

No disallowance for TDS default if tax deducted was deposited before due date of filing return.

Summary – The High Court of Jammu & Kashmir in a recent case of J&K Co-operative Housing Corpn. Ltd., (the Assessee) held that where assessee deducted tax at source from contractual payments on last day of relevant assessment year and duly deposited same with Central Government before time fixed for filing of return under section 139(1), said payments could not be disallowed by invoking provisions of section 40(a)(ia).

JUDGMENT

The instant appeal under Section 260A of the Income Tax Act, 1961 (for brevity the Act) is directed against order dated 27.09.2012 passed by the Income Tax Appellate Tribunal, Amritsar Bench in ITA No.479(Asr)/2011 in respect of assessment year 2005-06.

It is admitted fact that the assessee-respondent is a co-operative society engaged in granting loans or advances to its members and investing in debentures issued by Housing Societies registered in the State of Jammu and Kashmir. For the year 2005-06 the assessee filed its return and the assessment was completed under Section 143(3) of the Act (Annexure R-1). Later on Commissioner of Income Tax, Jammu while exercising power under Section 263 of the Act passed order dated 13.03.2009 and set aside the assessment completed under Section 143(3) of the Act. The CIT then issued directions to the Assessing Officer to frame fresh assessment because the original assessment was erroneous and prejudicial to the interests of the revenue. Accordingly, fresh assessment was made and disallowance made under Section 40 (a)(ia) of the Act was deleted. In that regard reliance has been placed on the decision of the Income Tax Appellate Tribunal, Hyderabad rendered in *Teja Constructions v. Asstt. CIT [2010] 39 SOT 13 (Hyd.) (URO)* and the decision of the Income Tax Appellate Tribunal at Amritsar in the case of *Reshi Construction Co. Srinagar* [IT Appeal No. 462 (Asr.) of 2008, dated 22-7-2009]. The Tribunal at Amritsar had taken the view that once the income of the assessee is estimated on net profit basis, no further addition could be made. It is appropriate to mention that CIT(A), Jammu in his order has also referred to the submission made by the counsel for the assessee, which was to the effect that the condition for actual deduction and deposit are prescribed under Section 40(a)(ia) of the Act. A reference was also invited to Sub-Clause (A) and 9(B) of Clause (ia) of Sub-section (a) of Section 40 of the Act to submit that when the tax was deducted during the last month of previous year it was required to be paid on or before the due date as per Sub Clause (I) of Section 139 of the Act. The assessee deducted the tax on 31.03.2006 and duly deposited it on 07.04.2006, which was well before the time fixed for filing of the return as per the provisions of Section 139(I) of the Act. The assessee further argued that the provisions of Section 40(a)(ia) have been amended by the Finance Act, 2010, which is applicable for the

assessment year 2010-11. If the TDS can be deposited with the Central Government on or before the due date of filing the return then the deductions were not be denied.

The HC asked the learned counsel for the revenue to apprise the Court about the fate of order passed by the Tribunal in the cases of *Teja Constructions (supra)* and *Reshi Constructions Co. Srinagar (supra)*. The object of ascertaining the status of those cases was whether they have attained finality or any appeal has been filed. However, there was no satisfactory answer available from the revenue.

Having heard learned counsel, the HC was of the considered view that no question of law much-less a substantial question of law would arise for determination of this Court. The assessee-respondent deducted the tax on 31.03.2006 and duly deposited the same on 07.04.2006 well before the time fixed for filing of return by Section 139(1) of the Act. Moreover, once net profit rate is applied no further addition could be made as has been held by Punjab and Haryana High Court in the case of *CIT v. Aggarwal Engg. Co.* [\[2008\] 302 ITR 246/\[2006\] 156 Taxman 40](#).

In view of the above, the appeal does not merit admission and same is dismissed.