

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'A' BENCH : HYDERABAD  
(Through Virtual Hearing)**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA Nos.416 and 417/Hyd/2016  
(Assessment Years: 2007-08 and 2008-09)**

The Deputy Commissioner of Income Tax,  
Circle – 2(1), Hyderabad. ..Appellant.

Vs.

M/s. Jana Priya Properties Pvt. Ltd.,  
8-2-120/86, Plot No.11 & 12,  
Keerthi and Pride Tower, Road No.2,  
Banjara Hills, Hyderabad.

PAN No.AABCJ9001E. ..Respondent.

Appellant by : Shri A. Srinivas, AR.  
Respondent by : Shri Sunku Srinivas, DR.

Date of Hearing : 08.09.2021  
Date of Pronouncement : 09.09.2021

**ORDER**

**PER S.S. GODARA, J.M. :**

These two Revenue's appeals for AYs 2007-08 and 2008-09 arise against the Commissioner of Income-Tax (Appeals) – 2, Hyderabad's separate orders; both dated 23.12.2015, passed in

case Nos.0213 and 214/2014-15, involving proceedings u/s 143(3) r.w.s. 254 and 143(3) of Income Tax Act, 1961 [in short, 'the Act'], respectively.

Heard both the parties. Case files perused.

2. The Revenue has proposed the following identical twin substantive grounds in the instant appeals :

*"1. In the facts and circumstances of the case whether the CIT(A) is correct in allowing the ground of the assessee that the AO cannot deny the deduction unless the Central Government rescind the approval and notification issued, by following the jurisdictional Tribunal's decision in the case of Ms.. Annapurna Builders in ITA No.1006/Hyd/2012 dated 27.11.2012.*

*2 In the facts and circumstances of the case whether the CIT(A) is correct in allowing the ground of the assessee even when the assessee deviated from the specific condition imposed by the CBDT that no single unit shall occupy more than 50% of the allocable industrial area of an industrial park.*

*3. In the facts and circumstances of the case whether the CIT(A) is correct in allowing the ground of the assessee that provisions of Sec.40(a)(ia) not applicable by following the decision of the Vizag Special Bench's decision in the case of M/s. Merylin Shipping Pvt Ltd., when the said decision was suspended by the Hon'ble High Court of A.P."*

3. We have given our thoughtful consideration to rival pleadings qua the Revenue instant twin substantive grievance. It emerges at the outset that this tribunal order in the Revenue's identical appeals in ITA Nos.2272 and 2273/Hyd/2018 for AYs. 2013-14

and 2014-15 dated 25.06.2021 has decided the former issue (grounds 1 and 2) as follows :

*“3. We notice at the outset with the able assistance of both the parties that the CIT(A) has gone by his detailed discussion in AY.2008-09 deleting the very nature of Section 80-IA(4) deduction disallowance for the sole reason that this taxpayer had let out more than 50% of the area to a single tenant. Both the learned representative informed us very fairly that this coordinate bench’s decision in Revenue’s appeal No.1746/Hyd/2016, AY.2011-12 decided on 07-04-2017 has taken note of the CBDT Circular dt.13-11-2006 as well as a catena of other co-ordinate benches’ orders thereby declining the department’s very grievance. We make it clear that there is no distinction in the above extracted pleadings on facts in all these assessment years qua the assessee’s eligible undertaking. We thus adopt judicial Consistency to affirm the CIT(A)’s action deleting the impugned Section 80-IA for deduction disallowance of Rs. 2,47,72,990/-. The Revenue’s sole substantive grievance as well as the main appeal ITA No.2272/Hyd/2018 fail therefore.”*

4. We adopt judicial consistency and in the absence of any distinction on facts to decline the Revenue’s instant former two substantive grounds. Coming to the latter issue of Sec.40(a)(ia), disallowance made by the Assessing Officer and reversed in the CIT(A)’s order by following tribunal’s Special Bench decision of M/s. Merylin Shipping and Transports Ltd., Vs. ACIT in (2012) 136 ITD 23 (SB) (45) that the same only covers those expenses which remain “payable” on the last day of the relevant accounting period, we find that the same is no more res integra since hon’ble apex court in Palam Gas Service Vs. CIT in 394 ITR 300 (SC) holds

that Sec.40(a)(ia) also covers both “paid” as well as “payable” expenses. The fact also remains that the legislature has inserted Sec.40(a)(ia) 2<sup>nd</sup> proviso by the Financial Act, 2012 w.e.f. 01.04.2013 that the impugned disallowance does not come into play in case the assessee / deductor concerned is not the assessee-in-default in view of section 201(1) first proviso of the Act. And that case law CIT Vs. Ansal Land Market Township Limited in (2015) 377 ITR 635 (Del) holds the foregoing proviso to be having retrospective effect being curative in nature. We therefore reverse this CIT(A)’s order on the foregoing legal issue and restore the issue back to the Assessing Officer for his necessary factual verification in light of Sec.40(a)(ia) 2<sup>nd</sup> proviso in order to cross check as to whether the assessee’s / payees concerned have been assessed qua the very income or not, as per law within three effective opportunities of hearing. The Revenue’s instant latter substantive ground is allowed for statistical purposes.

5. No other ground has been pressed before us.

6. These two Revenue's appeals are partly allowed for statistical purposes in the above terms. Ordered accordingly. A copy of this common order is placed in respective files.

Order pronounced on 9<sup>th</sup> day of September, 2021.

Sd/-  
**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

Hyderabad, dt 09.09.2021.

**\*TYNM**

Copy forwarded to:

1. M/s. Jana Priya Properties Pvt. Ltd., (8-2-120/86, Plot No.11 & 12, Keerthi and Pride Tower, Road No.2, Banjara Hills, Hyderabad.
2. The Deputy Commissioner of Income Tax, Circle - 2(1), Hyderabad.
3. CIT(Appeals) - 2, Hyderabad.
4. Pr.CIT-2, Hyderabad.
5. D.R. ITAT Hyderabad.
6. Guard File.

*By Order*