary issue that arises for our consideration is whether the CIT(A) was correct in law in upholding the disallowance of charges paid to MPCMS towards professional charges made by the appellant for non deduction of tax at source on such payments invoking provisions of section 40(a)(ia) of the Act.

11. Brief facts of the case are that the appellant had engaged services of an organization called MPCMS for rendering professional services in terms of agreement entered into by it on 01.04.2004, which is valid for a period of 5 years. This entity is a sister concern of the appellant company. During the previous year relevant to the assessment year under consideration, the appellant paid total sum of Rs. 7,33,77, 497/-. Out of the said sum of Rs. 7,33,77,497/- the appellant had deducted TDS only on a sum of Rs. 1,32,42,920/- and on the balance amount no tax was deducted at source treating it as mere reimbursement of expenditure to MPCMS.

The said payee, i.e. MPCMS also raised different bills. The AO was of the opinion that the money paid towards management consultancy charges under composite contract and the contract did not envisage any bifurcation of the amounts. The appellant was liable to deduct tax at source on entire amount paid to the MPCMS. As the appellant had failed to deduct tax at source on the entire amount, the AO invoking provisions of section 40(a)(ia) made addition of a sum of Rs. 6.63 crores. Even on appeal before the CIT(A) the same was confirmed by the CIT(A). There is no dispute about the applicability of provisions of section 194C of the Act on such payments. The Hon'ble Apex Court in the case of Transmission Corporation of A.P. Ltd v. CIT [1999] 239 ITR 587 observed that provisions of section 194C of the Act reveals the intention of the legislature to enforce tax even in respect of gross sums even though the whole of such sum does not represent the income chargeable under the Act. Non deduction of tax at source definitely attracts deduction u/s. 40(a)(ia) of the Act. The Hon'ble Apex Court in the context of provisions of section 195 held as under: -

> *"The purpose of sub-section (1) of section 195 is to see that the sum which is chargeable under section 4 of the Act for levy and collection of income-tax, the payee should deduct income-tax thereon at the rates in force, if the amount is to be paid to a non-resident. The said provision is for tentative deduction of income-tax thereon subject to regular assessment and by the deduction of income-tax, rights of the parties are not, in any manner, adversely affected. Further, the rights of payee or recipient are fully safeguarded under sections*

> *195(2), 195(3) and 197. Only thing which is required to be done by them is to file an application for determination by the Assessing Officer that such sum would not be chargeable to tax in the case of recipient, or for determination of appropriate proportion of such sum so chargeable, or for grant of certificate authorising recipient to receive the amount without deduction of tax, or deduction of income-tax at any lower rates or no deduction. On such determination, tax at appropriate rate would be deducted at the source. If no such application is filed, income-tax on such sum is to be deducted and it is the statutory obligation of the person responsible for paying such 'sum' to deduct tax thereon before making payment. He has to discharge the obligation of tax deduction at source."*

12. Similar provisions are incorporated in the context of provisions of section 194C. The safeguards in the context of section 194C are provided u/s. 197 & 197A of the Act. If the payee was of the opinion that the entire income is not chargeable to tax the rights of the payee are safeguarded u/s. 197 & 197A but the only requirement is to file an application for determination of income to the AO that such sum would not be chargeable to tax in the case of the recipient or for determination of appropriate portion of such sum chargeable or for grant of certificate authorising the recipient to receive the amount without deduction of tax or deduction of income tax at lower rate or no deduction. It is not the case of the appellant that the recipient had obtained any such certificate from the AO. Further, we find that the appellant had not discharged the onus of proving that it is a mere reimbursement of expenditure made by the appellant. The provisions of section 194C does not permit the

recipient to bifurcate the gross sum in terms of the contract into two different heads. When the law mandates a particular thing to be done in a particular manner, then it has to be done in the manner. In this connection, attention is drawn to the decision of the Privy Council in Nazir Ahmad v. King Emperor, AIR 1936 PC 253 which dictum has been followed by the honourable Supreme Court in UPSC v. S. Papaiah [1997] 7 SCC 614 and many other cases, Tamil Nadu Medical Officers Association v. Union of India [2020] SCC Online SC 699 and State of Jharkhand v. Ambay Cements [2005] 1 SCC 368. Provisions of section 40(a)(ia) are automatically attracts on failure of the assessee to deduct tax on the sum paid by him.

