

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

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA Nos. 139 & 140/VIZ/2018
(Asst. Year : 2013-14)**

Potru Srinivasa Rao,
4-2-67/10, Nandamuru Road,
Kovvur, W.G. District.

vs. ITO, Ward-2,
Tanuku.

PAN No. BHVPS 8223 A
(Appellant)

(Respondent)

Assessee by : Shri C. Subrahmanyam – FCA.
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 19/11/2018.
Date of pronouncement : 28/11/2018.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

These appeals by the assessee are directed against the separate orders of Commissioner of Income Tax (Appeals)-3, Visakhapatnam, each dated 12/02/2018 for the Assessment Year 2013-14.

2. Facts of the case, in brief, are that assessee is an individual engaged in the business of lorry transports and liquor, besides deriving income from a partnership firm. In the assessment order, the Assessing Officer has observed that the assessee has

purchased lorries by obtaining finance from M/s. L & T Finance. The assessee has made interest payments aggregating to Rs.2,10,574/- without making any TDS, hence, the same is disallowed by the Assessing Officer under section 40(a)(ia) of the Act and added to the total income of the assessee.

3. On appeal before the Id. CIT(A), it was submitted that the assessee has not claimed any expenditure in the profit & loss account in respect of finance charges paid to M/s. L & T Finance, therefore, section 40(a)(ia) has no application. The Id. CIT(A) by considering the explanation given by the assessee, confirmed the order of the Assessing Officer by observing as under:-

"4.4 I have carefully considered the arguments of the appellant and also the decision of the Assessing Officer. It is seen at page No. 2 from the assessment order of the Assessing Officer passed on 11/03/2016 wherein it is mentioned that this addition was made with the consent of the Authorized Representative of the appellant. The relevant portion of the same is reproduced hereunder:-

"In respect of purchase of lorries made by obtaining finance from M/s. L & T finance, the assessee made interest payments aggregating to Rs. 2,10,574/- without making any TDS. Hence, the same is disallowed under section 40(a)(ia) of the Act and added back, for which the AR agreed."

In view of the factual matrix, I do not find any fault with the Assessing Officer in rejecting the claim of the appellant. Accordingly, the grounds raised by the appellant are rejected and the order of the Assessing Officer is confirmed."

4. On appeal before us, Id. Authorized Representative for the assessee has submitted that the assessee has not claimed any expenditure in the profit & loss account in respect of finance charges paid to M/s. L & T Finance and section 40(a)(ia) is applies only when the claim is made by debiting the expenses to the profit & loss account.

5. On the other hand, Id. Departmental Representative strongly supported the orders of the authorities below and submitted that AR agreed for the addition before the Assessing Officer.

6. We have heard both the sides, perused the material available on record and orders of the authorities below.

7. The assessee has made certain interest payments to M/s. L & T Finance, aggregating to Rs. 2,10,574/- without making any TDS, therefore, the Assessing Officer has disallowed the same under section 40(a)(ia) of the Act. In the assessment order, the Assessing Officer has recorded that the AR agreed for the addition. On appeal before the Id. CIT(A), it is submitted that the interest payments made by the assessee to the M/s. L & T Finance was not claimed as expenditure in the profit & loss account, therefore, section 40(a)(ia) has no application. However, Id. CIT(A) without considering the explanation given by the assessee, simply confirmed the order on the ground that it is an agreed addition.

We find that when the assessee has submitted before the Id.CIT(A) that he has not claimed any expenditure in the profit & loss account, the Id. CIT(A) ought to have been examined and considered the issue on merits, simply because counsel agreed for the addition, the same cannot be confirmed when specific ground is taken by the assessee. In view of the above, we set aside the order passed by the Id. CIT(A) and remit the issue back to the Assessing Officer to consider the explanation given by the assessee and pass an order afresh in accordance with law. Thus, this appeal filed by the assessee is allowed for statistical purposes.

8. So far as ITA No. 140/VIZ/2018 is concerned, it is mere academic in nature, no adjudication is required, therefore same is dismissed.

9. In the result, appeal filed by the assessee in ITA No.139/VIZ/2018 is allowed for statistical purposes; and ITA No.140/VIZ/2018 is dismissed.

Order Pronounced in open Court on this 28th day of Nov., 2018.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated : 28th November, 2018.

vr/-

Copy to:

1. *The Assessee - Potru Srinivasa Rao, 4-2-67/10, Nandamuru Road, Kovvur, W.G. District.*
2. *The Revenue - ITO, Ward-2, Tanuku.*
3. *The Pr.CIT, Rajamahendravaram.*
4. *The CIT(A)-3, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.