

No disallowance if TDS is deposited before due date of filing return; amendment to sec. 40(a)(ia) has retro-effect

Summary – The High Court of Gujarat in a recent case of Omprakash R. Chaudhary, (the Assessee) held that where assessee having deducted tax at source from payments made to labour contractors, deposited same in Government account before due date of filing return under section 139(1), in view of retrospective amendment made in section 40(a)(ia) by Finance Act, 2010, with effect from 1-4-2005, amount so deposited could not be disallowed

Facts

- The assessee was engaged in the business of construction. During the course of assessment proceedings, the Assessing Officer noted that certain payments were made to labour contractors. On such amount, tax was deductible at source before 1-3-2005 and the same was though deducted by the assessee, the payment in the Government account was not made until 31-3-2005 and the same was done only on 28-6-2005.
- The Assessing Officer, thus, disallowed said payments by invoking provisions of section 40(a)(ia).
- The Commissioner (Appeals) relying upon amendment made to provisions of section 40(a)(ia) by Finance Act, 2008 with effect from 1-4-2005, deleted a part of disallowance in respect of tax deducted at source prior to month of March, 2005, as according to him, tax so deducted could be deposited with the Government account before due date specified in sub-section (1) of section 139.
- The Tribunal deleted entire disallowance even for month of March relying on the amendment made in section 40(a)(ia) by the Finance Act, 2010 giving it retrospective effect.
- On revenue's appeal:

Held

- It can be seen that the amendment made by the Finance Act 2010 allows additional time upto the due date of filing of the return in respect of even those instances where TDS has been deducted during the first eleven months of the previous year. The additional time till the due date of filing of the return, in case of TDS made during the last month of the previous year was already available by the amendment made by Finance Act 2008.
- Thus, it is apparent that the relaxation made by the amendment made under the Finance Act, 2010 brings the law in parity with the aforementioned situation and accordingly, for the TDS deducted all throughout the year, time is extended from payment till the filing of return. It is thus apparent that when the amendment introduced by the Finance Act, 2008 of relaxing the time for deposit of TDS was made retrospective from the year 2005 [1st April 2005], the amendment by Finance Act 2010

with regard to other limb of time limit for payment of TDS has to be held retrospective and not from 1st April 2010 only.

- It can be, thus, seen that the amendment to section 40(a)(ia) by the Finance Act, 2010 is only an amendment in continuation of the earlier amendment made in the Finance Bill, 2008 with retrospective effect from 1st April 2005. The Legislature, while extending the time for payment of TDS deducted in the month of March till due date of filing of the return under section 139(1), considered the apparent difference where an unintended benefit was given to the assessee who deducted the entire year's TDS in the month of March of the previous year which were eligible to pay TDS so deducted to the Government by due date of filing of the return under section 139(1).
- However, the assessee who may have deducted the tax in earlier months beginning from April to the end of February of the previous year, did not get such benefit of extended time and, thus, the same worked unreasonably for such assessee, and therefore, it can be safely held upholding the contention of the assessee that to cure such defect, amendment in the year 2010 has been brought and the benefit of extended time to avoid hardship was given to the assessee and, therefore, amendment of 2010 is in continuation to the amendment of 2008, and therefore, curative in nature and the same has to be held retrospective, *i.e.*, with effect from 1st April 2005. [Para 17.2]
- From the discussion held hereinabove, it is held that the amendment made in section 40(a)(ia) by the Finance Act 2010, is retrospective in operation, having effect from 1st April 2005 *i.e.*, from the date of insertion of section 40(a)(ia) [Para 18]
- Resultantly, the Tribunal rightly decided the said issue by holding that the disallowance made under section 40(a)(ia) by the Commissioner (Appeals) even for the amount for which the TDS had been deducted before 1st March 2005, holding amendment brought on 1st April 2010 as retrospective in nature.
- All the tax appeals preferred by the revenue stand dismissed accordingly.