



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

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.147/CTK/2016
Assessment Year : 2012-13

M/s.Jagannath Construction, At/PO: Tikini, Rayagada	Vs.	ITO, Rayagada Rayagada	Ward,
PAN/GIR No.AAIFJ 0479 L			
(Appellant)	..	(Respondent)	

Assessee by : Shri J.M.Pattnaik and Subit Sahu, Advs
Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 13/8/2024
Date of Pronouncement : 13/8/2024

ORDER

Per Bench

This is an appeal filed by the assessee against the order of the Id CIT(A)-1, Bhubaneswar dated 11.1.2016 in Appeal No.0689/14-15 for the assessment year 2012-13.

2. Shri J.M.Pattnaik and Subit Sahu, Id ARs appeared for the assessee and Shri S.C.Mohanty, Sr. DR appeared for the revenue.

3. It was submitted by Id AR that the only issue in the assessee's appeal was against the disallowance of 100% under section 40(a)(ia) of

the Act in respect of payment to sub-contractors to an extent of Rs.76,19,465/-. It was the submission that originally, the Co-ordinate Bench of this Tribunal had held the issue in favour of the assessee and the Revenue had filed a miscellaneous application and the same came to be disposed off vide an order in M.A.No.34/CTK/2017 dated 24.6.2022. It was the submission that originally, the Co-ordinate Bench of this Tribunal had followed the decision in the case of Victor Shipping Services Pvt Ltd., (2013) 357 ITR 642 (All) and subsequently on the reversal of the same by the decision of the Hon'ble Supreme Court in the case of Palam Gas vs CIT,(2017) 81 taxmann.com 43(SC) order dated 9th May, 2017, the revenue had filed M.A. and the order of the Tribunal had been recalled. It was the submission that now the issue was squarely covered by the decision of the Co-ordinate bench of this Tribunal in the case of Om Sri Nilamadhab Builders (P) Ltd in ITA No.296/CTK/2018 order dated 14.11.2022, wherein, in para 6, following the decision of the Hon'ble Supreme Court in the case of Vatika Township (P) Ltd., (2014) 49 taxmann.com 249(SC), it was held that the disallowance under section 40(a)(ia) is to be restricted to 30%.

4. In reply, Id Sr DR relied upon the decision of the Hon'ble Supreme Court in the case of Shree Choudhary Transport Company (2020) 426 ITR 289 (SC). Ld Sr DR drew our attention to paras 19 to 19.6 of the said judgement of the Hon'ble Supreme Court to submit that the amendment to

the provisions of section 40(a)(ia) of the Act by the Finance (No.2) Act did not have retrospective effect and the disallowance was to be at 100% itself.

5. We have considered the rival submissions. A perusal of the decision of the Co-ordinate Bench of this Tribunal in the case of Om Sri Nilamadhab Builders (P) Ltd(supra) clearly shows that the decision of the Hon'ble Supreme Court in the case of Choudhary Transport Company (supra) had been considered and after that in paras 5 & 6 held that the disallowance was to be restricted at 30% under section 40(a)(ia) of the Act and that the amendment by the Finance (No.2) Act, 2014 was to be given retrospective effect. The Co-ordinate Bench in paras 5 & 6 has held as follows:

"5.In reply, the Id. DR vehemently supported the orders of the Id. AO and Id. CIT(A). It was the submission that the decision of the Hon'ble Supreme Court in the case of Shree Choudhary Transport Company, referred to supra, though 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%."

6. This being so, respectfully following the decision of the Co-ordinate Bench in the case of Om Sri Nilamadhab Builders (P) Ltd(supra), the Assessing officer is directed to restrict the disallowance to 30% under section 40(a)(ia) of the Act.

7. In the result, appeal of the assessee stands partly allowed .

Order dictated and pronounced in the open court on 13/08/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 13/08/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M/s.Jagannath Construction, At/PO: Tikini, Rayagada
2. The Respondent: ITO, Rayagada Ward, Rayagada
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT,
6. Guard file.
//True Copy//

By order

Sr.Pvt.Secretary
ITAT, Cuttack