

आयकर अपीलीय अधिकरण, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'C' MUMBAI
सर्वश्री आय.पी. बंसल, न्यायिक सदस्य / एवं
नरेन्द्र कुमार बिल्लैय्या, लेखा सदस्य के समक्ष ।
BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER /AND
SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 3923/Mum/2012

निर्धारण वर्ष /Assessment Year 2008-09

M/s.Pratibha JV, C/o. Jayesh Sanghrajka & Co. Chartered Accountants, Unit No.405, Hind Rajasthan Centre, DS Phalke Road, Dadar(E), Mumbai 400 014.	बनाम/ Vs.	The DCIT -22(2), Income Tax Office, Above Vashi Rly. Station, Navi Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAP 7803M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by	Shri H.V.Datar
Respondent by :	Shri Chandrajit Singh

सुनवाई की तारीख / **Date of Hearing** : 25/09//2013

घोषणा की तारीख / **Date of Pronouncement** : 25/09/2013

आदेश / O R D E R

PER I.P.BANSAL, JM:

This is an appeal filed by the assessee. It is directed against the order passed by Ld. CIT(A)33, Mumbai dated 31/3/2012 for assessment year 2008-09. Grounds of appeal read as under:

"1.On the facts and circumstances of the case and judicial proposition, appellate order of Ld. CIT (Appeals) is bad in law and erroneous in facts and liable to be quashed.

2. On the facts and circumstances of the case and judicial proposition, Ld. CIT (Appeals) erred in making the disallowances of expenses on account of late payment of TDS without giving any notice under section 251 which is bad in law and erroneous in facts and liable to be quashed.

3. On the facts and circumstances of the case and judicial proposition, Ld. Commissioner of Income Tax (Appeals) erred in making the disallowances of expenses on account of late payment of TDS which Ld. Assessing Officer had not made in assessment order, such disallowance is bad in law and erroneous in facts and liable to be deleted.

4. On the facts and circumstances of the case and judicial proposition, Ld. CIT (A) erred in framing an appellate order that enforced the appellant to file further appeal and hence, suitable costs may be awarded to the appellant for the same”.

2. At the time of hearing Ld. AR submitted that assessee does not want to press ground No.1,2 & 4. Accordingly, these grounds are dismissed as withdrawn. He submitted that the only grievance of the assessee is represented in Ground No.3 and the facts relating to this ground are that a sum of Rs.7,43,955/- has been held to be disallowable by Ld. CIT(A) on account of late payment of TDS which, however, has been paid before the due date of filing of return, which in the present case is stated as 30/9/2008. The details of the TDS as well as date of payment thereof is described in the remand report submitted by the AO before Ld. CIT(A) vide letter dated 26/3/2012 and the same is has also has been reproduced in the order of Ld. CIT(A). The detail is as under:

S.No.	Particulars	Amount	Paid on
1.	TDS Professional Fees	6944	09.04.2008
2.		2893	28.07.2008
3.	TDS Professional Fees payable	62388	09.04.2008
4.		6468	21.04.2008
5.	TDS rent (Hiring) charge	27398	09.04.2008
6.	TDS sub contract Co Ltd. payable	5062	09.04.2008
7.	TDS sub contract payable	119551	09.04.2008
		1133	09.04.2008
	Total	231837	

2.1 Ld. AR submitted that the dispute as described in Ground No.3 which relates to disallowance of Rs.7,43,955/- on which, according to Ld. CIT(A) the tax was deposited beyond the due date. He submitted that according to well

established law if the payment is made before the due date of filing the return then disallowance cannot be made. He in this regard referred to the paper book in which copies of these decisions are enclosed as under:

S.No.	Content	Page No.
1.	CIT vs. Virgin Creations	1
2.	CIT vs. M/s. JK Construction Co.	2-3
3.	CIT vs. Mr. Rajinder Kumar	4-16
4.	Piyush Mehta v/s. ACIT	17-25
5.	Maharashtra State Electricity Distribution Co. Ltd. vs. ACIT	26-51
6.	M/s.Bansal Parivahan (India) Pvt. Ltd. vs. ITO	52-73
7.	ITO v/s. SK Mofizul Ali Purba Medinipur	74-77
8.	M/s.Designer Exports Vs. DCIT	78-81
9.	Shri Kanubhai Ramjibhai Makwana v/s. ITO	82-92
10.	B.M.S. Projects Pvt. Ltd. v/s. DCIT	93-105
11.	Rana Builders V/s. ITO	106-115
12.	Punjab State Co-operative Federation of Housing Building Societies Ltd. vs. DCIT	116-121

In aforementioned cases it has been held that amendment made in the provisions by Finance Act, 2010 being remedial / curative in nature have retrospective application. For the sake of brevity we may reproduce the relevant observation of Mumbai Tribunal in the case of Bansal Parivahan India Ltd., decision dated 22/9/2010 in ITA No.2355/Mum/2010.

“28. The assessee in the present case thus had not only deducted tax at source from the payments of freight charges made during the period 1.4.2005 to 28.2.2006, but the tax so deducted was also entirely paid by him to the credit of the Government although beyond the due date as stipulated in section 200 but before the due date of filing of his return of income for the year under consideration. The relevant TDS provisions thus were substantially complied by him and he was in a position to establish such compliance by filing the required documentary evidence along with his return of income. Still he was made to suffer by way of a disallowance of freight charges for which he was otherwise eligible for deduction giving rise to a huge demand as per the provisions of section 40(a)(ia) which was never the legislative intention behind enacting the said provisions. The provisions of section 40(a)(ia) as stood prior to the amendments made by the Finance Act 2010 thus were resulting into unintended consequences and causing grave and genuine hardships to the assessee who had substantially complied with the relevant TDS provisions by deducting the tax at source and by paying the same to the credit of the Government before the due date of filing of their returns u/s 139(1). In order to remedy this position and to

remove the hardships which was being caused to the assessee belonging to such category, amendments have been made in the provisions of section 40(a)(ia) by the Finance Act 2010. The said amendments, in our opinion, thus are clearly remedial/curative in nature as held by Hon'ble Supreme Court in the case of Allied Motors Pvt. Ltd. (supra) and Alom Extrusions Ltd. (supra) and the same therefore would apply retrospectively w.e.f. 1st April, 2005. In the case of R.B. Jodha Mal Kuthiala 82 ITR 570, it was held by the Hon'ble Supreme Court that a proviso which is inserted to remedy unintended consequences and to make the provision workable, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole. In the present case, the amount of tax deducted at source from the freight charges during the period 01/04/2005 to 28/02/2006 was paid by the assessee in the months of July and August 2006 i.e well before the due date of filing of its return of income for the year under consideration. This being the undisputed position, we hold that the disallowance made by the A.O. and confirmed by the learned CIT(A) on account of freight charges by invoking the provisions of section 40(a)(ia) is not sustainable as per the amendments made in the said provisions by the Finance Act, 2010 which, being remedial/curative in nature, have retrospective application. Accordingly, we delete the said disallowance and allow ground No. 2 of this appeal."

3. Accordingly, respectfully following the decisions relied upon by Ld. AR, after hearing both the parties we are of the opinion that disallowance cannot be made if the deposits are made before the due date of filing the return as described in section 139(1). As there is no dispute so as it relates to date of deposit of tax and these dates are stated in the remand report itself we direct the AO to delete disallowance of Rs.7,43,955/-

4. In the result, the appeal filed by the assessee is partly allowed in the manner aforesaid.

Order pronounced in the open court on 25/09/2013

आदेश की घोषणा खुले न्यायालय में दिनांक: 25/09/2013 को की गई।

Sd/-

(नरेन्द्र कुमार बिल्लैय्या / **N.K.BILLAIYA**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 25/09/2013

Sd/-

(आय.पी. बंसल / **I.P. BANSAL**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

व.नि.स./Vm, Sr. PS