



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

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

**ITA No481/CTK/2017**

Assessment Year : 2012-2013

C.O.No.42/CTK/2018

DCIT, Berhampur Circle, Berhampur	Vs.	Allied Infra suppliers At: Bजारंग Chemicals, near Jayashree Chemicals, Po/Dist: Ganjam
PAN/GIR No.AARFA 8673 K		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.K.Mishra, Adv  
Revenue by : Shri S.M.Keshkamat, CIT DR

**Date of Hearing : 15/11/ 2018**  
**Date of Pronouncement : 16 /11/ 2018**

**ORDER**

**Per N.S.Saini, AM**

This is an appeal filed by the revenue and cross objection by the assessee against the order of the Commissioner of Income Tax(A)-1, Bhubaneswar dated 2.8.2017 for the assessment year 2012-13.

2. First, we take up the appeal of the revenue.
3. Ground Nos.1 & 6 are as under:

"1. The order of the Ld. CIT(A) is erroneous on facts and in law.

6. The appellant craves to alter, amend or add any other ground that may be considered necessary in course of the appeal proceedings."
4. Ground Nos.1 and 6 are general in nature and do not require separate adjudication.

5. Ground No.2 reads as under:

"On the facts and in the circumstances of the case and for the specific reasons stated by the AO for not accepting the status of the assessee as a Firm which has not been rebutted by the assessee with documentary evidence, the Ld. CIT(A) is not correct in directing the AO to treat the status of the assessee as Firm and allow deduction towards salary and interest to the partners."

6. The CIT(A) has adjudicated the issue as under:

" The AO has taken the status as AOP (association of persons) doubting the genuineness of the reconstituted partnership for certain reasons and as a consequence of the same has disallowed salary and interest payment to the partners. In the course of appeal hearing, the matter was referred to the AO for examination and report since the assessee filed certain documents to prove the genuineness of reconstituted partnership deed. The relevant portion of the AO's remand report is reproduced below;

*"The contention of the assessee was verified with respect to the submissions made by it. The assessee also produced the original reconstitution of deed of partnership dated 01.04.2011 for verification before the undersigned on 17.02.2017. It also submitted copy of Form-C for reconstruction of firm along with the copy of the Deed of partnership. It was also supplemented by a copy of the affidavit attested by the Notary public, Berhampur confirming drawing of such deed of partnership. Under these circumstances, the assessee's claim that it is a Firm and is to be assessed as such cannot be ignored.*

*Hence, the presumption that the partnership was not genuine as it was not evidenced by a genuine/valid instrument of partnership deed and therefore the status of the assessee was to be treated as "Association of Persons" i.e. AOP, was not correct. On the above, the conclusion in the assessment order that the assessee was ineligible for claim of deduction of remuneration and interest of partners is not correct and the assessee is to be assessed as a Firm."*

4.1 I have considered the matter. The AO's conclusion in his report after examination of the relevant documents is that the status of the assessee should be taken as firm and not AOP. Consequently, the disallowance of interest on partners' capital and remuneration to the partners is unwarranted. In view of this, the status of the assessee is directed to be taken as firm and salary & interest payments to the partners are to be allowed as per law. **Hence, the above grounds are allowed."**

7. Ground No.3 of appeal reads as under:

"On the facts and circumstances of the case and having regard to the reasons stated by the AO for making addition of Rs.1,83,89,574/-towards unexplained investment, the Ld. CIT(A) is not justified in deleting the said entire addition on the basis of the remand report furnished by the AO, which he has prepared merely on the basis of claim/submission made by the assessee during appellate proceedings, without making any independent verification/enquiry."

8. The CIT(A) has adjudicated the ground as under:

"The Assessing Officer has made the addition of Rs.1,83,89,574/- on account of unexplained investment observing as under:

*"On verification of Balance sheet as on 31.03,2012, it is found that the assessee has shown in the asset side of the balance sheet, the amount of bills receivable at Rs.4,48,80,980.00 from Gopalpur Port Limited + Rs. 1,08,27,329.52 from Sri Avantika Contractors (I) Ltd.] under the head "Current assets, loans & advances." During*

*the head "current assets, loans & advances. During the course of assessment proceeding, the assessee filed the ledger copy of accounts issued by Gopalpur Port Limited and Sri Avantika Contractors (I) Limited as appearing in their books in the name of the assessee, On verification of the same, it is seen that Gopalpur Port Ltd. has shown the bills payable to the assessee at Rs.5,83,25,291,00 and Sri Avantika Contractors (I) Ltd. at Rs. 1,57,72,593.00, totaling to Rs.7,40,97,884/-. Thus, there is a difference of Rs.1,34,44,311.00 in the case of Gopalpur Port Ltd. and Rs,49,45,263.48 in the case of Sri Avantika Contractors (1) Ltd. between the amount shown by the assessee and the contractees. Taking into consideration the amounts shown as payable by the contractees in place of the amounts shown by the assessee, if the balance sheet of the assessee for the year ending on 31,03,2012 is re-casted, the same stands as under:*

**RECASTED BALANCE SHEET FOR THE YEAR ENDING ON 30.03.2012**

**LIABILITIES:**

Source of funds

Partners capital fund Rs.1,41,39,864.00

Current liabilities & provisions

Audit fees payable Rs. 5,000.00

Consultancy fees payable Rs. 10,000.00

Sundry creditors Rs. 4,42,82,877.00

Rs.4,42,97,877.00

Total: Rs.5,84,37,741.00

Assets

Application of funds assets

Current assets, loans & advances : Nil

Bills receivable

1. Gopalpur Port Ltd. Rs.5,83,25,291.00

2. Sri Avantika Cont.(I)Ltd Rs. 1,57,72,593.00

Rs.7,40,97,884.00

Income tax deducted at source AY 12-13: Rs.19,50,525.00

Balance in current account: Rs. 7,34,064.00

Cash in hand Rs. 44,842.48

Total : Rs.7,68,27,315.48

From the above recasted balance sheet, It is seen that the liabilities side of the balance sheet is less by Rs.1,83,89,574.48

than the assets side which represents the undisclosed investments of the assessee. This fact was brought to the notice of the assessee during the course of hearing and was asked to explain the difference found as discussed above with documentary evidence. However, no explanation whatsoever was put forth by the assessee. The assessee also not produced any books of account on the plea that those were washed away by the effect of super cyclone "phailin" from which it could have been verified, if at all maintained properly. Hence, in absence of proper explanation and also books of account the said amount i.e. Rs.1,83,89,574/- is added to the total income of the assessee as unexplained investment from undisclosed source."

The matter was remanded to the Assessing officer for examination/verification and report. The AO in his report has stated as under:

"On perusal of the submissions made by the assessee on 20.2.2017 and further on 22.2.2017, the assessee's transactions with two parties namely M/s. Gopalpur Port Ltd. and M/s Sri Avantika Contractor I Ltd., is explained. In the case of GPL, the advance amount of Rs.1,34,44,311/- is claimed to be on account of supply of diesel amounting to Rs.1,16,16,921/-, Rs.18 lakhs on account of mobilisation advances discussed in issue No.2 and other expenses for Rs.27,390/-. The diesel expenses item has been confirmed by the GPL on 26.2.2015 by way of a footnote diesel cost has been debited during F.Y. 12-13. The same was reiterated also by another confirmation on 14.2.2017. In the case of SACIL, the assessee has shown outstanding amount of Rs.1,08,27,329.52 as per tis balance sheet.(the assessee's claim that books of account were damaged due to cyclone phylin cannot be disregarded). The company has also confirmed vide its letter dated 5.3.2015 that Rs.52,80,036/- was debited to its account and this amount has been claimed by the assessee in two years i.e. F.Y 2011-12, Rs.45,263.48 and F.Y. 2012-13 Rs.33,4772.52 respectively. Thus, the closing balance in the books of SACIL was shown as Rs.1,57,72,593/-. The total gross contract receipt Rs.8,01,86,760/- in the case of GPL and Rs.1,57,72,593/ from SACIL. The total gross contract receipts declared by the assessee in the P&L A/c for the year ending 31.3.2012 has been shown as Rs.9,57,26,243/- (GPL Rs.7,83,86,748/- & SACIL Rs.1,73,39,495/- during F.Y. 2011-12.)