13. The submission of the learned counsel for the assessee that second proviso to section 40(a)(ia) shall have retrospective effect cannot be accepted in view of the decision of the Hon'ble Kerala High Court in the case of Thomas George Muthoot v. CIT 235 Taxman 246, relevant portion of which is extracted as below: -

> *“**7.** The first contention raised before us was that under Section 194A, an individual is excluded from the liability to deduct tax and that therefore, disallowance is without jurisdiction. In order to answer this contention, reference to Section 194A(1) and its proviso is necessary and therefore, these provisions are extracted for reference:*
>
> *"(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or*

by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:

Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section."

8. *Reading of the provision shows that individuals and Hindu undivided family are excluded in Section 194A (1) and therefore, are not liable to deduct tax at source. However, by virtue of the proviso which was inserted by the Finance Act, 2002, the benefit of exclusion is restricted only to those individuals and Hindu undivided families, whose total sales, gross receipts or turnover from business or profession do not exceed the monetary limit specified under Section 44AB(a) or (b) of the Act during the financial year immediately preceding the financial year in which such interest is credited or paid.*

9. *In the light of the proviso to Section 194A(1), if the appellants are claiming the exemption provided in the Section, the burden is on them to establish that they, being individuals, satisfied the conditions specified in the proviso to the Section. From the orders impugned, we find that no such contention was urged before the statutory authorities. In fact the Tribunal has entered into a specified finding that;*

"in this case, business income of the assessee exceeded the limit prescribed u/s 44AB of the Act, therefore the assessee, even though an individual is liable to deduct tax while paying interest to the firm u/s 194A(1) of the IT Act".

10. *No material whatsoever has been supplied by the appellants to contradict this specific factual finding recorded by the Appellate Tribunal. Therefore, this contention cannot be accepted.*

11. *The second contention raised was that second proviso to Section 40(a)(ia) of the Act, introduced by the Finance Act, 2012, being retrospective in operation, disallowance could not have been ordered invoking Section 40 (a)(ia) of the Act. This contention was sought to be substantiated relying on the judgments in Allied Motor (P.) Ltd. v. CIT [1997] 224 ITR 677/91 Taxman 205 (SC) and CIT v. Alom Extrusions Ltd. [2009] 319 ITR 306/185 Taxman 416 (SC).*

12. *The second proviso to Section 40(a)(ia) of the Act reads thus:*

"Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVIIB on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso."

13. *Admittedly this proviso was inserted by Finance Act, 2012 and came into force with effect from 01.04.2013. The fact the second proviso was introduced with effect from 01.04.2013 is expressly made clear by the provisions of the Finance Act, 2012 itself. This legal position was clarified by this Court in Prudential Logistics and Transports v. ITO [2014] 364 ITR 689/51 taxmann.com 426/[2015] 228 Taxman 320 (Mag.).*

14. *However, counsel for the appellants placed reliance on the judgment in Allied Motor (P.) Ltd. (supra). That was a case where the Apex Court was considering the scope and applicability of the first proviso to Section 43B inserted by the Finance Act, 1987, with effect from 01.04.1988. On examination of the legislative history the court found that the language of Section 43B was causing undue hardship to the taxpayers and the first proviso was designed to eliminate unintended consequences which cause undue hardship to the assessees and which made the provision unworkable or unjust*

in a specific situation. Accordingly, the court held that the proviso was remedial and curative in nature and on that basis held the proviso to be retrospective in operation. In Commissioner of Income Tax (supra) also following the judgment in Allied Motor (P.) Ltd. (supra), the Apex Court held that provisions of the Finance Act, 2003 by which the second proviso to Section 43B was deleted and the first proviso was amended, were curative in nature and therefore retrospective.

