

TCA.No.478 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.7.2020

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.478 OF 2014

(heard through video conferencing)

The Commissioner of Income Tax,
Central Circle, Chennai ...Appellant

Vs

M/s.Archean Granites Private Ltd.,
Chennai-28. ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 19.6.2013 made in ITA.No.2286/Mds/2012 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2005-06.

For Appellant : Mr.T.R.Senthilkumar, SSC &
Ms.K.G.Usharani, SC

For Respondent : Mr.G.Baskar



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Judgment was delivered by T.S.SIVAGNAM,J

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel and Ms.K.G.Usharani, learned Standing Counsel appearing for the appellant - Revenue and Mr.G.Baskar, learned counsel appearing for the respondent – assessee.

2. This appeal by the Revenue is directed against the order dated 19.6.2013 made in ITA.No.2286/Mds/2012 on the file of the Income Tax Appellate Tribunal, Chennai 'A' Bench for the assessment year 2005-06.

3. The appeal has been admitted on 01.9.2014 on the following substantial questions of law :

"i. Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that amendment made to Section 40(a)(ia) by Finance Act, 2010 would apply retrospectively though the amendment is made with effect from 01.4.2010 ? and

ii. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that if taxes withheld have not been remitted before the end of the financial year, then the corresponding expenditure is allowable as a deduction ?"

4. The learned counsel on either side do not dispute the fact that the substantial questions of law framed for consideration in this appeal were answered against the Revenue in the decision of the Hon'ble Supreme Court in the case of **CIT Vs. Calcutta Export Company [reported in (2018) 404 ITR 654]**.

5. While answering the substantial questions of law in the said decision, the Hon'ble Supreme Court held as follows :

"27) A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the Section, is required to be read into the Section to give the Section a reasonable interpretation and requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the Section as a whole.

28) The purpose of the amendment made by the [Finance Act, 2010](#) is to solve the anomalies that the insertion of [section 40\(a\)\(ia\)](#) was causing to the bona fide tax payer. The amendment, even if not given operation retrospectively, may not materially be of consequence to the Revenue when the tax rates are stable and uniform or in cases of big assessees having substantial turnover and equally huge expenses and necessary cushion to absorb the effect. However, marginal and

medium taxpayers, who work at low gross product rate and when expenditure which becomes subject matter of an order under [Section 40\(a\)\(ia\)](#) is substantial, can suffer severe adverse consequences if the amendment made in 2010 is not given retrospective operation i.e., from the date of substitution of the provision. Transferring or shifting expenses to a subsequent year, in such cases, will not wipe off the adverse effect and the financial stress. Such could not be the intention of the legislature. Hence, the amendment made by the [Finance Act, 2010](#) being curative in nature required to be given retrospective operation i.e., from the date of insertion of the said provision.

29) Further, in *Allied Motors (P) Limited (supra)*, this Court while dealing with a similar question with regard to the retrospective effect of the amendment made in [section 43-B](#) of the *Income Tax Act, 1961* has held that the new proviso to [Section 43B](#) should be given retrospective effect from the inception on the ground that the proviso was added to remedy unintended consequences and supply an obvious omission. The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. The aforesaid view has

consistently been followed by this Court in the following cases, viz., [Whirlpool of India Ltd., vs. CIT](#), New Delhi (2000) 245 ITR 3, [CIT vs. Amrit Banaspati](#) (2002) 255 ITR 117 and [CIT vs. Alom Enterprises Ltd.](#) (2009) 319 ITR 306.

30) Hence, in light of the forgoing discussion and the binding effect of the judgment given in *Allied Motors (supra)*, we are of the view that the amended provision of Sec 40(a)(ia) of the *IT Act* should be interpreted liberally and equitable and applies retrospectively from the date when [Section 40\(a\)\(ia\)](#) was inserted i.e., with effect from the Assessment Year 2005-2006 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. As the developments with regard to the Section recorded above shows that the amendment was curative in nature, it should be given retrospective operation as if the amended provision existed even at the time of its insertion. Since the assessee has filed its returns on 01.08.2005 i.e., in accordance with the due date under the provisions of [Section 139](#) IT Act, hence, is allowed to claim the benefit of the amendment made by [Finance Act](#), 2010 to the provisions of [Section 40\(a\)\(ia\)](#) of the IT Act.

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31) In light of the forgoing discussion, we are of the view that judgment of the High Court does not call for any interference and, hence, the appeals are accordingly dismissed. In view of the above, all the connecting appeals, interlocutory applications, if any, transferred cases as well as diary numbers are disposed off accordingly."

6. Thus, following the said decision, this appeal by the Revenue stands dismissed and the substantial questions of law framed for consideration are answered against the Revenue. No costs.

13.7.2020

To

The Income Tax Appellate Tribunal, Chennai 'A' Bench.

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