The pendency in balance receivable and balance payable between the assessee and two parties have been explained by the assessee. In this respect, the books of account (said to be washed away by

cyclone phyllin), the assessee's production of confirmation from the two parties is treated as sufficient evidence for explaining the difference. As the assessee has declared a composite contract sum received in P&L account as Rs.9,57,26,243/-, which is inclusive of sum receivable by the assessee for the year ended 31.3.2012. In my humble opinion, no separate addition by way of recasting of balance sheet for the year ended 31.3.2012 was required to be carried out."

After considering the remand report, the CIT(A) observed that there is no justification to make the addition of Rs.1,83,89,574/- by recasting the balance sheet and deleted the same."

9. Ground No. 4 of appeal reads as under:

" On the facts and circumstances of the case and having regard to the reasons stated by the AO for making addition of Rs.4,42,82,877/- on account of rejection of claim of sundry creditors, for the failure on the part of the assessee to furnish requisite details in that regard, the Ld. CIT(A) is not justified in deleting the entire said addition merely accepting the remand report of the AO which he has prepared on the basis of submissions made by the assessee during the appellate proceedings, without making any independent verification/ enquiry in that regard."

10. The CIT(A) adjudicated the issue as under:

*"In the balance sheet as on 31.03.2012, the assessee has shown sundry creditors of Rs.4,42,82,887/-. During the course of assessment proceeding, the assessee was asked to furnish details of sundry creditors vide this office letter No. DCIT/BAM/AARFA 8373K2014-15/7785 dated 5<sup>th</sup> December, 2014 No DCIT/BAM/AARF 8373K/2014-15/9130 dated 6<sup>th</sup> January, 2015 and a show cause letter No. DCIT/BAM/AARFA 8373K/2014-15/11883 dated 10<sup>th</sup> February, 2015. In this regard the assessee was asked to furnish details such as (i) name & address (complete postal address) of the sundry creditors (ii) opening balance as on 01.04.2011, (III) total amount of transaction(s) made during the year (iv) total amount of payment made during*

*the year alongwith date wise payment & mode of payment and (v) balance as on 31.3.2012. Apart from these requisitions made through letters, the assessee was also asked during the course of hearing to furnish those details in the case of sundry debtors. But the assessee did not file such details. In this context, it is relevant to mention here that it was the prime duty of the assessee to furnish those details and prove the genuineness and the correctness of the claim made on account of sundry creditors and debtors. The onus was on the assessee to prove the identity of the sundry creditors, their creditworthiness and the genuineness of the transaction. But the assessee failed to do so. It was simply stated on behalf of the assessee that all the books of account and other documents were washed away by the super cyclone 'phalin'. Other than this contention, no documents/papers and/or evidence was furnished to prove the genuineness and the correctness of the claim with their identity. For the reasons discussed above, it is held that the claim of sundry creditors made by the assessee at Rs.4,42,82,877/- is not at all genuine and correct and hence, the same is added to the income of the assessee.*

7.1 The matter was remanded to the AO for fresh verification on the basis of additional evidences produced by the assessee at the time of appeal ring. After examination of the documents and accounts produced before the AO in his remand report dt.2.3.2017 has submitted as under:

*"Addition of Rs. 4,42,82,877/- was made by disallowing the claim of sundry creditors out of the fact that it had not furnished details such as name and address of the sundry creditors opening balance as on 01.04.2011 total amount Of transactions made during the year then total amount of payment made during the year along with date wise payment and mode of payment and balance as on 31.03.2012. The assessee had at that time claimed that due to cyclone phylin, the same could not be furnished. Presently, the assessee has furnished list of sundry creditors along with copies of confirmation and Return of Income filed by the sundry creditors for the F.Y. 2012-13. (except in the case of Shri. Pratap Ranjan Rout - Rs.77691).*

Particulars	PAN	Closing Balance	
		Debit (Rs.)	Credit (Rs.)
Ajaya Bastia	AQVPB1529L		31,27,956.00
Anusuya Maharana	BITPM4886Q		20,43,576.00
Bikash Kr. Jena	AIOPJ2149R		19,73,846.00
Bikash Premjit	AVOPP9491K		14,42,786.00
Chandrakanta Mohanty	BFXPM6997R "		17,41,164.00
Chandra Sekhar Das	ASHPD4710D		23,46,872.00
Chitaranjan Behera	AMLPB8880A		15,64,283.00'
Daya Filling Station	-		7,96,155.00
Canesh Chandra Pad	BUJPP0318P		13,74,528.00
Ganeswar Sahu	AEUPS7626A		22,97,000.00
Gitanjali Maharana	BDTPM5259G		16,96,264.00
Gita Puri	AIYPP1161B		26,86,792.00
Maa Santoshi Earth Movers	AAQFM9771N		5,38,000.00
Manquli Dalai	BZTPD5383G		15,14,586.00
Nasib Singh	AOKPS4163G		2,00,000.00
Pawan Kumar Aqarwalla	BANPA7500C		16,40,852.00
Pinalisha Parija	AXJPP7012P		18,59,613.00
Pratap Ranjan Rout	-		77,691.00
Priya Ranjan Mohanty	AOPPM7232K		18,73,826.00
Rabi Narayan Ray	AGLPR9387C		10,82,376.00
Rajendra Kumar Sethi	DOQP53612F		16,41,164.00
Rajesh Chandra Rati	ARDPP0252F		9,86,472.00
Rajib Lochan Nayak	ADOPN5043R		22,43,947.00
Ranjita Mohanty	AVMPM1136F		16,23,926.00
Ranjit Patra	BDIPP0883Q		14,67,652.00
Sagar Rout	ASQPR8912H		18,32,789.00
Sailendra Rout	BBPPR8499M		8,74,238.00
Salary & Allowances Payable			95,190.00 \
Subha Sankar Lenka	ACKPL0821G		14,46,382.00
TDS payable 2011-12			1,92,951.00
	Grand Total:	4,42,82,877.00	

Under the circumstances stated by the assessee that its books of account were washed away by cyclone phylin, the above data is considered as sufficient for proving the genuineness of creditors, genuineness of the transactions and the confirmation from the creditors prove the credit worthiness of the sundry creditors.

7.2 I have considered the matter with reference to the facts on **record and** the remand report of the AO. I find that the sundry creditors were considered as not genuine in the

assessment because the assessee failed to furnish the relevant details and documents to prove the genuineness of the same. Apparently, the addition was made u/s.68 though there is no reference to that section in the assessment order. In the course of remand proceedings, the assessee has furnished all the relevant details and documents examination of the same, the AO is of the opinion that the credit liabilities disclosed in the accounts are genuine. Moreover, the provisions of section 68 cannot be applied to sundry creditors and the assessee cannot be applied to sundry creditors and the assessee cannot be asked to prove the 3 ingredients of cash credits in respect of sundry creditors. The sundry credits have arisen out of transactions with the assessee of supply of goods or services and unless the AO proves that the goods or services were never supplied, he cannot make an addition on account sundry creditors. Keeping the above in view and the report of the AO, the addition of Rs.4,42,82,877/- on account of sundry creditors is deleted."

11. Ground No.5 of appeal reads as under:

" On the facts and circumstances of the case, the Ld. CIT(A) is not justified in restricting the disallowance made out of the total expenses under different heads amounting to Rs.8,72,77,179/- at the rate of 2%, which is very low, when the AO has made such disallowance at the rate of 25% for the reasons stated in the assessment order."

12. The CIT(A) has adjudicated the ground as under:

"The AO has given the following reasons for making the addition of Rs.2,18,19,295/-.

