

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

ITA-292-2012 (O&M)

Date of decision:- 05.05.2015

The Commissioner of Income Tax, Karnal

...Appellant

Versus

M/s Kurukshetra Darpan (P) Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Yogesh Putney, Advocate,
for the appellant.

Mr. Ravi Shankar, Advocate,
for the respondent.

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S.J. VAZIFDAR, A.C.J. (ORAL)

This appeal was admitted on 28.01.2014 on the following
substantial questions of law:-

“(i) Whether under Section 40(a) (ia) of the Income Tax Act, 1961, disallowance of the expenditure payment of which, though required deduction of tax at source, has not been made, would be confined only to those cases where the amount remains payable till the end of the previous years or would include all amounts which became payable during the entire previous year?”

“(ii) Whether in the facts and circumstances of the case, the learned ITAT is right in law in allowing deduction of expenditure under Section 40(a) (ia) of the Income Tax Act, 1961 in absence of deduction of tax at source by the assessee as held by the Hon’ble jurisdictional High Court?”

2. We have by a separate order and judgement dated 29.04.2015 in a group of appeals the first of which is ITA-716-2009 in the case of *P.M.S Diesels Vs Commissioner of Income Tax-2, Jalandhar* decided the applicability of Section 40(a) (ia) of the Income Tax Act, 1961

(in short the Act). By that judgement, we have decided the issues in favour of the revenue. Therefore, the questions of law raised in this appeal must also be decided in favour of the revenue.

3. Having said that, however, it would be necessary to remand the matter to the Tribunal for considering the facts of the case. For instance, one of the contentions raised on behalf of the respondent/assessee is that the payments in respect whereof tax was not deducted at source pertained to a period prior to coming into force of Section 40(a) (ia) of the Act. Further issue may also arise whether the payees had made payments of the TDS to the credit of the government or not. The Tribunal would, therefore, decide the case on merits in view of the law laid down by us in *P.M.S. Diesels Vs Commissioner of Income Tax-2, Jalandhar's* case (supra). The appeal is accordingly disposed of with a clarification that all the contentions on merits are kept open.

4. Needless to add that it would be open to the Tribunal to remand the matter either to the CIT (Appeals) or to the Assessing Officer if it thinks it necessary.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

05.05.2015
Amodh