

No TDS disallowance on payment of taxes by payee; proviso to sec. 40(a)(ia) effective prospectively from 1.4.2013

Summary – The High Court of Kerala in a recent case of Prudential Logistics And Transports., (the Assessee) held that benefit of second proviso to section 40(a)(ia) giving concession to assessee from deducting TDS in case recipient of amount in question had already paid taxes on such amount would be available with effect from 1-4-2013 only

Facts

- During scrutiny, the Assessing Officer noticed that the assessee-firm had made certain payment to three different persons without deducting TDS thereon. According to the assessee-firm, said amount was the amount accepted by the assessee as loan and, therefore, they had shown the repayment. However, on verification, when explanation was called for, the assessee explained that although the said amount had been classified as loan, the amount actually represented lorry hire charges and no TDS was deducted on such amounts as recipients of said amounts had already paid tax thereon.
- Issue for consideration was whether the assessee would get any benefit or his obligation was absolved if the recipients of the said amount had already paid taxes on the amounts received by them in the light of the amendment to the second proviso to section 40(a)(ia).

Held

- Reading of section 40(a)(ia) along with the second proviso and section 201(1) along with the proviso, would mean that the mandate or requirement on the part of the payer to deduct tax at source is not so strict if they are able to show that the payee or the recipient of the amounts has paid tax in accordance with the provisions of section 201(1) and the proviso.
- This was not the claim made by the assessee before the Assessing Officer. The claim was on a different stand, initially reflecting the amounts as loan in the account books though shown as freight charges in the returns and later explained that it was not the loan amount but freight charges. It was never the case of the assessee that there was no mandate subsequent to the amendment, to deduct tax as TDS in the light of above provisions. The assessment year in question is 2007-08 and the amendment giving breathing space to payer of amounts is with effect from 1-4-2013. Therefore, the said benefit is not applicable to the assessee. Even otherwise, on factual situation, the very fact that these amounts were claimed as loan initially, till the scrutiny came up for consideration before the Assessing Authority would only indicate the real intention of the assessee-firm, *i.e.*, not to disclose this amount as freight charges but something else as repayment of loan.
- In light of above observations, the Tribunal was justified in upholding disallowance under section 40(a)(ia).