

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

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

**श्रीवी. दुर्गाराव, न्यायिकसदस्यएवं
श्रीडि.एस. सुन्दरसिंह, लेखासदस्यकेसमक्ष**

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

**आयकरअपीलसं./I.T.A.No.39/Viz/2013
(निर्धारणवर्ष/Assessment Year:2009-10)**

Dy.Commissioner of Income-Tax
Circle-2(1)
Vijayawada

Vs. M/s Sri Sai Engineering &
Drilling
#54-18-26, 2nd Line
LIC Colony
Vijayawada
[PAN :ABAFS0788A]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

**Cross Objection No.58/Viz/2013
Arising out of I.T.A.No.39/Viz/2013
(निर्धारणवर्ष/Assessment Year: 2009-10)**

M/s Sri Sai Engineering & Drilling
#54-18-26, 2nd Line
LIC Colony
Vijayawada
[PAN :ABAFS0788A]

Vs. Addl. Commissioner of
Income Tax, Range-2
Vijayawada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

Revenue by
Assessee by

: Shri D.K.Sonowal, CIT DR
: Shri G.V.N.Hari, AR

सुनवाईकीतारीख / Date of Hearing

: 29.01.2019

घोषणाकीतारीख/Date of Pronouncement

: 06.02.2019

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Vijayawada vide AppealNo.275/CIT(A)/VJA/2011-12 dated 30.11.2012 and cross objections by the assessee for the Assessment Year (A.Y.) 2009-10.

2. In this case, the assessee filed the appeal, which was decided by this Tribunal vide order in ITA No. 39/VIZ/2013, dated 06.01.2017. In the order dated 06.01.2017, the coordinate bench of ITAT has decided the issue with regard to the disallowance u/s 40(a)(ia), following the decision of special bench in the case of Merilyn Shipping & Transporters Vs. ACIT [2012] 20 taxmann.com 244 (Visakhapatnam). Subsequently, the revenue has filed Miscellaneous Application No.14/Viz/2018 stating that in view of the Hon'ble Supreme Court judgment in the case of Palam Gas Service vs. CIT (81 taxmann.com 43) requested to recall the order for re-adjudication. Accordingly Ground No.9, 10 and 11 which are related the issue of disallowance u/s 40(a)(ia) are recalled to decide the issue afresh on merits. Ground Nos.9,10,11 of revenue's appeal reads as under :

Grounds 9,10 and 11:

9. *The Ld.CIT(A) erred in deleting the disallowance made u/s 40(a)(ia)*

towards transportation charges and fit filling charges basing on ITAT's decision in the case of Merilyn Shipping & Transports, which was stayed by the Hon'ble A.P.High Court.

10. *The Ld.CIT(A) erred in confirming that no TDS is required even though the payment to each vehicle exceeds Rs.50,000/- and also in respect of payment made to a person exceeding Rs.50,000/- in a year.*

11. *Reliance is also placed on the following decisions :*

a. *Shree Choudhary Transport Company Vs. ITO [225 CTR (Raj)] 125 2009]*

b. *Dey's Medical (U.O.) (P) Ltd. Vs. Union of India & Ors. [(2009) 316 ITR 445]*

c. *Marc. Signage Vs. ITO 2010-TIOL-KOL*

d. *Matrix Glass & Structures Pvt. Ltd. Vs. ITO 2011-TIOL-181-ITAT-KOL*

e. *M/s Parnika Construction Pvt. Ltd. Vs. Dy.Commissioner of Income Tax, Circle-116(3), Hyderabad ITAT 'B' Bench, Hyderabad in ITA No.1081/Hyd/09, dt.16.07.2010.*

3. Ground No.9, 10 and 11 are related to the addition made by the AO in respect of transportation charges Rs.74,97,500/- and Pit filling charges of Rs.20,41,800/-. Above payments were made in excess of Rs.50,000/- in each case, though the assessee tax required to deduct the tax at source u/s 194C of the Act, the assessee failed to deduct the same, hence, the AO disallowed the sum of Rs.74,97,500/- representing transportation charges and Rs.20,41,800/- relating to Pit filling charges u/s 40(a)(ia) of the Act.

4. On appeal, the Ld.CIT(A) following the decision of Hon'ble ITAT, special bench in the case of Merilyn Shipping and Transport Services Pvt. Ltd. Vs. ACIT[2012] 20 taxmann.com 244 (Visakhapatnam) allowed the appeal of the assessee.

5. Against the order of the Ld.CIT(A) , the revenue filed appeal before the Tribunal and the ITAT also allowed the appeal of the assessee following the decision of Merilyn Shipping and Transport Services Ltd. since no part of expenditure was outstanding as at the end of the year.

6. Against the order of the ITAT, the revenue filed miscellaneous application in view of the Hon'ble Supreme Court's decision in the case of Palam Gas Services, wherein, Hon'ble Supreme Court has reversed the order of the Merilyn Shipping and Transport Services Ltd.,

7. We have heard both the parties and perused the material placed on record. We observed that a sum of Rs.74,97,500/- was outstanding as at the end of the year in respect of transportation charges and a sum of Rs.20,41,800/- in respect of Pit filling charges. According to the assessee, the payments were made to more number of operators through their group leader in lump sum ,so, the amount payable/paid by them to individual operators does not exceed Rs.50000/-. Thus, the assessee argued that there is no case for making deduction u/s 194C of the act and consequent disallowance u/s 40(a)(ia) does not arise. Similarly in respect of pit filling charges also the assessee's argued that the payment was made to mestry towards the labour payments and there is no application of 194C of the Act. Ld.CIT(A) did not examine the issue with regard to application of

provisions of TDS to the payments made, since, there was no outstanding as at the end of year in view of the special bench judgment. Therefore, in the interest of justice, we are of the considered opinion that the issue should be remitted back to the file of the CIT(A) to examine whether the payments in question attract the provisions of TDS and consequent application of disallowance u/s 40(a)(ia) of the Act and decide the issue afresh on merits keeping in view of the decision of Hon'ble Supreme Court in the case of Palam Gas Service Ltd. Both the parties have conceded to remit the matter back to the file of the Ld.CIT(A). The ld. CIT(A) should allow reasonable opportunity to the assessee to present its case. Accordingly, appeal of the revenue is allowed for statistical purpose.

8. In the result, appeal of the revenue and the cross objections of the assessee are allowed for statistical purpose.

Pronounced in the open Court on this 6th day of Feb., 2019

Sd/-

(वी.दुर्गराव)

(V. DURGA RAO)

न्यायिकसदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 06.02.2019

L.Rama, SPS

sd/-

(डि.एस. सुन्दरसिंह)

(D.S. SUNDER SINGH)

लेखासदस्य/ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ TheAssessee-M/s Sri Sai Engineering & Drilling, #54-18-26, 2nd Line, LIC Colony, Vijayawada
2. राजस्व/The Revenue –(i) Dy.Commissioner of Income-Tax, Circle-2(1) Vijayawada
3. The Pr.Commissioner of Income Tax, Vijayawada
4. Commissioner of Income-Tax (Appeals),Vijayawada
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam