



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

**BEFORE S/SHRI P.M. JAGTAP, VICE PRESIDENT
AND C.M. GARG, JUDICIAL MEMBER**

ITA No.98/CTK/2020

Assessment Year : 2011-12

Sri Jayant Kumar Jena, Kusupur, Mahanga, Cuttack	Vs.	DCIT, Circle-1(1), Cuttack
PAN/GIR No.ACRPJ 9329 E		
(Appellant)	..	(Respondent)

Assessee by : Shri ,S.N.Sahu/Somnath Sahoo, ARs
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 20 /1/ 2021
Date of Pronouncement : 28 /1/2021

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the CIT(A), Cuttack dated 14.11.2019 for the assessment year 2011-12.

2. The only issued involved in the grounds of appeal is that the old CIT(A) was not justified in confirming the addition of Rs.18,61,933/- u/s.40(a)(ia) of the Act for the interest paid to NBFC without deduction of TDS.

3. Facts of the case are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of Rs.18,61,933/- under the head interest paid to NBFCs in the profit and loss account. He also noticed that the assessee has not made any TDS out of interest paid. Therefore, the AO required the assessee to explain as to why interest amount of Rs.18,61,933/- paid to NBFCs will not be disallowed and added to the total income of the assessee u/s.40(a)(ia) of the Act. In response, the assessee submitted that NBFCs company have financed the lorries to M/s. J.K. Jena for transportation business and in order to avoid irregular payments, they always obtain postdated cheques covering the principal and interest instalments payable from the assessee. The assessee also in order to avail the finance facility, the had no option but to issue the post dates and also paid the instalments. The assessee also submitted that the finance companies have furnished the interest certificates. On verification of the interest certificates issued by NBFCs, the AO opined that it simply confirms the interest portion of instalments but nowhere it is clarified that the interest amount has been included in the total income of the payee. Since the assessee failed to establish that the interest of Rs.18,61,933/- has been offered to tax, the AO disallowed interest amount of Rs.18,61,933/- and added the same to the total income of the assessee.

4. On appeal, the Id CIT(A) confirmed the action of the Assessing Officer on the ground that no submissions were furnished before him to dispose of the appeal despite several opportunities granted to the assessee.

5. Hence, the assessee has filed appeal before the Tribunal.

6. Ld A.R. of the assessee submitted that the Id CIT(A) has passed a cryptic order without considering the submissions made before him in Form No.35. Ld AR also submitted that the Assessing Officer has wrongly presumed that interest amount of Rs.18,61,933/- has been debited in the profit and loss account without deduction of TDS but actually the assessee has not debited the same amount in the profit and loss account, which can be emanated from the audited profit and loss account and balance sheet filed before the AO. He submitted that on this ground also, the appeal is liable to be allowed. He submitted that the return income disclosed by the assessee as noted by the AO is Rs.38,18,930/- and the interest amount of Rs.16,61,933/- is reduced therefrom, then the return income will be Rs.19,56,997/- (Rs.38,18,930 – Rs.18,61,933/-)

7. Ld A.R. further produced a decision dated 7.12.2018 of ITAT Kolkata 'D' Bench in the case of ACIT vs Smt. Champa Nandi in ITA No.2517/Kol/2017 and submitted that on similar facts and circumstances, the interest amount disallowed by the AO was deleted by the Id CIT(A) and on further appeal, the Tribunal confirmed the action of the Id CIT(A). He

also further relied on the decision of ITAT Bangalore in the case of Shri Azmath Ulla vs ACIT in ITA No.144/Bang/2017 order dated 7.6.2017 and submitted that on similar facts also, although the interest certificates received from NBFCs were furnished before the AO, the Tribunal has restored the matter to the file of the AO to verify of the fact that the recipient NBFCs have already into account the amount of interest for computing the income in their return of income.

8. Replying to above, Id CIT DR supported the orders of lower authorities.

9. We have heard the rival submissions and perused the record of the case. The issue before us for adjudication is as to whether the interest amount paid by the assessee to NBFC have been included in the certificates or not. It is the contention of the assessee that the interest amount has been paid to NBFC and the NBFC have furnished interest certificate in support of this. In view of above, we are of the considered opinion that if the certificates filed by NBFCs is inclusive of interest amount and offered to tax, then the compliance of section 40(a)(ia) is deemed to have been made and no disallowance is called for. We also find that the second proviso to section 40(a)(ia) shall have retrospective effect. Therefore, we set aside the orders of lower authorities and restored to the file of the AO for verification of the fact that the receipt NBFCs have already taken into account the amount of interest received by them for computing the income

in their return oncome and if after verification, the AO is satisfied that NBFCs have considered this interest amount, no disallowance is called for. For this limited purpose, the issue is restored to the file of the AO.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 28/1/2021.

Sd/-
(C.M. Garg)
JUDICIAL MEMBER

sd/-
(P.M. Jagtap)
VICE PRESIDENT

Cuttack; Dated 28 /1/2021
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Sri Jayant Kumar Jena,
Kusupur, Mahanga, Cuttack
2. The Respondent. DCIT, Circle-1(1),
Cuttack
3. The CIT(A)-, Cuttack
4. Pr.CIT- , Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack