



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.390/Rpr/2014**

Assessment Year : 2010-2011

Sunny Wasan, Prop. M/s. Sun Construction, 88, Indra Commercial Complex, T.P. Nagar, Korba.	Vs.	DCIT, Circle, Korba
PAN/GIR No. AAPPW 0342 E		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri R.B.Doshi, AR  
Revenue by : Shri O.P.Chaudhury, DR

**Date of Hearing : 17/01/ 2018**  
**Date of Pronouncement : 19/01/ 2018**

**ORDER**

**Per Pavan Kumar Gadale, JM**

This is an appeal filed by the assessee against the order of the CIT(A)-  
Bilaspur, dated 26.8.2014 for the assessment year 2010-2011.

2. The assessee has raised the following grounds of appeal:

"1.The learned Assessing Officer as well as the Commissioner of Income Tax appeals are not justified in applying the provisions of Section 40(a)(ia) of Income Tax Act, 1961 when the books of accounts have been rejected. The entire addition is illegal should be deleted.

2. That, the learned Commissioner of Income Tax Appeals has erred in law and on facts of the case in confirming the addition made by the Assessing Officer of Rs. 16,32,797/-. The assessee



has already paid the sum and the provisions of Section 40(a)(ia) are not applicable to the sum already paid by the assessee. The addition should be ordered to be deleted.

3. That, the assessee was ignorant of the fact that the provisions of Section 40(a) of the Income Tax Act, 1961 are applicable to payment of Hire Charges to NBFCS and ignorance of law is an excuse.

4. That since there are different views of various courts on the issue of 40(a)(ia) the assessee must be given the benefit of doubt.

5. The appellant craves permission to raise the additional ground or grounds at the time of hearing of the appeal. "

3. The brief facts of the case are that the assessee is an individual and is proprietor of M/s. Sun Construction. He filed the return of income on 25.2.2011 showing total income of Rs.18,06,015/-. The Assessing Officer found that the assessee has derived income from contract works obtained from Vedanta Aluminum Ltd., GDCL, Balaji Infratec and sub-contract from M/s. J.J. Associates. The Assessing Officer in the course of scrutiny assessment , the assessee filed the list of sundry creditors and amount shown outstanding against their names. In response to Assessing officer's query, the assessee has submitted that there are about 100 creditors and it is impossible to produce them as they are petty villagers, who supplied the materials to the assessee for construction work. In absence of evidence and confirmation of creditors and as agreed by the assessee, the Assessing



Officer estimated the profit 28% of gross receipt of Rs.4,89,88,522/. As the assessee has shown income of Rs.18,06,015/-, the balance of Rs.21,13,067/- was added to the total income of the assessee.

4. On the disputed issue, the Assessing Officer found from the profit and loss account that a sum of Rs.24,76,645/- has been debited under the narration "interest". The Assessing Officer also found that the assessee has paid interest aggregating to Rs.16,32,797/- to NBFCs namely Magma Finance Ltd., Tata Capital and Bajaj Auto Finance Ltd., without deducting TDS therefrom. In response to query raised by the Assessing Officer, it was submitted by the assessee that 40(a)(ia) is applicable only on payable amount and not on paid amount. This explanation was not acceptable to the Assessing officer and relying on various judicial pronouncements, disallowed Rs.16,32,797/- and added the same to the total income of the assessee.

5. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

6. Hence, the assessee is in appeal before us.

7. At the time of hearing, Id A.R. of the assessee submitted that the amounts are not covered by the provisions of TDS and, therefore, the disallowance u/s.40(a)(ia) of the Act does not arise. He submitted that once



the income is estimated, there cannot be any more addition, more so, of statutory nature.

8. Ld D.R. supported the orders of lower authorities.

9. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We noted that the Assessing Officer has estimated the net profit @ 8% of gross contract receipts. Therefore, once the books of account are rejected, there is no necessity for disallowing any further amounts as held by Hon'ble A.P. High Court in the case of Maddi Sudarsanam Oil Mills Co. vs CIT, 37 ITR 369 (AP). Respectfully following the same, we are of the opinion that the Assessing Officer is not justified in disallowing Rs.16,32,797/- u/s.40(a)(ia) of the Act. Hence, we set aside the orders of lower authorities and delete Rs.16,32,797/- and allow the grounds of appeal of the assessee.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced on 19/01/2018.

Sd/-

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

Raipur; Dated 19 /01/2018  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1.	The Appellant : Sunny Wasan, Prop. M/s. Sun Construction, 88, Indra Commercial Complex, T.P. Nagar, Korba
2.	The Respondent. DCIT, Circle, Korba
3.	The CIT(A)-Bilaspur
4.	Pr.CIT-Bilaspur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Raipur**