

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1712 OF 2014

The Commissioner of Income Tax-II, Pune .. Appellant.  
v/s.  
Shraddha & S S Kale, Joint Venture .. Respondent.

Mr. Charanjeet Chanderpal with Ms. Padma Divakar, Ms. Swapna Tejale  
and Ms. Namita Shirke, for the Appellant.

**CORAM: M.S.SANKLECHA, &  
S.C.GUPTE, JJ.**

**DATE : 27<sup>th</sup> MARCH, 2017.**

**P.C:-**

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 16<sup>th</sup> January, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 16<sup>th</sup> January, 2014 is in respect of Assessment Year 2009-10.

2 The Revenue urges the following question of law for our consideration:

*“ Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in holding that amendment to Section 40(a)(ia) of the Act by the Finance Act, 2010 was retrospective in operation without appreciating that the law to be applied should be the one which is applicable to the relevant year?”*

3 The impugned order dated 16<sup>th</sup> January, 2014 of the Tribunal upheld the order dated 31<sup>st</sup> August, 2012 of the Commissioner of Income

Tax (Appeals) [CIT(A)] to the effect that the amendment to Section 40(a) (ia) of the Act which was introduced by Finance Act, 2010, is retrospective in nature. This was by following the order dated 21<sup>st</sup> June, 2012 of its Coordinate Bench in *ITO v/s. Mata Tulsomal Premchand* (Pune Bench) and the decision of the Calcutta High Court in *CIT v/s. Virgin Creations* (Income Tax Appeal No. 302 of 2011 dated 23<sup>rd</sup> November, 2011). Thus, holding that any amount of tax deducted at source should be deposited with the state-exchequer on/ or before the due date of filing of return of income, as prescribed under Section 139(1) of the Act, to ensure that the claim of expenditure is not disallowed.

4 We find that besides the decision of the Calcutta High Court in *Virgin Creations* (supra), the Delhi High Court in *CIT v/s. Naresh Kumar [2013] 39 Taxmann.com 182*, the Gujarat High Court in *CIT v/s. Omprakash R. Chaudhary (2015) 57 Taxmann.38* and the Karnataka High Court in *CIT v/s. Sri Scropio Engineering Ltd., 388 ITR 266* have held that the amendment to Section 40(a)(ia) of the Act by Finance Act, 2010 w.e.f. 1<sup>st</sup> April, 2010, is retrospective. This particularly, in view of the fact that the Courts have taken a view that the provision being a machinery provision, retrospective effect being given to it, is appropriate.

5 Mr. Charanjeet Chanderpal, learned Counsel for the Appellant-Revenue is not able to point out any reason as to why the views of Calcutta, Gujarat, Delhi and Karnataka High Courts should be departed from. In the above view, as the various High Courts have already taken a view on this very issue and in the absence of any reasons to take a different view, we see no reason to discard the same. Thus, the

amendment to Section 40 (a)(ia) of the Act by Finance Act, 2010 is retrospective with effect from 1<sup>st</sup> April, 2005 as held by various High Courts.

6 In view of the above, the question as framed does not give rise to any substantial question of law.

7 Accordingly, **Appeal dismissed.** No order as to costs.

(S.C.GUPTE,J.)

(M.S.SANKLECHA,J.)

