

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

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

**ITA Nos. 151 & 208/VIZ/2015
(Asst. Years : 2010-11 & 2011-12)**

M/s. Sri Vijaya Lakshmi Cements v. ACIT, Circle-(1),
& Road Lines, Opp : Casmo Club, Eluru.
J.P. Road, Bhimavaram,
West Godavari District – 534 202

PAN No. ABIFS 2386 N (Appellant) (Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri M. Narayana Rao - DR

Date of hearing : 05/01/2017.

Date of pronouncement : 12/01/2017.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

These are the appeals filed by the assessee against the separate orders of the Commissioner of Income Tax (Appeals), Rajahmundry, dated 27/02/2015 & 30/03/2015 for the Assessment Year 2011-12 & 2010-11.

ITA No.151/VIZ/2008

2. Facts of the case, in brief, are that the assessee is a firm carrying on the business of transport, filed its return of income declaring total income of ₹ 50,13,320/-. The return of income filed by the assessee was initially processed under section 143(1) of the Income Tax Act,

1961. Subsequently, a survey under section 133A was conducted in the business premises of the assessee. The case of the assessee was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer has noted that the assessee failed to deduct TDS on interest paid to the financiers of ₹ 20,92,117/-, the same was disallowed by invoking the provisions of section 40(a)(ia) of the Act.

3. On appeal, Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer.

4. At the time of hearing, learned counsel for the assessee submitted that the assessee has paid the amounts on or before 31st March of the financial year and the issue is squarely covered by the decision of the Special Bench of this Tribunal at Visakhapatnam in the case of *Merilyn Shipping & Transports v. ACIT* [(2012) 016 ITR (Trib) 0001] and the same has been followed by the very same Coordinate Bench in the case of *Mukundara Engineers & Contractors v. ACIT* in ITA No. 657/VIZ/2014, dated 22/07/2015 and submitted that the same may be followed.

5. On the other hand, Departmental Representative supported the orders of the authorities below.

6. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The only issue involved in this appeal is disallowance under section 40(a)(ia) of the Act. The very same issue has been considered by the Special Bench of the Tribunal in the case of *Merilyn Shipping & Transports* (supra) and

also the Coordinate Bench of this Tribunal has followed the same in the case of Mukundara Engineers & Contractors (supra), wherein it has been held as under:-

"8. We have carefully considered the rival submissions and perused the record. Consistent with the view taken by the ITAT Special Bench Visakhapatnam and also in the light of the view expressed by the Hon'ble AP High Court in the case of Janapriya Engineering Syndicate, we are of the opinion that the provisions of section 40(a)(ia) of the Act cannot be made applicable in respect of the amounts already paid before 31st March. In other words, the Assessing Officer is directed to restrict the disallowance to the amounts payable after 31st March. With these observations, ground No.3 of the assessee is treated as partly allowed."

7. Respectfully following the decision of the Coordinate Bench of this Tribunal in Mukundara Engineers & Contractors (supra), we direct the Assessing Officer to verify the payments made. If assessee has already made payments on or before 31st March of the financial year, the same may be allowed and if any payments made subsequent to 31st March, the same may be disallowed. Thus, this ground of appeal raised by the assessee is partly allowed.

ITA No. 208/VIZ/2015

8. At the time of hearing, learned counsel for the assessee submitted that he may be permitted to withdraw the appeal, for which learned Departmental Representative has no objection.

9. In view of the request made by the assessee, this appeal filed by the assessee is dismissed as withdrawn.

10. In the result, appeals filed by the assessee in ITA No.151/VIZ/2015 is allowed in part and in ITA No.151/VIZ/2015 is dismissed as withdrawn.

Order Pronounced in the open Court on the 12th day of January, 2017.

Sd/-
(G. MANJUNATHA)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated : 12th January, 2017.

vr/-

Copy to:

1. The Assessee.
M/s. Sri Vijaya Lakshmi Cements & Road Lines, Opp : Casmo Club, J.P. Road, Bhimavaram, West Godavari District-534 202.
2. The Revenue - ACIT, Circle-(1), Eluru.
3. The CIT, Rajahmundry.
4. The CIT(A), Rajahmundry.
5. The D.R.
6. Guard file.

By order

Assistant Registrar
I.T.A.T., Visakhapatnam

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Justice