"In the profit and loss account, the assessee has debited the following expenses under different heads:

Transportation expenses	:	Rs.2,83,37,849
Quarrying expenses	:	Rs.2,51,04,671
High, stacking & segregation	:	Rs. 99,16,913
Placement of stone	:	Rs.1,63,00,946
Repair & maintenance	:	Rs. 25,02,000
Hire charges of machinery	:	Rs. 32,95,000
Staff salary & allowance	:	Rs. 11,34, 000

Contract wages : Rs. 6,85,800  
Total : Rs.8,72,77,179

*With regard to the claim of such expenses the assessee was not able to produce bills & vouchers. It has also not able to produce books of account on the plea that those were washed away in super cyclone "Phallin". In absence of bills and expenses vouchers and books of account, it was not possible on the part of the undersigned to verify the genuineness and correctness of the expenses claimed under the heads mentioned above. Hence, I deem It fair and reasonable to disallow 25% of the total expenses of Rs.8,72,77,179/- which comes to Rs.2,18,19,294.7'5 or rounded off to Rs.2,18,19,295/-and add the same to the total Income of the assessee.*

*Since the assessee has not furnished the names and address of the transporters and the parties/persons to whom hire charges of machineries has been paid along with the ledger copies, the details of payment made i.e. the date and the amount paid/credited and the amount of tax deducted at sources, if any, and its deposit into the account of the central Government could not be verified."*

8.1 In the remand report dt.2.3.2017, the AO has submitted as under:  
*"As the assessee had failed to furnish the books of accounts, on the plea that these were washed away by cyclone phyllin, out of the expenses amounting to Rs.8,72,77,179/-, the 25% disallowance amounting to Rs.2,18,19,295/- was found fair and reasonable. During the course of hearing, since, the assessee submitted explanation head-wise along with TDS deducted particulars of expenses, these expenses can be allowed. The assessee has shown to have paid M/s Monalisha Parija Rs. 1,01,016/- and Rs. 9,69,697/- on 21.12.2011 and 30.12.2011 respectively. It is seen that, no TDS has been deducted for these payments. Hence, disallowance u/s 40(a) (ia) is called for on this payment of Rs. 10,70,713/-."*

8.2 I have given careful consideration to the matter. The fact remains that the assessee has failed to produce the books of account and the bills & vouchers in support of various expenses before the AO. It is another matter that the reason for non-production given by the assessee is that the books and vouchers destroyed by the cyclone 'philyn'. The AO has reported that the assessee has paid to M/s. Monalisha Parija a total amount of Rs. 10,70,713/-without deduction of tax at source as per the requirement of law. Hence, this amount is required to be disallowed u/s.40(a)(ia). From the balance expenses of Rs.8,62,06,466/- (Rs.8,72,77,179 minus Rs.10,70,713) a disallowance of 2% may be made to take care of the probable non-genuine expenses included therein. Accordingly, the disallowance to be made comes to

Rs.17,24,129/-. Besides, a disallowance of Rs.10,70,413/- is to be made u/s.40(a)(ia). Hence, out of the total disallowance of Rs.2,18,19,295/-, disallowance of Rs.127,94,542/- is confirmed and the balance of Rs.1,90,24,753/- is deleted."

13. We have heard the rival submissions, perused the materials available on record and orders of the lower authorities. It is observed that various additions deleted by the CIT(A) were on the basis of the remand report by the Assessing Officer. In the remand report submitted by the Assessing Officer, the Assessing Officer himself after verification admitted that the addition is to be deleted.

14. On the above facts when Bench asked Id D.R. that when the Assessing officer has himself agreed to in the remand report that addition is to be deleted then what is the grievance of the revenue and why this appeal has been filed. Ld D.R. could not give any reply to the query of the Bench. In the circumstances, we do not find any good reason to interfere with the order of the CIT(A), which is hereby confirmed and appeal of the revenue is dismissed.

