

Amendment made to sec. 40(a)(ia) by Finance Act, 2012 should be applicable retrospectively w.e.f 1/4/2005: ITAT

Summary – The Kolkata ITAT in a recent case of Dilip Kumar Roy, (the Assessee) held that Second proviso inserted in sub-clause (ia) of clause (a) of section 40 by the Finance Act, 2012, should be given retrospective effect from 1-4-2005

Facts

- The assessee carried on business of distribution of Kerosene oil. During assessment proceedings assessee claimed deduction of carriage charges.
- The Assessing Officer found that a part of carriage charges was paid to contractors on which tax had not been deducted at source under section 194C. He thus invoked provisions of section 40(a)(ia) and disallowed said payments.
- The Commissioner (Appeals) confirmed said disallowance.
- The assessee filed instant appeal seeking a direction to the Assessing Officer to verify that in case the payees had declared the receipt from the assessee in their return of income then disallowance under section 40(a)(ia) could not be made.

Held

- With a view to liberalize provisions of section 40(a)(ia) Finance Act, 2012 brought amendment with effect from 1-4-2013. The second proviso was inserted in sub-clause (ia) of clause (a) of section 40 by the Finance Act, 2012.
- The provisions of section 40(a)(ia) are meant to ensure that the assessee's perform their obligation to deduct tax at source in accordance with the provisions of the Act. Such compliance will ensure revenue collection without much hassle. When the object sought to be achieved by those provisions are found to be achieved, it would be unjust to disallow legitimate business expenses of an assessee. Despite due collection of taxes due, if disallowance of genuine business expenses are made than that would be unjust enrichment on the part of the Government as the payee would have also paid the taxes on such income.
- In order to remove this anomaly, this amendment has been introduced. In case of payment to non-resident, the Government does not have any other mechanism to recover the due taxes. Hence, no amendment was made in section 40(a)(i). The legislature has not given blanket deduction under section 40(a)(ia). The deduction as per amended section will be allowed only if the –

- (i) payee has furnished his return of income under section 139;

- (ii) payee has taken into account such sum for computing income in return of income; and
 - (iii) payee has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.
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- The question is as to whether the amendment made as above is prospective or retrospective with effect from 1-4-2005 when the provisions of section 40(a)(ia) were introduced. Keeping in view the purpose behind the proviso inserted by the Finance Act, 2012 in section 40(a)(ia) of the Act, it can be said to be declaratory and curative in nature and therefore, should be given retrospective effect from 1-4-2005, being the date from which sub-clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.
 - Thus the alternative prayer of the assessee is accepted.