

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष ।

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 3381/Mds/2016

निर्धारण वर्ष /Assessment year : 2009-2010.

M/s. Amaravathy Textiles,
9-D/5, Ramakrishnapuram,
Karur 639 001.

Vs. The Deputy Commissioner of
Income Tax,
Circle 2(1)
Tiruchirappalli.

[PAN AAFFA 9673E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. A.S. Sriraman, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri. B. Sahadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 06-04-2017

घोषणा की तारीख /Date of Pronouncement

: 12-04-2017

आदेश / ORDER

In this appeal filed by the assessee, directed against an order dated 17.11.2016 of the Commissioner of Income-tax (Appeals)-1, Tiruchirappalli, it is aggrieved on a disallowance of ₹13,20,000/- made u/s. 40(a) (ia) of the Income Tax Act, 1961 (in short 'the Act').

2. Ld. Counsel for the assessee submitted that the disallowance was made for payment of rent without deduction of tax. According to him, such rent though it was paid without deducting tax, was shown by respective recipients in their returns and such recipients had paid

the tax on the rentals received by them. Relying on the judgment of Co-ordinate Bench in the case of *DCIT vs. M/s. Quantum Knits Pvt. Ltd* (ITA No.304/Mds, 2015, dated 18.01.2017), Id. Authorised Representative submitted that amendment to Sec. 40(a)(ia) of the Act and Sec. 201(1) of the Act made through Finance Act, 2012 had to be considered retrospectively.

3. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

4. I have considered the rival contentions and perused the orders of the authorities below. Only contention raised by the Id. Authorised Representative is that payee had accounted rent receipts and paid taxes thereof. According to him, amendment to Sec. 40(a)(ia) and Sec. 201(1) of the Act made through Finance Act, 2012 were retrospective. In the case of *M/s. Quantum Knits Pvt. Ltd (supra)* relied on by the Id. Authorised Representative, this Tribunal had held at para 4 of its order as under:-

"4. We have perused the orders and heard the rival submissions. The assessee had effected payment to one M/s KPR Mills Ltd. without deducting tax at source. The A.O. had considered it as part of "bundle of services" in the nature of business promotion expenses. According to the Ld. A.O., assessee failed to deduct tax at source. The A.O. made disallowance under Section 40(a)(ia) of the Act. The CIT(Appeals) while affirming this view of the A.O., observed that M/s KPR Mills Ltd. who accounted these receipts under the head "Miscellaneous receipts", had paid tax thereon. The CIT(Appeals) relied on the amendment to Section 40(a)(ia) of the Act. Retrospectivity of amendment to Section 40(a)(ia) and 201(1) of the Act made through Finance Act, 2012 was an issue which was dealt with by Hon'ble Delhi High Court in the case of *CIT v. M/s Ansal Land Mark Township (P.) Ltd.* (377 ITR 635). The view taken by the

Hon'ble Delhi High Court was in favour of the assessee. There is no decision of jurisdictional High Court on this issue. This being the situation, we are of the opinion that the CIT(Appeals) was justified in taking a view that if the recipient had accounted the income and paid the tax, assessee could not be subjected to rigours of Section 40(a)(ia) of the Act. We do not find any reason to interfere with this view taken by the Ld. CIT(Appeals). However, whether the payee had accounted the receipts and paid tax thereon, in our opinion, requires verification by the Ld. A.O. We remit the issue back to the A.O. for this limited purpose”.

Following the above order, I am of the opinion that question whether payee had accounted receipts and paid tax thereon requires verification by the Id. Assessing Officer. Needless to say, if the payee had accounted rent receipts and paid taxes thereon, assessee cannot be mulcted with a tax, by making a disallowance u/s.40(a) (ia) of the Act. I therefore set aside the order of the lower authorities and remit the issue back to the file of the Id. Assessing Officer for consideration afresh in accordance with law.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced on Wednesday, the 12th day of April, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:12th April, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |