

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

BEFORE Dr. O.K.NARAYANAN, VICE-PRESIDENT  
AND SHRI V.DURGA RAO, JUDICIAL MEMBER

ITA No.2076(Mds)/2012  
Assessment Year : 2009-10  
&  
C.O. No.155(Mds)/2013 in  
ITA No.2076(Mds)/2012

The Income-tax Officer,  
Ward II(4),  
Madurai.

(Appellant)

M/s.Theekathir Press,  
Vs. 6/16, Bye Pass Road,  
Madurai.

PAN AAAAT3906B.  
(Respondent/Cross Objector)

Appellant by : Shri Guru Bhashyam, IRS, JCIT  
Respondent by : Shri J.Prabhakar, C.A.

Date of Hearing : 18<sup>th</sup> September, 2013  
Date of Pronouncement : 18<sup>th</sup> September, 2013

**ORDER**

PER Dr.O.K.NARAYANAN, VICE-PRESIDENT

The appeal is filed by the Revenue and the cross objection by the assessee. The relevant assessment year is 2009-10. The appeal and the cross objection are directed against the order of the Commissioner of Income-tax(Appeals)-I

at Madurai, dated 21-8-2012 and arise out of the assessment completed under section 143(3) of the Income-tax Act, 1961.

2. In the present case, the Assessing Officer has disallowed the claim of certain expenditure made by the assessee under section 40(a)(ia) on the ground that tax has not been deducted at source and paid to the credit of Government of India. But, the Commissioner of Income-tax(Appeals) deleted the disallowance stating that the amount 'payable' alone would attract the disallowance under section 40(a)(ia) and the amount already paid would not attract the above provision. The Revenue is aggrieved and, therefore, this second appeal before us.

3. The Income-tax Appellate Tribunal, Visakhapatnam-Special Bench, had held in the case of Merilyn Shipping and Transports vs. Addl. CIT, 16 ITR (Trib) 1, that the provisions of section 40(a)(ia) do apply only to those amounts remained payable by the end of the previous year and the said provisions do not apply to the amounts already paid by the assessee before the close of the relevant previous year. In that way, the order of the Commissioner of Income-tax(Appeals) in the present case is

conducive to the decision of the Special Bench. The very same view has been upheld by the Hon'ble Allahabad High Court in the case of CIT vs. M/s. Vector Shipping Services(P) Ltd. The Hon'ble Allahabad High Court, through their judgment dated 9-7-2013 in ITA No.122 of 2013, has held that the decision of the Special Bench of the Tribunal in the case of Merilyn Shipping and Transports vs. Addl. CIT is good law. In that way, the present appeal filed by the Revenue is liable to be dismissed.

4. But, at the same time, the learned Joint Commissioner of Income-tax appearing for the Revenue has relied on three other judgments rendered by the Hon'ble Calcutta High Court and Gujarat High Court, in which their Lordships have held that the law stated by the Special Bench of the Tribunal in the case of Merilyn Shipping & Transports vs. Addl.CIT was not acceptable. The Hon'ble Calcutta High Court, through their judgment delivered on 3<sup>rd</sup> April, 2013 in ITA No.20 of 2013 in the case of CIT vs. Crescent Export Syndicates, has held that the order of the Special Bench of the Tribunal in the case of Merilyn Shipping & Transports vs. Addl.CIT is not acceptable. The same view has again been repeated by the Hon'ble Calcutta High

Court in the case of CIT vs. Md. Jakir Hossain Mondal, through their judgment delivered on 4<sup>th</sup> April, 2013 in ITA No.31 of 2013. The Hon'ble Gujarat High Court in the case of CIT vs. Sikandarkhan N.Tunvar, 33 Taxman.com.133, has also held that the disallowance under section 40(a)(ia) does not distinguish between amounts "paid" and "payable". In view of the above judgments of two High Courts, the learned Officer contended that the appeal of the Revenue needs to be allowed.

5. We find that the judgment of the Hon'ble Allahabad High Court is in favour of the assessee. At the same time, we find that the orders of the Calcutta High Court and the Gujarat High Court are against the assessee. In such circumstances, the rule of Judicial Precedence demands that the view favourable to the assessee must be adopted, as held by the Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd., 88 ITR 192. Following the above fundamental rule declared by the Hon'ble Supreme Court, we have to follow the judgment of the Hon'ble Allahabad High Court, which is in favour of the assessee. Accordingly, we hold that the disallowance under section 40(a)(ia) applies only to those

amounts 'payable' and not to those amounts 'paid'. Accordingly, we uphold the order of the Commissioner of Income-tax(Appeals) in the present case. The appeal filed by the Revenue is liable to be dismissed.

6. The cross objection filed by the assessee is rejected as not pressed. It is also time barred.

7. In result, the appeal filed by the Revenue and the cross objection filed by the assessee, both are dismissed.

Order pronounced in the open court at the time of hearing on Wednesday, the 18<sup>th</sup> of September, 2013 at Chennai.

Sd/-  
(V.Durga Rao)  
Judicial Member

Sd/-  
(Dr. O.K.Narayanan)  
Vice-President

Chennai,  
Dated, the 18<sup>th</sup> September, 2013.  
V.A.P.

Copy to: 1. Appellant  
2. Respondent  
3. CIT  
4. CIT(A)  
5. DR  
6. GF.