

ORDER SHEET  
ITAT No.101 of 2013  
GA No. 1334 of 2013  
IN THE HIGH COURT AT CALCUTTA  
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, XX, KOLKATA  
Versus  
SK. MAHASIN ALI

Appearance:

Mr. S. N. Dutta, Adv.  
Mr. Abhratosh Majumder, Adv.  
Mr. Soumitra Mukherjee, Adv.  
Mr. Debasish Ghosh, Adv.  
Mr. Avra Majumder, Adv.

BEFORE:

The Hon'ble JUSTICE INDIRA BANERJEE  
The Hon'ble JUSTICE ASIM KUMAR RAY  
Date : 24th June, 2013.

The Court : This appeal is against an order dated May 21, 2012 of the Income Tax Appellate Tribunal, Bench 'A', Kolkata, allowing the appeal of the assessee against the order dated August 2, 2011 of the Appellate Commissioner pertaining to the assessment year 2006-2007.

The learned Tribunal was of the view that since there was no dispute that the assessee was an individual, and the learned Tribunal had all along taken the consistent view that Section 194(c) of the Income Tax Act, was not applicable to individuals upto the Assessment Year 2006-07, the disallowance under Section 40(a)(ia) of the Income Tax Act could not be allowed.

In passing the aforesaid order, the learned Tribunal relied on the decision of the Special Bench of the learned

Tribunal in ITA No.477/Viz/2008 (Merilyn Shipping & Transports vs ACIT-Range-L, Vishakapatnam), taking the view that the word 'payable' used in Section 40(a)(ia) of the Income Tax Act had to be given its natural meaning. The learned Tribunal was of the view that Section 40(a)(ia) of the I.T. Act is applicable only to expenditure payable as on 31<sup>st</sup> March of every year and cannot be invoked to disallow the amount which had already been paid during the previous year, without deducting tax at sources.

In ITAT 20 of 2013 [Commissioner of Income Tax, Kolkata-IX vs. Crescent Export Syndicate] the Division Bench comprising Their Lordships The Hon'ble Justice Girish Chandra Gupta and The Hon'ble Justice Tarun Kumar Das held :-

**"16.** A bare reading of the above provision would make it clear that the term 'paid' does not only mean actual payment but if the liability has been incurred according to the method of accounting followed by the assessee, then the same also comes within the purview of term 'paid'. If the assessee is following mercantile system of accounting then as soon as the liability accrues in its favour, the same is accounted for by crediting the amount of payee. Thus, it is evident that the emphasis is on liability to pay and not on actual payment. If we accept the contention of assessee, then Section 40(a)(ia) would become otiose and the section will not be attracted where payment is made though without deducting tax at source. Ld. Counsel has referred to the various decisions and in case of Jaipur Vidyut Vitaran Nigam Limited (supra), the Tribunal had relied on the definition of Section 42(2) but the import of phrase incurred in accordance with the method of accounting followed was not considered. Therefore, the finding that by implication the word 'payable' does not include 'paid' cannot be accepted."

In view of the aforesaid judgment of the Calcutta High Court, we deem it appropriate to entertain the appeal on the following questions of law:-

- a) Whether the learned Tribunal applied the correct legal principles in deleting disallowance made by the Assessing Officer under Section 40(a)(ia) read with Section 194C in respect of the income of the assessee for the Assessment Year 2006-07 ?
- b) What is the true scope and ambit of Section 40(a)(ia) of the Income Tax Act, 1961 ?

All parties are to act on a signed photocopy of this order on the usual undertakings.

(INDIRA BANERJEE, J.)

(ASIM KUMAR RAY, J.)