15. *A statutory provision, unless otherwise expressly stated to be retrospective or by intendment shown to be retrospective, is always prospective in operation. Finance Act, 2012 shows that the second proviso to Section 40 (a)(ia) has been introduced with effect from 01.04.2013. Reading of the second proviso does not show that it was meant or intended to be curative or remedial in nature, and even the appellants did not have such a case. Instead, by this proviso, an additional benefit was conferred on the assessees. Such a provision can only be prospective as held by this Court in Prudential Logistics and Transports (supra). Therefore, this contention raised also cannot be accepted.*

16. *Relying on the Apex Court judgment in Hindustan Coca Cola Beverage (P.) Ltd. v. CIT [2007] 293 ITR 226/163 Taxman 355, learned Senior Counsel for the appellants contended that the recipients of the amounts paid by the appellants, the firms of which they are partners, have already paid tax and that therefore, it is illegal to disallow the interest paid. First of all, Section 40(a)(ia) is in very categoric terms and the provision is automatically attracted, on the failure of an assessee to deduct tax on the interest paid by him. Therefore, going by the language of Section 40(a)(ia), once it is found that there is failure to deduct tax at source, the fact that the recipient has subsequently paid tax, will not absolve the payee from the consequence of disallowance. In so far as the judgment in Hindustan Coca Cola Beverage (P.) Ltd.'s case (Supra) is concerned, that was rendered in the context of*

section 201(1), the object of which being compensatory in nature, cannot be of any assistance to the appellants to resist a proceeding under Section 40(i)(ia) of the Act. This contention, therefore, is only to be rejected.

17. *Another contention that was pressed into service was that the appellants had already paid the amount and therefore, the provisions of Section 40(a)(ia), applicable only in respect of the amount which remains to be payable on the last day of the financial year, is not attracted. Therefore, according to the appellants, disallowance cannot be sustained. This contention was sought to be substantiated by relying on the judgment of the Allahabad High Court in CIT v. Vector Shipping Services (P.) Ltd. [2013] 357 ITR 642/38 taxmann.com 77/218 Taxman 93 (Mag.). Primarily, this contention should be answered with reference to the language used in the statutory provision. Section 40(a)(ia) makes it clear that the consequence of disallowance is attracted when an individual, who is liable to deduct tax on any interest payable to a resident on which tax is deductible at source, commits default. The language of the Section does not warrant an interpretation that it is attracted only if the interest remains payable on the last day of the financial year. If this contention is to be accepted, this Court will have to alter the language of Section 40(a) (ia) and such an interpretation is not permissible. This view that we have taken is supported by judgments of the Calcutta High Court in CIT v. Crescent Exports Syndicate [2013] 216 Taxman 258/33 taxmann.com 250 and the Gujarat High Court in the case of CIT v. Sikandarkhan N Tunvar [2013] 357 ITR 312/33 taxmann.com 133/[2014] 220 Taxman 256 (Mag.), which have been relied on by the Tribunal.*

Resultantly, we do not find any merit in the contentions and questions of law are answered against the assessees. Appeals are only to be dismissed and we do so."

14. Further, the observation made by the CIT(A) is that the appellant had not filed certificate as envisaged in the second proviso

remains uncontroverted. Therefore, the benefit of second proviso cannot be granted to the appellant.

15. The principle of consistency cannot be applied at the cost of well settled position of law and moreover the appellant had not laid down factual foundation proving the existence of same facts as that of AY 2008-09. Thus, we do not find any merit in the contentions raised on behalf of the appellant.

16. Since identical issues and facts are involved in assessee's appeals ITA Nos. 465 & 496/Coch/20254, our findings in ITA No. 464/Coch/2025 shall apply mutatis mutandis to these appeals also.

17. In the result, the appeals filed by the assessee stand dismissed.

Order pronounced in the open court on 22nd August, 2025.

Sd/-	Sd/-
(RAHUL CHAUDHARY)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Cochin, Dated: 22nd August, 2025

n.p.

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