The proviso to Section 40(a)(ia) of the Income-tax Act is retrospective in nature. In case of conflicting High Court decisions, the Tribunal is required to be followed the beneficial decision to the taxpayer

**Background**

Recently, the Raipur Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of R K P Company¹ (the taxpayer) held that second proviso to Section 40(a)(ia) of the Income-tax Act, 1961 (the Act) is declaratory and curative in nature and therefore retrospective in effect.

The Tribunal while dealing with the conflicting decisions of High Courts, relying on the decision of Supreme Court in the case of Vegetable Products Ltd², followed the decision of the High Court which is in favor of the taxpayer.

**Facts of the case**

- During the course of the assessment proceedings, the Assessing Officer (AO) disallowed a sum of INR6,48,456, being a payment made to NBFCs on account of interest charges without deduction of tax at source, under Section 40(a)(ia) of the Act.
- Aggrieved, the taxpayer filed an appeal, and relied upon, the Delhi High Court decision in the case of Ansal Landmark Townships Pvt Ltd³, but without any success. The taxpayer further filed an appeal before the Tribunal.

**Tribunal’s ruling**

- The Tribunal observed that Delhi High Court in the case of Ansal landmark Township Pvt. Ltd. upheld the decision of Delhi Tribunal in the case Rajeev Kumar Agarwal⁴ where it was held that insertion of the second proviso to Section 40(a)(ia) of the Act is declaratory and curative in nature, and it has retrospective effect from 1 April 2005, being the date from which sub clause (ia) of Section 40(a) was inserted by the Finance (No. 2) Act, 2004.
- There are conflicting decisions on the issue of whether the second proviso to Section 40(a)(ia) of the Act is retrospective in nature. It is thus evident that views of two High Courts⁵ are in direct conflict with each other. Clearly, therefore, there is no meeting ground between these two judgments.
- The difficulty arises as to which of the non-jurisdictional High Court is to be followed by the Tribunal. It will be wholly inappropriate for the Tribunal to choose views of one of the High Courts based on perceptions about the reasonableness of the respective viewpoints, as such an exercise will de facto amount to sitting in judgment over the views of the High Courts something diametrically opposed to the very basic principles of the hierarchical judicial system.

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¹ R K P Company v. ITO [ITA No. 106/RPR/2016] (AY 2010-11)
² CIT v. Vegetable Products Ltd. [1972] 88 ITR 192 (SC)
³ CIT v. Ansal Landmark Townships Pvt Ltd [2015] 377 ITR 635 (Del)
⁴ Rajeev Kumar Agarwal v. ACIT [2014] 149 ITD 363 (Agra)
⁵ Ansal landmark Township Pvt. Ltd. and Thomas George Muthoot v. CIT [2015] 63 taxmann.com 99 (Ker)
The Tribunal adopted an objective criterion for deciding as to which of the High Court should be followed. It found guidance from the judgment of the Supreme Court in the case of Vegetable Products Ltd. The Supreme Court laid down a principle that 'if two reasonable constructions of a taxing provisions are possible, that construction which favours the taxpayer must be adopted'. This principle has been consistently followed by the various authorities as also by the Supreme Court itself.

The Supreme in the case of Petron Engg. Construction (P) Ltd. & Anr. reiterated that the above principle of law is well established, and there is no doubt about that.

The Supreme Court had, however, some occasions to deviate from this general principle of interpretation of the taxing statute which can be construed as exceptions to this general rule. It has been held that the rule of resolving ambiguities in favour of the taxpayer does not apply to deductions, exemptions, and exceptions which are allowable only when plainly authorised.

This exception, in the present case, has no application. The rule of resolving ambiguity in favour of the assessee does not also apply where the interpretation in favour of assessee will have to treat the provisions unconstitutional, as held in the matter of Dadabhoy's New Chirmiry Ponri Hill Colliery Co. Ltd.

Therefore, what follows is that in the peculiar circumstances of the case and looking to the nature of the provisions with which the Tribunal were concerned, the view expressed by the Delhi High Court in the case of Ansal Landmark, which is in favour of the taxpayer, is required to be followed. The tax department does not, therefore, derive any advantage from the Kerala High Court's decision in the case of Thomas George Muthoot.

As regards lack of guidance from jurisdictional High Court, that cannot be reason enough to disregard the decisions from non-jurisdictional High Courts.

Courts above, being a higher tier of the judicial hierarchy, bind the lower forums not only in the jurisdiction of respective High Courts but unless, there is anything contrary thereto by the jurisdictional High Courts, other jurisdictions as well.

There cannot be any dispute on the fundamental proposition that in the hierarchical judicial system, the better wisdom of the Court below has to yield to the higher wisdom of the Court above, and therefore the Tribunal have to humbly bow before the views expressed by the Higher Courts. Such a High Court being a non-jurisdictional High Court does not alter the position as laid down by the Bombay High Court in the matter of Godavari Devi Saraf and as analysed by a coordinate bench of this Tribunal in the case of Aurangabad Holiday Resorts Pvt Ltd.

The Tribunal remitted the matter to the AO for limited verification on the aspect as to whether the recipient of payment has included the same in his computation of business income offered to tax, and, if found to be so, delete the disallowance in question.

**Our comments**

The binding nature of a High Court decision has been a matter of debate before the Courts/Tribunal. The Supreme Court in East India Commercial Co. Ltd. observed that the law declared by the highest court in the state is binding on authorities or Tribunals under its superintendence, and they cannot ignore it.

While dealing with the issue of binding nature of High Court’s decision in other jurisdictions, some of the courts have held that the High Court decision is binding in other jurisdictions also in the absence of jurisdictional High Court decision. Relying on such decision the Tribunal in this case observed that there cannot be any dispute on the fundamental proposition that in the hierarchical judicial system, better wisdom of the court below has to yield to higher wisdom of the court above, and therefore the Tribunal have to humbly bow before the views expressed by the Higher Courts.

In the present case, the Tribunal dealt with the issue of which decision is to be followed when there are conflicting decisions of High Courts, on the same matter. The Tribunal observed that it would be wholly inappropriate for the Tribunal to choose views of one of the High Courts based on perceptions about the reasonableness of the respective viewpoints. Such an exercise will de facto amount to sitting in judgment over the views of the High Courts something diametrically opposed to the very basic principles of the

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8 Petron Engg. Construction (P) Ltd. & Anr. v. CBDT & Ors. [1988] 75 CTR 30 (SC)
9 State of M.P. v. Dadabhoy’s New Chirmiry Ponri Hill Colliery Co. Ltd. [AIR 1972 (SC) 614]
10 East India Commercial Co. Ltd. v. Collector of Customs AIR 1962 SC 1893
hierarchical judicial system. The Tribunal adopted an objective criterion for deciding as to which of the High Court should be followed. Relying on the decision of Supreme Court in the case of Vegetable Products Ltd, the Tribunal followed the decision of the High Court which is in favor of the taxpayer.