15. In the result, appeal of the revenue is dismissed.

16. **Now, we take up the cross objections of the assessee for our adjudication.**

17. Ground Nos.1 to 4 of cross objection are as under:

"1, the learned C.I.T.(A) is justified in confirming the status of the see as Firm on the basis of remand report submitted by the learned .O. therefore, there is no illegality in allowing the salary and interest paid to Partners. In view of this, the grounds taken on this issue being without any merit needs to be rejected in the interest of justice.

2. For that, the learned C.I.T.(A) is justified in the eye of law in deleting addition of Rs. 18,00,012.00 made by the learned A.O. on the basis of findings given by the A.O. while submitting the remand report. In view of this, the ground raised by the learned A.O. being devoid of any merit needs to be rejected in the interest of justice.

3. For that, the learned C.I.T.(A) is justified in deleting the addition of Rs. 1,83,89,574.00 on the basis of explanations offered by the Assessee and the remand report submitted by the A.O. In view of this, the grounds taken by the learned A.O. being without any basis has no leg to stand, as such, needs to be rejected in the interest of justice.

4.For that, the learned C.I.T(A) is justified in deleting the addition of Rs.4,42,82,877.00 on account of sundry creditors made by the learned A.O. on the basis of remand report submitted by the A.O. In view of this, the grounds taken on this issue being not sustainable is liable to be rejected in the interest of justice."

18. In view of our decision in revenue's appeal, Ground Nos.1 to 4 of cross objection have become infructuous and hence, dismissed.

19. Ground No.5 of cross objection reads as under:

" For that, since disallowance of 25% of total expenses of Rs.8,72,77,179.00 on estimation basis was excessive taking into consideration of nature of business and without any basis, the learned C.I.T.(A) is justified in restricting such disallowance to 2%, hence the grounds taken on this issue being devoid of any merit needs to be rejected in the interest of justice."

20. No arguments were advanced by Id A.R. of the assessee with regard to Ground No.5 of cross objection and hence, same is dismissed.

21. Ground No.6 of cross objection reads as under:

" For that, when the learned C.I.T.(A) himself directed to disallow 2% of total expenses of Rs.8,72,77,179.00, he should not have again applied section 40(a)(ia) of the Act to disallow part of such expenses, on the basis of Remand Report without issuing any notice to the Assessee, when the learned A.O has no Authority to suggest the learned C.I.T.(A) to disallow Rs.10,70,413.00 by applying section 40(a)(ia) of the Act. The impugned disallowance of Rs. 10,70,413.00 being illegal needs to be deleted in the interest of justice."

22. The brief facts of the case are that the CIT(A) observed that the Assessing Officer has reported that the assessee has paid Rs.10,70,713/- to M/s. Monalisha Parija without deduction of tax at source as per the requirement of law. Hence, this amount is required to be disallowed u/s.40(a)(ia) of the Act. The CIT(A) disallowed the expenses and made addition of Rs.10,70,713/- to the income of the assessee by invoking the provisions of section 40(a)(ia) of the Act.

23. Before us, Id A.R. has referred to ledger copy of payment made to Monalisha Parija and Form No.16A to submit that TDS was deducted on the payments of Rs.10,70,713/- and deposited with the Government. It was also submitted that these documents were also filed before the CIT(A), who not taking into

consideration these documents has disallowed the expenses by relying on the report of the Assessing Officer. Hence, he prayed that addition be deleted.

24. Ld D.R. could not controvert the submission of Id A.R. of the assessee.

25. On a perusal of the TDS certificate filed by Id A.R. of the assessee during the course of hearing, we find that TDS of Rs.10,707/- was deducted out of the total payment of Rs.10,70,713/- and the related TDS was deposited in the account of Central Government on 29.9.2012 i.e. before the due date of furnishing of return of income u/s.139(1) of the Act. The said TDS certificate is generated from the site of Income Tax Department. Ld A.R. of the assessee made a statement at bar that this TDS certificate was filed before the lower authorities was not disputed by Id D.R. Hence, we find that addition made by the CIT(A) was on wrong appreciation of facts and, therefore, we set aside the order of the CIT(A) and delete the addition of Rs.10,40,713/ and allow this ground of cross objection of the assessee.

