

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री अरुण खोड़पिया लेखा सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

AND

SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.376/CTK/2016

(निर्धारण वर्ष / Assessment Year :2011-2012)

Kendrapara Urban Co-operative Bank Ltd., College Square, Tinimuhani, Kendrapara	Vs	ACIT, Cir-1(2), Cuttack
PAN No. :AAATK 8347 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारित की ओर से /Assessee by	:	Shri P.C.Sethi, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	15/11/2022
घोषणा की तारीख/Date of Pronouncement	:	15/11/2022

आदेश / ORDER

Per Bench :

This an appeal filed by the assessee against the order of the Id. CIT(A), Cuttack, dated 27.03.2015, passed in I.T.Appeal No.546/2011-12 for the assessment year 2011-2012.

2. This appeal had originally been disposed off by the coordinate Bench of this Tribunal vide order dated 16.03.2020, wherein it was held that the amendment to Section 40(a)(ia) of the Act by the Finance Act (No.2) Act, 2014 was retrospective in operation and the disallowance on account of the non-deduction of TDS was liable to be restricted to 30% as against 100% made by the AO and confirmed by the Id. CIT(A).

3. The revenue had filed a miscellaneous application bearing M.A.No.39/CTK/2021, wherein the decision of the Hon'ble Supreme Court in the case of Shree Choudhary Transport Company (2020) 426 ITR 289

(SC) had been referred to. In view of the interpretation made in respect of Shree Choudhary Transport Company, referred to supra, the order of the Tribunal had been recalled on the ground that there appeared to be a mistake apparent from the record. The appeal is now come up for hearing before us.

4. Ld. AR on behalf of the assessee has categorically brought to our attention that in para 19.6 of the decision of the Hon'ble Supreme Court in the case of Shree Choudhary Transport Company (supra), nowhere mentions that the Hon'ble Supreme Court has treated the amendment made to Section 40(a)(ia) of the Act by the Finance (No.2) Act, 2014 was not retrospective in operation. It was the submission that a perusal of the said paragraph categorically showed that the Hon'ble Supreme Court had in that case rejected as baseless, rather preposterous the attempt on the part of the assessee therein to seek some succour in the amendment of Section 40(a)(ia) of the Act by the Finance (No.2) Act, 2014. It was the submission that the coordinate benches of the Tribunal in the cases of Muradul Haque, [2020] 117 taxmann.com 251 (Delhi-Trib.), Smt. Sonu Khandelwal, ITA No.597/JP/2013, dated 13.05.2016, Singonahalli Chikkarevanna Gangadharaiah [2020] 116 taxmann.com 230 (Bang-Trib), Tripura State Electricity Corporation Ltd., ITA No.30-32/Gau/2015, dated 18.10.2019 as also in the case of Smt. Kanta Yadav, ITA No.6312/Del/2016, dated 12.05.2017, have categorically held that the amendment to Section 40(a)(ia) of the Act by the Finance (No.2) Act,

2014 was retrospective in operation. It was the submission that the disallowance is liable to be restricted to 30%.

5. In reply, the Id. DR vehemently supported the orders of the Id. AO and Id. CIT(A). Ld. Sr. DR drew our attention to para 19, 19.2 & 19.5 of the decision of the Hon'ble Supreme Court in the case of Shree Choudhary Transport Company, referred to supra, to submit that though the Hon'ble Apex Court did not directly hold that the amendment brought by the Finance (No.2) Act, 2014 into the Section 40(a)(ia) of the Act, was not retrospective, however, the interpretation is to be given to hold the same as not retrospective.

6. We have heard the rival submissions. In respect of the amendments which have brought into by the various Finance Act, wherein the amendment is brought in to remove the hardship caused to the assessee, the same is clarificatory in nature. This principle is as per the decision of the Hon'ble Supreme Court in the case of Vatika Township (P.) Ltd. [2014] 49 taxmann.com 249 (SC). A perusal of the amendment by the Finance (No.2) Act, 2014 made to the provision of Section 40(a)(ia) of the Act clearly shows that the amendment has been brought to remove hardship caused to the assessee. It must be understood that the disallowance of 100%, by the said amendment was restricted to 30%, thus, clearly the amendment was brought in to remove the hardship caused to the assessee. In these circumstances, respectfully following the decision of the various coordinate benches of the Tribunal on this issue, referred to supra, as also the principle laid down by the Larger Bench of

the Hon'ble Supreme Court (Constituted by the Five Hon'ble Judges) in the case of Vatika Township (P.) Ltd. [2014] 49 taxmann.com 249 (SC), the AO is directed to restrict the disallowance u/s.40(a)(ia) of the Act to 30%. Similar view has also been taken by this Bench of the Tribunal in the case of Om Sri Nilamadhab Builders (P) Ltd., passed in ITA No.296/CTK/2018, order dated 14.11.2022.

7. Though it has been argued by the Id. Sr. DR that at the time of hearing of miscellaneous application, the Bench was convinced that the said amendment was not retrospective and for that purpose only the earlier order of the Tribunal had been recalled. The said argument would not hold good insofar as when the miscellaneous application is heard, its prima facie case that is looked at. It is at the time of hearing of the appeal that a perusal of the various decisions and the amendments are looked into. In these circumstances, the appeal of the assessee is partly allowed.

8. In the result, appeal of the assessee is partly allowed.

Order dictated and pronounced in the open court on 15/11/2022.

Sd/-
(अरुण खोड़पिया)
(ARUN KHODPIA)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-
(जार्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 15/11/2022

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Kendrapara Urban Co-operative Bank Ltd.,
College Square, Tinimuhani, Kendrapara
2. प्रत्यर्थी / The Respondent-
ACIT, Cir-1(2), Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack