

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ITA No. 24 of 2011 (O&M)
Decided on : 30.01.2017**

M/s Gopal Cotton Industries Pvt. Ltd.

... Appellant

Versus

The Commissioner of Income Tax, Rohtak

... Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Sanjay Bansal, Sr. Advocate with
Mr. B.M. Monga, Advocate and
Mr. Rohit Kaura, Advocate
for the appellant.

Mr. Yogesh Putney, Advocate
for the respondent.

AJAY KUMAR MITTAL, J. (Oral)

CM No.16015-CII of 2012

This is an application under Section 260A(7) of the Act, read with Order 41 Rule 27 of the Code of Civil Procedure, 1908, for production of documents (Annexures A-11 and A-12) by way of additional evidence in the present appeal.

Notice of this application to the learned counsel for the non-applicant/respondent.

Mr. Yogesh Putney, Advocate, accepts notice on behalf of the non-applicant/respondent.

After hearing learned counsel for the parties, we find that the documents viz. Annexure A-11 & A-12, sought to be appended by way of additional evidence are relating to the material depicting that the income tax had been paid by the payee. The amount was included in the income of the

payee on which tax had been paid. We find that in such circumstances, the additional evidence sought to be produced is relevant. Accordingly, the application is allowed and the additional evidence (Annexures A-11 & A-12) is taken on record.

CM stands disposed of.

Main case:

The assessee by way of present appeal filed under Section 260A of the Income Tax Act, 1961 (in short 'the Act'), assailed the order dated 31st August, 2010, passed by the Income Tax Appellate Tribunal, New Delhi, Bench "C" (hereinafter referred to as 'the Tribunal'), in ITA No.4854/Del/2009, for the assessment year 2006-07, claiming the following substantial questions of law:-

- “(i) Whether the Tribunal misdirected itself in law as well as on facts in recording its conclusion based on irrelevant and perverse findings and in ignoring uncontroverted relevant material on record ?*
- “(ii) Whether the Tribunal was legally correct on the facts and in the circumstances of the case in holding that the assessee-appellant was required to deduct Tax Deduction at Source for the period prior to the date of the issuance of the Certificate dated 26.09.2005 issued by the Assessing Officer of the deductee under Section 197 of the Income Tax Act, 1961 ?*
- “(iii) Whether the certificate issued by the Assessing Officer under Section 197(1) of the Income Tax Act, 1961 on 26.9.2005 was applicable to the payments made by the appellant subject to non deduction of TDS and no disallowance in respect of the TDS not deducted could be made warranting an addition under Section 40(a)(ia) of the Income Tax Act, 1961 ?*
- “(iv) Whether the impugned Order passed by the Tribunal is*

perverse, mis-reading of the certificate issued under Section 197(1) of the Income Tax Act, 1961 and a result of non application of mind ?”

3. Vide CM No.2162-CII of 2015, the assessee-appellant had claimed the reframed substantial questions of law and amended grounds of appeal, which were accepted by this Court on February 05, 2015 and the same were taken on record. The reframed substantial questions of law are thus:-

- “(a) Whether the impugned order passed by the Tribunal upholding the Order of the CIT(A) in disallowing the expenses prior to 29.08.2005 for the assessment year 2006-07 is sustainable in law in view of the proviso to Section 40(a)(ia) of the Act, interpreted to be retrospective in effect, on the basis of the documents placed on the records by way of additional evidence justifying the payment of income tax by the deductee on the amount paid by the appellant herein ?*
- (b) Whether the Tribunal acted illegally and perversely in misinterpreting the certificate dated 26.09.2005 issued by the Assessing Officer of the deductee under Section 197 of the Income Tax Act, 1961 which operated retrospectively w.e.f. 03.12.2004 to 31.03.2006, while upholding the disallowance under Section 40(a)(ia) towards expenses claimed by the appellant and income shown by the deductee having been subjected to payment of income tax thereon for the period prior to 26.09.2005 for the assessment year 2006-07 ?*
- (c) Whether expenses under Section 40(a)(ia) of the Act at the hands of the appellant could be disallowed in respect of the payments on which correspondingly tax had been paid by the recipient of the income i.e. deductee, so as to prevent the applicability of the principle of double taxation not permitted by law under*

the Income Tax Act, 1961 ?”

4. We have heard learned counsel for the parties.
5. In view of the fact that vide CM No.16015-CII of 2012, the application for additional evidence filed by the appellant has been accepted, we do not propose to record the detailed facts in the case, as the matter is required to be remitted to the assessing officer to examine the veracity, authenticity and relevancy of these documents after affording opportunity of hearing to the appellant-assessee. Consequently, the orders of the CIT(A) as well as the Tribunal are set aside and the matter is remanded to the assessing officer for adjudicating the issue regarding Section 40(a)(ia) of the Act, in the light of the additional evidence produced by the assessee after affording an opportunity to the assessee and by passing a speaking order in accordance with law. The present appeal stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 30, 2017

J.Ram

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No