

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI 'H' BENCH  
BEFORE I.P. BANSAL, JM & SHRI A.N. PAHUJA, AM

ITA no.3592/Del/2011 Assessment year:2008-09		
Income Tax Officer, Ward 16(1), Room no.224, C.R. Building, New Delhi	V/s.	Taru Leading Edge (P) Ltd., A-1/276,Second Floor, Safdurjung Enclave, New Delhi
[PAN : AAAC 4608 C ]		
(Appellant)		(Respondent)

Assessee by	Shri S. Srinivasan, AR
Revenue by	Dr. B.R.R. Kumar, DR

Date of hearing	22-05-2012
Date of pronouncement	22-05-2012

**ORDER**

**A.N.Pahuja:-** This appeal filed on 20.07.2011 by the Revenue against an order dated 16.05.2011 of the Id. CIT(A)-XIX, New Delhi, raises the following grounds:-

1. *“Whether on the facts and in the circumstances of the case the provisions of section 40(a)(ia) of the Income-tax Act as amended by the Finance Act, 2010, with effect from 01.04.2010 should be treated as retrospectives w.e.f. 01.04.2005.*
2. *The appellant craves for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal. “*

2. Facts, in brief, as per relevant orders are that return declaring income of ₹12,75,862/- on a/c of short term capital gains and nil business income filed on 30.09.2008 by the assessee, after being processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act), was taken up for scrutiny with the service of a notice u/s 143(2) of the Act issued on 15.09.2009.

During the course of assessment proceedings, the Assessing Officer (A.O. in short) noticed that the assessee deposited TDS of ₹1,59,332/- deducted from an amount of ₹16,22,846/- beyond the stipulated time. To a query by the AO, seeking to disallow the aforesaid amount in terms of provisions of sec. 40a(ia) of the Act, the assessee pleaded that proviso to section 40(a)(ia) of the Act inserted by Finance Act,2010 was applicable retrospectively w.e.f. 1.4.2005 and the assessee having deposited TDS before the due date of filing the return, no disallowance could be made. However, the AO did not accept the submissions of the assessee and disallowed the amount of ₹16,22,846/- in terms of extant provisions of section 40(a)(ia) of the Act.

3. On appeal, the Id. CIT(A), following the decision of ITAT Ahmedabad Bench in the case of Kanubhai Ramjibhai Makwana Vs. Income Tax Officer (2011) 9 Taxmann.com 55, holding the proviso to sec.40a(ia) of the Act inserted by Finance Act 2010 applicable retrospectively w.e.f 1.4.2005, allowed the claim, the assessee having deposited TDS on 11.4.2008..

4. The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT(A). At the outset, both the parties agreed that issue is squarely covered by the decision dated 23<sup>rd</sup> November, 2011 of the Hon'ble Calcutta High Court in I.T.A. no.302 of 2011 in CIT Vs. Virgin Creations, followed subsequently by co-ordinate Bench in their decision dated 11.4.2012 in Piyush C. Mehta Vs. ACIT no.1321/Mum./2009 for the AY 2005-06 and the decision dated 10.5.2012 in ITA no. 717/Bang/2011 for the AY 2008-09 in ACIT Vs. M.K. Gurumurthy..

5. We have heard both the parties and gone through the facts of the case. Indisputably, the assessee deposited TDS deducted from an amount of ₹16,22,846/- on 11.4.2008 i.e. before the due date of filing of return. The issue before us in this case is as to whether amendment made to the provisions of section 40a(ia) of the Act by the Finance Act,2010, would apply with

retrospective effect from 1.4.2005 or w.e.f 1.4.2010. We find that various co-ordinate Benches of the ITAT in their decision dated 16.12.2010 in Kulwant Singh vs. ITO in ITA no.2191/Ahd./2008 for the AY 2005-06, decision dated 22.9.2010 is in the case of Bansal Parivahan (India) P Ltd. vs. ITO in ITA no.2355/Mum/2010 for the AY 2006-07 and the decision dated 3.12.2010 in the case of Shri Kanubhai Ramjibhai Makwana in ITA no.3983/Ahd./2008 for the AY 2005-06 held that the said amendment would operate retrospectively w.e.f 1.4.2005. Subsequently, Special Bench in Bharati Shipyard Ltd. vs. DCIT ,13 taxmann.com101(Mum)(SB) vide their order dated 9.9.2011 held that the aforesaid amendment carried out by the Finance Act,2010 was applicable prospectively. Later, Hon'ble Calcutta High Court in their decision dated 23.11.2011 ITA no. 302 of 2011 GA 3200/2011 in CIT Vs. Virgin Creations, held that that amendment to the provisions of Sec.40(a)(ia) of the Act, by the Finance Act, 2010 as aforesaid was retrospective from 1.4.2005. The Id. AR pointed out that this is the sole decision rendered by a High Court at the moment on the issue. Following the view in this decision, co-ordinate Bench in their decision dated 11.4.2012 in Piyush C. Mehta Vs. ACIT no.1321/Mum./2009 for the AY 2005-06 and the decision dated 10.5.2012 in ITA no. 717/Bang/2011 for the AY 2008-09 in ACIT Vs. M.K. Gurumurthy also held that the aforesaid amendment is applicable retrospectively w.e.f 1.4.2005..

5.1 In view of the foregoing, following the view taken in the aforesaid decision of the Hon'ble Calcutta High Court in Virgin Creations(supra) , we are of the opinion that the amendment to the provisions of Sec.40(a)(ia) of the Act, by the Finance Act, 2010 is applicable retrospectively from 1.4.2005. Consequently, any payment of tax deducted at source on or before the due date for filing return of income u/s.139(1) of the Act, can not be disallowed in terms of provisions of sec.40a(ia) of the Act. Indisputably, in the instant case the assessee deposited the tax deducted at source on 11.4.2008 i.e. before the due date for filing return of income u/s.139(1) of the Act . In this situation, especially when the Revenue have not brought to our notice any contrary decision, we are not inclined to

interfere with the findings of the Id. CIT(A). In view thereof, ground no.1 in the appeal is dismissed.

6. No additional ground having been raised before us in terms of residuary ground no.2 in the appeal, accordingly, this ground is dismissed.

7. No other plea or argument was made before us.

8. In result, appeal is dismissed.

*Order pronounced in open Court*

Sd/-  
(I.P. BANSAL)  
(Judicial Member)

Sd/-  
(A.N. PAHUJA)  
(Accountant Member)

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Copy of the Order forwarded to:-

1. Assessee
2. Income Tax Officer, Ward 16(1), Room no.224, C.R. Building, New Delhi
3. CIT concerned
4. CIT (A)-XIX, New Delhi.
5. DR, ITAT, 'H' Bench, New Delhi
6. Guard File.

By Order,  
Deputy/Asstt.Registrar  
ITAT, Delhi