

Sec. 40(a)(ia) contemplates actual tax deduction and not mere debit entry in account of payee

Summary – The Rajkot ITAT in a recent case of Atul Auto Ltd., (the Assessee) held that section 40(a)(ia) contemplates actual tax deduction and not mere debit entry in account of payee.

Facts

- The assessee-company was engaged in the business of manufacturing of three wheelers, auto-rickshaws and their spares, apart from generation of electricity. During the year, it made payments towards material testing fees and consultation fees and claimed deduction of the same.
- The Assessing Officer disallowed the expenses under section 40(a)(ia).
- On appeal, the Commissioner (Appeals) confirmed the disallowance made by the Assessing Officer.
- On second appeal:

Held

- The Gujarat High Court in the case of *CIT v. Sikandarkhan M Tunvar* [\[2013\] 33 taxmann.com 133](#) had considered a similar issue. Two propositions clearly emerge from the decision of the High Court: one, the disallowance under section 40(a)(ia) is attracted in respect of amounts out of which tax is deductible at source and such tax is either not deducted or after deduction is not paid before the specified date, and, two, the disallowance under section 40(a)(ia) can be made irrespective of the provisions contained in sections 30 to 38.
- Deduction of tax at source as contemplated by section 40(a)(ia) needs to be real and not illusory. Deduction of tax at source implies subtraction of the amount of tax from the amount payable by the assessee to the payee out of which tax is deductible at source before it is paid to the payee or is credited to the account of the payee. It is after deduction of such tax from the amount payable to the payee that the assessee can pay/credit the remaining amount. Entries in the books by the assessee by which the amount of tax deductible is debited to the running account of the payee does not constitute real deduction of tax at source out of the amount payable to the payee unless such deduction has actually been made simultaneously at the time when the amount was paid/credited by the assessee. The law contemplates real deduction of tax at source out of amount payable by the assessee and not mere book entries by which such tax is debited to the running account of the payee in the books of the assessee, unless such entries are supported by actual deduction.
- There is absolutely no evidence before the Tribunal that tax was actually deducted by the assessee at source out of the amounts paid or credited by the assessee to the payees in the year under appeal, although such tax was deductible at source. The law requires actual deduction of tax at source out of amounts paid /credited by the assessee and not mere debit entries in the running

accounts of payees. The assessee has neither been able to prove actual deduction of tax at source out of amounts paid/credited by it in favour of the payees in the year under appeal, nor actual payment of such tax in the year under appeal. Unless the assessee proves that it has actually deducted the tax at source out of amounts paid/credited in favour of the payees in the year under appeal, it is not possible to delete the impugned disallowance. Therefore, the appeal of the assessee on the said issue was liable to dismissed.