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Disallowance u/s 40(a)(ia) not applicable if exp. wasn't claimed as deduction while calculating taxable income

Summary – The High Court of Bombay in a recent case of Health India TPA Services (P.) Ltd., (the Assessee) held that Sine qua non for application of section 40(a)(ia) to apply is claiming of amount sought to be disallowed as an expenditure/deduction to determine taxable income of assessee

Facts

- The assessee was a Third Party Administrator (TPA) in respect of the mediclaim Insurance. The business of the assessee *inter alia* involved facilitating an insured person to avail the services of the hospital without payment in cash popularly called cashless services. It was ensured by the assessee as a TPA guaranteed payment to the hospitals extending cashless facility to the insured on behalf of the Insurance company. The medical expenses incurred and claimed by the hospitals for rendering services to the Insured, were collected by the assessee from the Insurance company and paid over to the hospitals. As the above payments were merely routed through them, the assessee did not deduct any tax at source under Chapter XVII B of the Act nor did it debit the payment to its profit and loss account.
- In view of the failure of the assessee to deduct the tax under Chapter XVII B of the Act, the Assessing Officer held that the entire amount which was paid over to the hospitals would be disallowed under section 40(*a*)(*ia*).
- The Commissioner (Appeals) held that the question of disallowance of expenditure under section 40(*a*)(*ia*), would not arise as no such allowance being expenditure in its profit and loss account was claimed.
- The Tribunal recorded a finding of fact *viz.* that the assessee had not claimed any expenditure in respect of the payments made by it to the hospitals on receiving the same from the insurance company. It acted as a mere conduit to carry the amounts for the insurance company to the concerned hospital. These amounts were not reflected in its profit and loss account. In the above view, the Tribunal dismissed the revenue's appeal.
- On revenue's appeal:

Held

- It is noted that both the order *i.e.* of the Commissioner (Appeals) as well as the impugned order of the Tribunal have recorded a finding of fact that the assessee had not claimed any expenditure while computing its income chargeable to tax, as a consequence, there could be no occasion to disallow such expenditure under section 40(*a*)(*ia*). It is clear from plain reading of section 40(a)(ia) that the failure to deduct the TDS in the absence of the same having been claimed as an expenditure while determining the income, would not attract disallowance. The consequence of failure to deduct the tax is found in section 201 and it does not in any way permit the addition of an amount, which has not subjected tax deduction at source. The *Sine qua non* for the application of section 40(*a*)(*ia*) to

apply is claiming of the amount sought to be disallowed as an expenditure / deduction to determine the taxable income of the assessee. In the present case, the revenue is not challenging the concurrent finding of the fact that the amount which is being sought to be added to the respondent's income has not been considered *i.e.* deducted to arrive at its income. Thus in such a case, the stand of revenue contrary to the clear provisions of section 40(*a*)(*ia*) of the Act is unsustainable.

- In view of aforesaid, impugned order passed by the Tribunal does not require any interference.