<u>IN THE HIGH COURT OF JUDICATURE AT HYDERABAD</u>
<u>FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH</u>
<u>I.T.T.A. No. 117 of 2015</u>

Between:

The Commissioner of Income Tax ….Appellant

Vs.

M/s.PLR Projects Pvt. Ltd. … . Respondent

JUDGMENT PRONOUNCED ON: 08.10.2015

HON'BLE SRI JUSTICE : HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

HON'BLE SRI JUSTICE: HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers may be allowed to see the judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes

3. Whether Their Ladyship/Lordship wish to see the fair copy of the judgment? Yes/No

<u>*HON'BLE SRI JUSTICE G. CHANDRAIAH</u>

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<u>HON'BLE SRI JUSTICE CHALLA KODANDA RAM</u>

+I.T.T.A. No. 117 of 2015

%08-10-2015

The Commissioner of Income Tax ….Appellant

Vs.

$ M/s.PLR Projects Pvt. Ltd. … . Respondent

!Counsel for the Appellant: Sri J.V.Prasad, senior SC for Income-tax Dept.

Counsel for Respondent: N.A

<Gist :

>Head Note:

? Cases referred:

JUDGMENT:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for brevity "the Act") arises out of the Order dated 12.03.2014 in I.T.A.No. 1079/H/2013 passed by the Income-Tax Appellate Tribunal (for brevity "the Tribunal"), Hyderabad Bench "A", Hyderabad relating to the assessment year 2007-2008. The following substantial questions of law are said to be arising from the orders of the Tribunal for adjudication:

1. Whether on the facts and circumstances of the case, the Hon'ble ITAT was justified in deleting the disallowance made u/s.40(a)(ia) of the Income Tax Act on payment made to M/s.Kranthi Constructions without deducting tax at source even though it was towards sub-contracting of work of the joint venture?
2. Whether on the facts and circumstances of the case, the Hon'ble ITAT is correct in deleting the disallowance made u/s 40(a)(ia) of the I.T. Act and holding that the insertion of second proviso to Section 40(a)(ia) by Finance Act, 2012 with effect from 01.04.2013 is retrospective in operation?

Heard Sri J.V.Prasad, learned Senior Standing Counsel for the Income-Tax Department appearing for the appellant and perused the material placed on record.

As we are not inclined to admit this case on account of the finding of facts given by the Tribunal, the matter is being disposed of at the admission stage.

The Tribunal, as a matter of fact, found that a sum of Rs.1,52,09,336/- was not received by the assessee from the Department and that payment was made over directly to one M/s.Kranti Constructions, who are sub-contractors and who had in fact executed the work in terms of Memorandum of Understanding that was entered into by the assessee. The Tribunal also found that the Department made T.D.S. on payments made to M/s.Kranti Constructions and the same is reflected in the returns. In other words, the Tribunal, as a matter of fact, found that these amounts paid to M/s.Kranti Constructions could not be made as forming part of the assessment of the assessee. In that view of the matter, invocation of Section 40(a)(ia) itself would not arise. This finding of fact is not challenged before us. Hence, the appeal is liable to be dismissed on this ground alone. However, the Tribunal, having rendered a finding that the facts of the case under Section 40(a)(ia) could not be invoked, went on to discuss the retrospective effect given to Section 40(a)(ia) by Finance Act, 2012 with effect from 01.04.2013 while relying on the order of Tribunal, Cochin Bench in the case o f **Antony D. Mundackal v. A.C.I.T. in I.T.A.No. 38/Cochin/2013, dated 29.11.2013** for the assessment year 2009-2010. Inasmuch as there was no necessity for the Tribunal to enter into this arena since the order of the Tribunal is erroneous to the extent of rendering the finding with regard to the retrospective aspect of the Finance Act, 2012, the issue is left open to the respective parties to canvass the matter in appropriate forum.

Subject to the above observation, this appeal is dismissed. No order as to costs.

As a sequel to the dismissal of the appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

08.10.2015

CHALLA KODANDA RAM,J

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