

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO. 707 OF 2016

Pr. Commissioner of Income Tax -5 .. Appellant

Versus

Perfect Circle India Pvt Ltd .. Respondent

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- Mr. Suresh Kumar for the Appellant
 - Mr. Sanjiv M. Shah for the Respondent
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**CORAM : AKIL KURESHI &
B.P. COLABAWALLA, JJ.**

DATE : JANUARY 7, 2019.

P.C.:

1. This appeal is filed by the Revenue challenging the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short) dated 27.3.2015. Following question is presented for our consideration:-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in rejecting the disallowance of Rs. 1,44,78,000/- made by the AO u/S. 40(a)(ia) of the Act by holding that the amendment to the proviso of the said section was retrospective in nature without appreciating that the Act specifically provides that the said proviso comes into operation w.e.f. 1.4.2013 and is prospective in nature and cannot be applied retrospectively?"

2. It is not necessary to record background facts since the question of law raised by the Revenue is whether the second proviso to Section 40(a)(ia) of the Income Tax Act, 1961 ("the Act" for short) would have retrospective effect. We may notice that the said proviso was inserted w.e.f 1.4.2013 and in essence, it provides that where an assessee fails to deduct whole or any part of the tax at source but is not deemed to be an assessee in default under the first proviso to Section 201(1), then for the purpose of clause 40(a)(ia), it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee. The Revenue would content that the benefit of this proviso would be available to the assessee only prospectively w.e.f. 1.4.2013. Various Courts, however, have seen this proviso as beneficial to the assessee and curative in nature. The leading judgment on this point was of the Division Bench of Delhi Court in the case of **CIT Vs. Ansal Land Mark Township P Ltd**¹. The Court held that Section 40(a)(ia) is not a penalty and insertion of second proviso is declaratory and curative in nature and would have retrospective effect form 1.4.2005 i.e the date from the main

1 [2015] 377 ITR 635 (Delhi)

proviso 40(a)(ia) itself was inserted. Several High Courts have adopted the same lines. We may also note that the Supreme Court in the case of **Hindustan Coca Cola Beverages P Ltd Vs. CIT²** even in absence of second proviso to Section 40(a)(ia) had noticed that the payee had already paid the tax. Under such circumstances, the Court held that the payer / deductor can at best be asked to pay the interest on delay in depositing tax.

3. Under such circumstances, no question of law arises. Tax appeal is dismissed.

[B.P. COLABAWALLA, J.]

[AKIL KURESHI, J]

2 [2007] 293 ITR 226 (SC)