

**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 No. 29/VIZ/2019
(Asst. Year : 2008-09)**

ITO, Ward-1,
Tuni. vs. M/s. Sri Sairam Finance Co.,
D.No. 1-65-6, Acharigari
Thota, Seetharampuram,
Tuni, East Godavari District.

(Appellant) PAN No. AASFS 3026 N
(Respondent)

**C.O.No.41/VIZ/2019
(Arising out of ITA No. 29/VIZ/2019)
(Asst. Year : 2008-09)**

M/s. Sri Sairam Finance Co., vs. ITO, Ward-1,
D.No. 1-65-6, Acharigari Tuni.
Thota, Seetharampuram, Tuni,
East Godavari District.

PAN No. AASFS 3026 N (Applicant) (Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 26/06/2019.
Date of pronouncement : 03/07/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue and the cross objection by the assessee are directed against the order of Commissioner of

Income Tax (Appeals)-2, Visakhapatnam, dated 29/10/2018 for the Assessment Years 2008-09.

2. There is a delay of 2 days in filing this appeal. The Revenue has filed an affidavit by mentioning the reasons for delay in filing the appeal. We find that there is a sufficient cause to file the appeal belatedly. Accordingly, delay is condoned.

3. Facts of the case, in brief, are that assessee has made interest payments of Rs. 13,71,771/- which includes 9,518/- paid to persons below Rs. 5,000/- and Rs. 7,82,016/- paid to partners on their capital. However, the assessee did not deduct tax on the balance interest payments of Rs. 5,80,177/-, which attracts TDS provisions. When the assessee was asked to explain, it was submitted before the Assessing Officer that payees by filing Form-15G requested the assessee not to deduct tax and he further submitted that the same was forwarded to the CIT, Rajahmundry, however, assessee did not submit acknowledgment obtained from the office of the CIT, Rajahmundry, but copy of the said forms are filed before the Assessing Officer. The Assessing Officer not agreed with the submissions of the assessee and by invoking section 40(a)(ia), disallowed an amount of Rs. 5,80,177/- on the ground that the assessee has failed to file the acknowledgement obtained from the CIT, Rajahmundry.

4. On appeal, Id. CIT(A) by following the decision of the ITAT, Visakhapatnam Bench in the case of *Pioneer Finance Vs. Pr.CIT* in ITA No. 459/VIZ/2016, dated 20/12/2017 allowed the appeal of the assessee. For the sake of convenience, the relevant portion of the order is extracted as under:-

"5.2 x x x x x

1. x x x x x

2. x x x x x

3. x x x x x

4. Further, the appellant places reliance in the decision of the Hon'ble Income Tax Appellate Tribunal, Visakhapatnam in the case of *Pioneer Finance Vs. Pr. Commissioner of Income Tax* in ITA No. 459/V/2016 Order dt.20/12/2017 wherein the Hon'ble Tribunal placed reliance on the decision of the ITAT, Chennai Bench in the case of *Narasu Spinning Mills vs. ACIT* wherein it was held as under:

"Business Expenditure--Interest, commission, brokerage etc. to a resident--Disallowance u/s 40(a)(ia) towards payment of interest--Non-payment of TDS AO made disallowance of Rs.71,016/- u/S 40(a)(ia) on ground that assessee had not made any TDS at time of payment and recipient of amount had submitted Form 15H -- Since assessee was informed in advance, TDS was not made and in fact, assessee filed TDS certificate subsequently--Held, Section 40(a)(ia) clearly says that when tax is deductible at source and such tax has not been deducted or (M/s. Pioneer Finance) after deduction it was not paid before due date for filing the return of income, then expenditure, which was otherwise allowable under the provisions of Income -tax Act, had to be disallowed--Interest payment of Rs.71,016/- was claimed as expenditure --Assessee was making similar payment to very recipient in earlier assessment year and tax was not deducted as required u/S 40(a)(ia) on basis of Form15H filed by recipient -- Recipient of interest amount informed assessee that she would file Form 15H - - Accordingly , at time of credit , tax was not deducted--Subsequently Form 15H was filed on 10.04.2011, before due date for

depositing amount in Government account -When recipient filed Form 15H, there was no liability on part of the assessee to deduct tax-- Admittedly, tax was not deducted at time of credit--However, before due date for filing return of income, recipient filed Form 15H -- Therefore, on date of filing of return of income, tax was not deductible on amount paid to recipient since Form 15H was filed --When there was no requirement for deduction of tax in view of filing of Form 15H by recipient on 10.04.2011, this Tribunal was of considered opinion that there could not be any disallowance u/s 40(a)(ia) -- Tribunal was unable to uphold order of lower authority and accordingly, order of lower authority was set aside and addition of Rs.71,016/was deleted--Assessee's Appeal partly allowed.

5.3 I have considered the above submissions made by the A.O. and the appellant. The issue to decide is whether the disallowance u/s.40(a)(ia) of the Income tax Act, 1961 made by the AO is reasonable and justified or not. Taking into consideration the decision of the Hon'ble Income Tax Appellate Tribunal, Visakhapatnam in the case of Pioneer Finance Vs. Pr. Commissioner of Income Tax in ITA No. 459/V/2016 Order dt. 20.12.2017 in which the facts of the case are similar to the facts of the present appeal and by following the said decision of the Hon'ble ITAT, Visakhapatnam cited supra, I hereby direct the Assessing Officer to delete the made of Rs.5,80,177/- u/s.40(a)(ia) of the Income tax Act, 1961 on the interest payments made by the appellant. In the result, the appeal made by the appellant on this ground is hereby allowed."

- 5.** On being aggrieved, Revenue carried the matter in appeal before this Tribunal.
- 6.** Ld. Departmental Representative relied on the grounds of appeal.
- 7.** *Per contra*, Id. counsel for the assessee has relied on the order of the ITAT, Visakhapatnam Bench in the case of *ITO Vs.*

M/s. Manikanta Finance Corporation in ITA No. 28/VIZ/2019, dated 21/06/2019 and submitted that same may be followed.

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

9. In the present case, the assessee has received Form-15G from payees, the same were forwarded to the CIT, Rajahmundry, therefore, he did not deduct tax at source. The case of the Assessing Officer is that the assessee has not filed the acknowledgment from the office of the CIT, Rajahmundry in respect of receipt of Form-15G and accordingly addition is made. The Id. CIT(A) by considering all the details, deleted the addition made by the Assessing Officer by following the decision of the coordinate bench of the Visakhapatnam tribunal in the case of *Pioneer Finance (supra)*. The very same aspect has been considered by this Tribunal in the case of *M/s. Manikanta Finance (supra)* and confirmed the order of the Id. CIT(A). For the sake of convenience, the relevant portion of the order is extracted as under:-

8. The only issue before us is non-deduction of TDS in respect of payment made by the assessee above Rs. 5,000/- amounting to Rs. 14,94,465/-. The case of the assessee is that he has received Forms 15G from the payees and the same were forwarded to the Id.Commissioner, Rajahmundry, therefore he has not deducted any tax at source. The Assessing Officer considered the submissions of the assessee and observed that the assessee

failed to file the acknowledgements from the office of the Id. Commissioner in respect of receipt of Form 15G, hence, addition is made. The assessee has filed all the details before the Id. CIT(A) as were filed before the Assessing Officer. The relevant documents have been placed before the Tribunal also. The Id. CIT(A) by considering the submissions of the assessee and also by following the decision of the ITAT, Visakhapatnam Bench in the case of Pioneer Finance (supra), deleted the addition made by the Assessing Officer. For the sake of convenience, the relevant portion of the order is extracted as under:-

"5.3. I have considered the above submissions made by the A.O. and the appellant. The issue to decide is whether the disallowance u/s. 40(a)(ia) of the Income-tax Act, 1961 made by the AO is reasonable and justified or not. Taking into consideration the decision of the Hon'ble Income Tax Appellate Tribunal, Visakhapatnam in the case of Pioneer Finance Vs. Pr. Commissioner of Income Tax in ITA No. 459/V/2016 order dated 20/12/2017 in which the facts of the case are similar to the facts of the present appeal and by following the said decision of the Hon'ble ITAT, Visakhapatnam cited (supra), I hereby direct the Assessing Officer to delete the addition made of Rs. 14,94,455/- u/s 40(a)(ia) of the Income-tax Act, 1961 on the interest payments made by the appellant. In the result, the appeal made by the appellant on this ground is hereby allowed."

9. We find that the Id. CIT(A) by considering all the details and also by following the decision of the coordinate bench of the tribunal in Pioneer Finance's case (supra), deleted the addition made by the Assessing Officer. We find no reason to interfere with the order passed by the Id. CIT(A). Thus, this appeal filed by the revenue is dismissed."

10. Respectfully following the decision of the above referred to judgment, we find no reason to interfere with the order passed by the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed.

11. So far as C.O. filed by the assessee is concerned, which is only supportive to the order of the Id. CIT(A). As the assessee

has no grievance against the order of the Id. CIT(A), the C.O. filed by the assessee has become infructuous and is dismissed accordingly.

12. In the result, appeal filed by the Revenue and the C.O. filed by the assessee are dismissed.

Order Pronounced in open Court on this 03rd day of July, 2019.

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

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 03rd July, 2019.

vr/-

Copy to:

1. *The Assessee-M/s. Sri Sairam Finance Co., D.No. 1-65-6, Acharigari Thota, Seetharampuram, Tuni, East Godavari District.*
2. *The Revenue – ITO, Ward-1, Tuni.*
3. *The CIT-2, Visakhapatnam.*
4. *The CIT(A)-2, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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