



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

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No.291/CTK/2019

Assessment Year : 2011-12

Oruganti Sowbhagyam , Balaji Weight Bridge Utkal Ashram Road, near Ganjamkala Parishad, Berhampur.	Vs.	DCIT , Berhampur
PAN/GIR No.AOJPS 8089 Q		
(Appellant)	..	(Respondent)

Assessee by : Shri Bhagaban Padhee, AR
Revenue by : Shri J.K.Lenka, DR

Date of Hearing : 15/11/ 2019

Date of Pronouncement : 04 /12/ 2019

ORDER

This is an appeal filed by the assessee against the order of the CIT(A),1, Bhubaneswar dated 12.6.2019 for the assessment year 2011-12.

2. The sole ground raised by the assessee is that the Id CIT(A) is not justified in confirming the addition of Rs.5,00,000/- made u/s.40(a)(ia) of the Act.

3. Ld A.R. of the assessee submitted that non-deduction of TDS while making deposit to transporter providers on declaration of PAN Number which came into effect from 1.10.2009. Id A.R. further submitted that the amended provisions laid down u/s.194C(6) of the I.T.Act, 1961 (in short

the 'Act') is operative w.e.f. 1.6.2015 and payment of Rs.5 lakhs to the transporter disallowed by the AO u/s,. 40(a)(ia) of the Act on account of non-deduction of TDS is pertaining to financial year 2010-2011 relevant to assessment year 2011-12. Therefore, amended provision of sub-section(6) of Section 194C of the Act cannot be applied retrospectively for making addition. Ld A.R. submitted that since the amended provision is applicable from 1.6.2015 i.e. from financial year 2015-16 relevant to assessment year 2016-17 onwards, therefore, the findings of the CIT(A) in para 3.2 of the order are not sustainable. Hence, the AO may kindly be directed to delete the addition.

4. Replying to above, Id D.R. submitted that in pursuance to the order of Pr. CIT, Bhubaneswar u/s.263 of the Act dated 14.3.2016, the AO was directed to frame denovo assessment order and in pursuance thereto, the Assessing Officer passed reassessment order u/s.263/143(3) on 23.12.2016. Ld D.R. submitted that on the date of passing order, the amendment inserted by the legislature was operative and effective and, therefore, the AO was right in making the addition and Id CIT(A) was also correct in confirming the same. However, on being asked by the bench, Id D.R. could not controvert that the amendment inserted by Finance Act,2015 to sub-section(6) of Section 194C has been given effect from 1.6.2015 and there is no mandate or direction of the legislature to apply the same retrospectively which may cover assessment year under consideration i.e. 2011-12.

5. On careful consideration of the rival submissions, first of all, I may point out that the amendment has been inserted by Finance Act, 2015 to sub-section(6) of Section 194C of the Act, which has been held as effective w.e.f. 1.6.2015, which disentitle the assessee from benefit of first limb of sub-section (6) of section 194C of the Act as the legislature in its wisdom added words "*where such contractor owns ten or less goods carriage at any time during the previous year and furnishes a declaration to that effect along with*". In my humble understanding, the purpose of insertion of said provisions of sub-section(6) to section 194C was that the legislature in its wisdom wanted to give relaxation of this provision only in a case where the contractor owns ten or less goods carriage at any time during the previous year and furnishes a declaration to that effect alongwith his Permanent Account Number, to the person paying or crediting such sum" on which TDS u/s.194C was required to be made.

6. In my humble understanding, the present case under consideration is pertaining to payment of amount to contractor by the assessee relates to assessment year 2011-12 and I am unable to agree with the contention of Id D.R. that the amended sub-section(6) of Section 194C can be placed into service against the assessee for assessment year 2012-12 as it is ample clear from the Finance Act, 2015 that said amended provisions has been given effect from 1.6.2015 which falls within the ambit of financial year 2015-16. I therefore, hold that the basis taken by the AO and conclusion

drawn by the CIT(A) in para 3.2 in his order cannot be held as sustainable and justified and thus, I dismiss the same. The AO is directed to delete the addition of Rs.5,00,000/-. Hence, the sole ground of the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 4 /11/2019.

Sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 4 /12/2019
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Oruganti Sowbhagyam , Balaji Weight Bridge Utkal Ashram Road, near Ganjamkala Parishad, Berhampur
2. The Respondent. DCIT , Berhampur
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT- 1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack