

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA**  
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

**I.T.A No. 1563/Kol/2016**  
**Assessment Year: 2011-12**

M/s. Calcutta Iron Foundry  
(PAN: AABFC5707F)  
(Appellant)

Vs. Income-tax Officer, Wd-34(3), Kolkata.  
(Respondent)

Date of hearing: 22.11.2016  
Date of pronouncement: 30.11.2016

For the Appellant: Smt. Shika Agarwal, ACA, Ld. AR  
For the Respondent: Md. Ghayas Uddin, JCIT, Sr. DR

**ORDER**

**Per Shri M. Balaganesh, AM:**

This appeal by assessee is arising out of order of CIT(A)-10, Kolkata vide Appeal No. 271/CIT(A)-10/Wd-34(3)/14-15/Kol dated 31.05.2016. Assessment was framed by ITO, Ward-34(3), Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2011-12 vide his order dated 24.03.2014.

2. The only issue raised by the assessee in this appeal is as to whether the amendment brought in the second proviso to section 40(a)(ia) of the Act is to be construed as retrospective in operation or not.

2.1. The brief facts of this issue are that the AO during the course of assessment proceedings found that the assessee had paid a sum of Rs.42,080/- towards motor car hire charges without deduction of tax at source and disallowed the same u/s. 40(a)(ia) of the act. The action of the AO was upheld by the Ld. CIT(A) in first appeal

2.2. Aggrieved, the assessee is in appeal before us on the following grounds:

*“1. That the Ld. CIT(A) erred in not deleting the disallowance of Rs.42,080/- in view of the second proviso to Sec. 40(a)(ia) of the Act inserted by the Finance Act 2012. The second proviso is curative in nature and assessee cannot be held as defaulter for not deducting tax at source, if the payee has included the receipts in its income and has paid tax on the same. Hence, the addition is wrong and liable to be deleted.”*

2.3. During the course of hearing the Ld. AR argued that the payee of the hire charges had duly offered the said receipt in his return of income which aspect may kindly be directed to be verified by the AO. She also argued that in view of the amendment to second proviso to section 40(a)(ia) of the Act, which is held as retrospective in application by the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Ansal Land Mark Township (P) Ltd., reported in 377 ITR 635 (Del), which was later followed by the Hon'ble Calcutta High Court in the case of Tirupati Construction in G.A. No. 2146 of 2016 with ITAT No. 287 of 2016 dated 23.08.2016, she prayed for treating the assessee as not in default warranting disallowance u/s. 40(a)(ia) of the Act. In response to this, the Ld. DR fairly agreed for setting aside this issue to the file of AO.

2.4. We have heard rival submissions and gone through the facts and circumstances of the case. We find that in the light of the decision of the Hon'ble Delhi High Court and Hon'ble Calcutta High Court cited supra, if the payee has disclosed the said hire charges receipt in his return and paid taxes thereon the assessee should not be invited with disallowance u/s. 40(a)(ia) of the Act by treating him as the assessee in default. We direct the AO to verify the same and dispose of the issue accordingly.

3. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 30.11.2016

Sd/-  
(S.S. Viswanethra Ravi)  
Judicial Member

Sd/-  
(M. Balaganesh)  
Accountant Member

Dated :30th November, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Calcutta Iron Foundry, 18, R. N. Mukherjee Road, Kolkata-700 001
2. Respondent – ITO, Ward-34(3), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.