26. Ground No.7 and 8 of cross objection read as under:

7. For that, when the learned A.O as well as the learned C.I.T.(A) himself have verified evidences and accepted the fact that Rs.61,55,000.00 were invested by the partners and these

investments were made while meeting the business exigency of the Firm by partners, the learned C.I.T(A) should not have disallowed it in the hand of the Firm by applying section 40A(3) of the Act on the basis of remand report without issuing any notice to the Appellant. In view of this the impugned disallowance confirmed by the learned C.I.T.(A) is liable to be deleted in the interest of justice.

8. For when section 40A(3) of the Act has no application under the facts and in the circumstance of the case, the learned C.I.T(A) should not have applied this section to disallow Rs.61,55,000.00. Thus the impugned disallowances being not sustainable in the eye of law is liable to be deleted."

27. The brief facts of the case are that the Assessing Officer disallowed Rs.61,55,000/- by invoking the provisions of section 40A(3) of the Act being the payment made in cash by the assessee to the following four parties:

i)	Santosh Kumar Moharana	:	Rs.39,25,000
ii)	Ahi Bhusan Sahu	:	Rs.10,50,000
iii)	Subhas Kr Moharana	:	Rs. 8,50,000
iv)	Sabyasachi Panda	:	Rs. 3,30,000

28. On appeal, the CIT(A) confirmed the addition by observing as under:

"I have considered the matter. On the facts of the case, it is clear that the capital introduced by the partners cannot be taxed as unexplained since all the partners are assessed to tax and their creditworthiness cannot be doubted from the incomes shown by them in the returns. However, the entire capital introduction of Rs.61,55,000/- has been made by the partners by way of journal entries passed in the name of partners who have made payments on behalf of the firm for various expenses. The expenses are found to have been made to various parties in cash in violation of the provisions of section 40A(3). Only because the payments have been made by the partners, the firm cannot get away from the

mischief of section 40A(3). Hence, though the addition on account of capital introductions by the partners is to be deleted, the addition is confirmed by way of disallowance u/s 40A(3). The addition of Rs.61,55,000/- is confirmed u/s.40A(3)."

30. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts are that the four partners of the assessee firm incurred expenditure on behalf of the firm aggregating to Rs.61,55,000/-. The assessee firm debited the related expenditure account and credited the partners capital account for the respective amount which they paid on behalf of the firm. The Assessing Officer treated the amount as unexplained credit in the hands of the firm, which was deleted by the CIT(A). However, the CIT(A) treated this amount as in violation to section 40A(3) and thereby confirmed the disallowance of Rs.61,55,000/-. The revenue is not in appeal before us on this issue.

31. In the cross objection of the assessee, the assessee contended that no payment was made by the partners in violation of provisions of section 40A(3) of the Act and, therefore, the disallowance was made on an erroneous assumption.

32. Ld D.R. relied on the order of the CIT(A) and contended that the payments by the firm to the partners were in violation of section 40A(3) of the Act.

33. We find that there is no payment in cash by the firm to the partners. Rather, the undisputed facts are that the partners' capital account was credited by the amount of expenditure paid by the partners on behalf of the firm. Thus, there is no payment to a particular person in excess of Rs.20,000/- in violation of section 40A(3) of the Act. Thus, we find that the disallowance was made without bringing the necessary facts on record for which the onus was on the revenue. We, therefore, find that the disallowance made by the CIT(A) by invoking the provisions of section 40A(3) is unsustainable. We, therefore, delete the disallowance of Rs.61,55,000/- and allow this ground of cross objection of the assessee.

34. In the result, cross objection of the assessee is partly allowed.

Order pronounced on 16 /11/2018.

Sd/-

sd/-

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

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

Cuttack; Dated 16/11/2018  
B.K.Parida, SPS



**Copy of the Order forwarded to :**

1. The Appellant : /Revenue: DCIT, Berhampur Circle,  
Berhampur
2. The Respondent/Assessee: M/s. Allied Infra  
Supplies.
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT- 1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

**Sr. Pvt. Secretary,  
ITAT, Cuttack**