

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 2454 & 2455/KOL/2024
Assessment Years: 2011-12 & 2012-13**

Shreyans Overseas Pvt. Ltd. (Appellant)	Vs.	ITO, Ward-8(2), Kolkata (Respondent)
PAN: AAJCS5050N		

Appearances:

Assessee represented by : Miraj D. Shah, AR.
Department represented by : Sallong Yaden, Addl. CIT(DR).
Date of concluding the hearing : 07-August-2025
Date of pronouncing the order : 03-November-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

These appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2011-12 and 2012-13 dated 28.08.2024, which have been passed against the assessment orders u/s 143(3)/263 of the Act, dated 28.12.2016 and u/s 143(3) of the Act dated 28.03.2015, respectively. Since the issues are common, both the appeals were heard together and are being decided vide this common order for the sake of convenience and brevity.

1.1. The Registry has informed that the both these appeals are barred by limitation by 34 days. The assessee has filed a petition for condonation of delay stating that he had received a call from the

Jurisdictional Assessing Officer's office regarding the collection of demand and passing of appellate order dismissing the appeal. The assessee was unaware of the appellate order. Thereafter, he approached the Counsel for filing the appeal before the Tribunal. Due to this there is delay in filing of the appeal. After perusing the same, we find force in the reasons mentioned therein and are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeals within statutory time limit. We, therefore, condone the delay and admit the appeals for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

I. ITA No. 2454/KOL/2024, AY 2011-12:

"1. That the Order passed u/s 250 is bad in law as well as on facts of the case.

2. That the Hon'ble Commissioner of Income Tax (A) erred in law as well as on facts of the case by confirming the action of the Ld. Assessing Officer of disallowing a sum of Rs.33,61,400/- paid to M/s Suryamukhi Projects Pvt. Ltd. u/s 40(a)(ia) for non-deduction of TDS.

3. That the appellant craves to leave, add, amend or adduce any of the grounds of appeal during the course of appellate proceedings.

II. ITA No. 2455/KOL/2024, AY 2012-13:

"1. That the Order passed u/s 250 is bad in law as well as on facts of the case.

2. That the Hon'ble Commissioner of Income Tax (A) erred in law as well as on facts of the case by confirming the action of the Ld. Assessing Officer of disallowing a sum of Rs. 1,59,39,600/- paid to M/s Suryamukhi Projects Pvt. Ltd. and M/s Snowfall Tradelink Pvt. Ltd. u/s 40(a)(ia) for non-deduction of TDS.

3. That the appellant craves to leave, add, amend or adduce any of the grounds of appeal during the course of appellate proceedings."



3. We shall take up ITA No. 2454/KOL/2024 for AY 2011-12 for adjudication first as the lead case. Brief facts of the case are that the assessee is a company engaged in the business of commission agency and had filed its return of income on 30.09.2011 showing total income of ₹16,02,245/-. The case was selected for scrutiny through Computer Assisted Scrutiny Selection (in short 'CASS'). Accordingly, notices u/s 143(2) and 142(1) of the Act were issued to the assessee. The Assessing Officer (hereinafter referred to as Ld. 'AO') framed the assessment u/s 143(3) of the Act on 18.02.2014. The said assessment order was set aside by the Ld. C.I.T., Kolkata-3 vide order under section 263 of the Act dated 04/12/2015 on the issue of non-deduction of TDS on commission payments made to a concern named M/s. Suryamukhi Project Pvt. Ltd. ("SPPL") and the assessee was also showing income from commission. Thereafter the assessment order was passed on 28.12.2016 after making an addition of ₹33,61,400/- u/s 40(a)(ia) of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee holding that the assessee had not deducted TDS on the payments made to M/s. Suryamukhi Project Pvt. Ltd. According to him, the stated reasons for not deducting the TDS were not acceptable and the amended proviso to section 201 of the Act was also not applicable in the case of the assessee i.e. the assessee was not covered by the second proviso to section 40(a)(ia) of the Act. Thus, the Ld. CIT(A) held that the Assessing Officer had rightly made the addition u/s 40(a)(ia) of the Act.
4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.



5. Rival contentions were heard and the submissions made have been examined. The Ld. CIT(A) issued notice for hearing, in response to which the assessee filed submission. A perusal of the assessment order u/s 143(3)/263 of the Act dated 28.12.2016 shows that the assessee had filed the TDS exemption certificate from the ITO (TDS) Ward 3(2), Kolkata but on verification by the Ld. AO, the ITO (TDS) Ward 3(2), Kolkata vide reply dated 13/12/2016 informed the Ld. AO that the TDS exemption certificate was not issued by his office. On this ground, the Ld. AO made the addition. The assessee also relied upon the decision of Hindustan Coca-Cola Beverage Pvt. Ltd. vs CIT [2007] 293 ITR 226 (SC) in support of its argument, and also relied upon the proviso to section 201(1) of the Act to state that it is not an assessee default. Form No. 26A was also submitted with respect to the transactions in question before the Ld. CIT(A). The Ld. CIT(A) has held in para 7.1 of his order that the decision of Hindustan Coca-Cola Beverage Private Ltd (supra) was in the context of whether any amount should be recovered from the deductor in case of short deduction of TDS and the same does not cover the addition made under section 40(a)(ia) of the Act. Further, the proviso to section 201 relied upon by the assessee was also not applicable to the facts of the case of the assessee for F.Y. 2012 and the contention was, therefore, not accepted. As regards Form No. 26A filed by the assessee, the Ld. CIT(A) examined the same and noted that the deductee had filed the return on 24.11.2021 showing total income of ₹10,90,007/- on a turnover of ₹301,46,71,691/-. It is stated in the appeal order that the turnover disclosed by the deductee is inclusive of the commission paid by the assessee. The Ld. CIT(A) was of the view that the deductee had shown meagre income on a huge turnover and since it had submitted fake certificates for lower deduction of tax, these



facts cast serious doubts on the credibility and also the nature of transactions in question. The stated reason for not deducting TDS were not acceptable and the amended proviso was also not applicable in the case of the appellant, therefore, the payments amounting to ₹33,61,400/- made without deducting the TDS were squarely hit by section 40(a)(ia) of the Act and the appeal was, therefore, dismissed. The Ld. DR relied upon the order of the Ld. CIT(A) and requested that the same may be upheld.

6. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). The disallowance was upheld because the required certificates filed by the assessee for no deduction of tax at source were found to be not issued by the Assessing Officer concerned and were treated as fake by the Ld. AO as well as by the Ld. CIT(A). The assessee has also relied upon the decision of Madhu Transport Company Private Limited v ITO, Ward-II (1) in ITA No. 1233/KOL/2024 for A.Y. 2008-09 dated 23.04.2025 in which reliance has been placed on the decision of Hindustan Coca Cola (supra). The Bench was of the view that the fresh certificates from the ITO (TDS) Ward 59(3), Kolkata being filed now were not filed before either the Ld. AO or the Ld. CIT(A). Therefore, we deem it appropriate to set aside the order of the Ld. CIT(A) and remand the matter to the Ld. AO as the assessee has filed Form No. 26A for the deductee and also fresh certificates under section 197 of the Act dated 01.04.2010 for the financial year 2010-11 issued by the ITO (TDS), Ward 59(3), Kolkata which shall be examined by the Ld. AO and necessary relief shall be provided as per law. As regards the non-applicability of the 2nd Proviso to the facts of the case of the assessee, the issue came up in the case of Commissioner of Income-tax, Kolkata

vs. Calcutta Export Company [2018] 93 taxmann.com 51 (SC)/[2018] 255 Taxman 293 (SC)/[2018] 404 ITR 654 (SC)/[2018] 302 CTR 201 (SC)[24-04-2018] in respect of the amendment to the provisions of section 40(a)(ia) of the Act and the Hon'ble Supreme Court have held the amendment to be curative and, therefore, retrospective in nature, an extract of the findings from which is as under:

“■ *The controversy surrounding the above amendment was whether the amendment being curative in nature should be applied retrospectively i.e., from the date of insertion of the provisions of section 40(a)(ia) or to be applicable from the date of enforcement. [Para 25]*

■ *TDS results in collection of tax and the deduct or discharges dual responsibility of collection of tax and its deposition to the government. Strict compliance of section 40(a)(ia) may be justified keeping in view the legislative object and purpose behind the provision but a provision of such nature, the purpose of which is to ensure tax compliance and not to punish the tax payer, should not be allowed to be converted into an iron rod provision which metes out stern punishment and results in malevolent results, disproportionate to the offending act and aim of the legislation. Legislature can and do experiment and intervene from time to time when they feel and notice that the existing provision is causing and creating unintended and excessive hardships to citizens and subject or have resulted in great inconvenience and uncomfortable results. Obedience to law is mandatory and has to be enforced but the magnitude of punishment must not be disproportionate by what is required and necessary. The consequences and the injury caused, if disproportionate do and can result in amendments which have the effect of streamlining and correcting anomalies. As discussed above, the amendments made in 2008 and 2010 were steps in the said direction only. Legislative purpose and the object of the said amendments were to ensure payment and deposit of TDS with the Government. [Para 26]*

■ *A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section, is required to be read into the section to give the section a reasonable interpretation and requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole. [Para 27]*

■ *The purpose of the amendment made by the Finance Act, 2010 is to solve the anomalies that the insertion of section 40(a)(ia) was causing to the bona fide tax payer. The amendment, even if not given operation retrospectively,*

may not materially be of consequence to the revenue when the tax rates are stable and uniform or in cases of big assessees having substantial turnover and equally huge expenses and necessary cushion to absorb the effect. However, marginal and medium taxpayers, who work at low gross product rate and when expenditure which becomes subject matter of an order under section 40(a)(ia) is substantial, can suffer severe adverse consequences if the amendment made in 2010 is not given retrospective operation i.e., from the date of substitution of the provision. Transferring or shifting expenses to a subsequent year, in such cases, will not wipe off the adverse effect and the financial stress. Such could not be the intention of the legislature. Hence, the amendment made by the Finance Act, 2010 being curative in nature required to be given retrospective operation i.e., from the date of insertion of the said provision. [Para 28]

■ *Thus, the amended provision of section 40(a)(ia) should be interpreted liberally and equitable 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 and deleterious consequences beyond what the object and purpose of the provision mandates. As the developments with regard to the section recorded above shows that the amendment was curative in nature, it should be given retrospective operation as if the amended provision existed even at the time of its insertion. Since the assessee has filed its returns on 01-08-2005 i.e., in accordance with the due date under the provisions of section 139, hence, is allowed to claim the benefit of the amendment made by Finance Act, 2010 to the provisions of section 40(a)(ia) of the Act. [Para 30]*

■ *In view of aforesaid, the judgment of the High Court does not call for any interference and, hence, the appeal is accordingly dismissed. [Para 31]"*

7. The Ld. AO is, therefore, directed to consider the legal provisions, the documents filed before us which the assessee is also required to file before the Ld. AO and delete the addition as per law. Accordingly, all the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.

8. Since the facts and issues in ITA No. 2455/KOL/2024 are similar to that of ITA No. 2454/KOL/2024, we also set aside the order of the Ld. CIT(A) for AY 2012-13 and remand the issue to the file of the Ld. AO for necessary action as per law. Thus, all the grounds raised by the



assessee before the Tribunal for AY 2012-13 are also partly allowed for statistical purposes.

9. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open Court on 3rd November, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 03.11.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Shreyans Overseas Pvt. Ltd., 6th Floor, Kankaria Estate, 6th Little Russel Street, Middleton Row S.O., Kolkata, West Bengal, 700071.**
2. **ITO, Ward-8(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata