

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI CHANDRA POOJARI , ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.20/BANG/2020
Assessment Year : 2013 - 14

Shri K.R Santhosh Kumar, No.20, 4 th Cross, Nagarbhavi 1 st Stage, Near Matha National School, Adarsh Nagar, Kalyan Nagar, Bengaluru-560 072.	Vs.	The Asst. Commissioner of Income Tax, Circle-3(2)(1), Bengaluru.
PAN - CMGPS 1983 Q		
APPELLANT		RESPONDENT

Appellant by	:	Shri S Ramsubramanian, C.A
Respondent by	:	Shri Elamurugu, JCIT (DR)

Date of Hearing	:	02-12-2020
Date of Pronouncement	:	04 -12-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 07/11/2019 passed by Ld. CIT (A), Bangalore for assessment year 2013-14 on following grounds of appeal:

- “1. That the order of the learned Commissioner of Income-Tax (Appeals) in so far is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.*
- 2. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in confirming the disallowance of Rs.56,19,628/- u/s.*

40(a)(ia) of the Act for non-deduction of tax at source u/s. 194C of the Act on the transportation charges paid during the year.

3. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the disallowance on the ground that the appellant did not produce the declaration from the transport contractors even though the provisions of the Act does not require the appellant to get such declaration for the period prior to 01.06.2015 as amended in Finance Act, 2015.

4. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in confirming the disallowance u/s. 40(a)(1a) of the Act even though the appellant is not required to deduct tax at source as the provisions of section 194C(6) exempts the payer from deducting tax at source if PAN of the payee is provided.

5. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not appreciating the fact that the PAN of the payees were submitted during the assessment proceedings and therefore, complied with the provisions of section 194C(6) and 194C(7).

6. That the finding of the learned Commissioner of Income-Tax (appeals) that the benefit of provisions of section 194C(6) are applicable only to those transport contractors who were covered by the provisions of section 44AE of the Act and such finding is perverse and contrary to the materials available on record.

7. That the learned Commissioner of Income-Tax (Appeals) ought to have held that the PAN of the payees filed before the assessing officer is in compliance with the provisions of section 194C(7) of the Act and therefore, disallowance cannot be made on procedural lapse.

Each of the above grounds is without prejudice to one another, the appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or modify otherwise each or any of the grounds of appeal either before or at the time of hearing this appeal.”

Brief facts of the case are as under:

2. Assessee is an individual carrying business of Agarbatti and other trading goods. For year under consideration assessee filed its return of income on 12/10/2013 declaring total income of Rs. 20, 79, 920/-. Subsequently statutory notice under section 143 (2) was issued and assessment was completed by determining total income of Rs. 37, 09, 824/-.

Notice under section 263 of the act was issued subsequently to assessee and Ld.AO was directed to verify;

- Whether a sum of Rs.57,61,508/- was actually paid to the owners of the vehicle or sub contractor's; and
- Whether provisions of section 194C and (vii) were fulfilled.

3. Pursuant to the directions of Ld.Pr.CIT in the order passed under section 263 dated 21/03/2018, Ld.AO called upon assessee to furnish details of transportation charges and to justify non-disallowance of the same under section 40(a)(ia) of the Act. In response, assessee vide letter dated 19/07/2018 filed details of transportation to whom the pavements were made and declaration from such transporters under section 194C (6) confirming that they do not own more than 10 vehicles during the financial year under consideration.

4. Ld.AO further sought clarification on following issues:

- whether service providers/contractor's/transporters are the actual owners of the vehicles. If so, to provide details of vehicles owned and necessary supporting documents.
- As per section 194C (vii) of the Act, assessee has to submit the information and prescribed perform within specified time before the designated income tax authority. Assessee was called upon to clarify if the required performer was submitted before the authorities.

Since no reply was received, Ld.AO disallowed transportation charges of Rs.57,61,508/-.

5. Aggrieved by the addition made by Ld. AO, assessee preferred appeal before Ld. CIT (A).

6. Ld. CIT (A) decided the issue by observing as under:

4.10 Thus neither has file appellant been able to substantiate his claim that the transporters had provided their PAN to him before he made payments to them nor has he been able to show that the transporters were owning not more than ten goods carriages and earning their income only from the same. In view of above the disallowance made by the AO for failure of the appellant to deduct tax at source is upheld as the conditions laid down in Section 194C(6) of the Act itself are not satisfied. Considering above the grounds of appeal 3 and 4 of the appellant are dismissed and grounds of appeal 2 and 5 are partly allowed.

4.11 There is another aspect of the issue and that is the compliance of the provisions of Section 194C(7), which is an integral part of the beneficiary provision of Section 194G(6) of the Act. As per the same the person responsible for paying to transporter is required to report the particulars of payment made to transporters without deduction of tax in compliance to the provision of Section 194C(6) of the Income-tax Act in the statement of deduction of tax (Form 26Q) as per the provision of Rule 3 1A(4)(vi) of the Income-tax Rules, 1962. However [the same is not being discussed here as the benefit of Section 194C(6) itself is held to be not available to the appellant.]”

7. He thus confirmed the addition made by Ld.AO.

8. Aggrieved by order passed by Ld.CIT(A), assessee is in appeal before us now.

9. Ld.AR submitted that, only issue alleged by assessee is regarding disallowance made under section 40(a)(ia) of the Act for non-deduction of tax at source under section 194C of the Act on transportation charges paid during the year. He submitted that the primary reason for the disallowance is that assessee did not produce the declaration from transport contractor's and that assessee did not provide PAN details of

the payee during assessment proceedings thereby failed to comply with the provisions of section 194C(6) and 194C(7) of the Act.

10. Ld.AR submitted that, there is no specific condition in section 194C(6), that benefit would be available only for owners of vehicles and not the contractor's or sub contractor's. Ld.AR submitted that, finding of Ld.CIT(A) that, no details of ownership of vehicles and proof of contractor's/owners/service providers were filed is not correct.

11. He submitted that provisions of section 194C(6) and 194C(7) are not interdependent with each other and can be applied separately. In support of the he placed reliance on decision of *Hon'ble Kolkata Tribunal* in case of *Soma Rani Ghosh vs DCIT* reported in (2016) 74 *Taxmann.com* 90. He submitted that the view taken by *Hon'ble Kolkata Tribunal* in case of *Soma Rani Ghosh vs DCIT (supra)* has been followed by *Hon'ble Jaipore Tribunal* in case of *Mangalam Housing and Developers vs ACIT* in *ITA No.324/JP/2018* by order dated 04/06/2018.

12. On the contrary, Ld.Sr.DR submitted that, provisions of section 194C(6) and 194C(7) are interdependent and given the fact that no TDS was deducted, disallowance made by Ld.AO under section 40(a)(ia) of the Act is correct. Ld.Sr.DR has filed written submission on 4/12/2020.

13. We have perused submissions advanced by both sides in light of records placed before us.

14. Primary issue that is to be adjudicated is regarding whether provisions of section 194C(6) has to be read together with section 194C(7).

Relevant provisions are as under:

“Payments to contractors.

94C. (1) Any person responsible for paying any sum²² to any resident (hereafter in this section referred to as the contractor²²) for carrying out any work²² (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

- (i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;
- (ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—

- (i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or
- (ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed ²³[thirty] thousand rupees :

Provided *that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds ²⁴[one lakh] rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.*

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, ²⁵[where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with] his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.”

15. It has been noted that, sub clause 6 have been amended by Finance Act 2015, and prior to amendment, sub clause 6 read as under:

“(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of playing, hiring or leasing goods carriages, and furnishes his permanent account number, to a person paying or crediting such sum.”

16. Present year under consideration before us AE's assessment year 2013-14 and therefore unamended provision of clause 6 is to be considered. On perusal of unamended clause 6, it is clear that, if the sub contractor's have supplied their PAN to assessee in respect of hiring/leasing/of vehicles during the course of its business, then assessee shall not deduct any TDS. Thus, as per

Clause 6, as it stood prior to amendment, applicable for the year under consideration, in order to get immunity from obligations of TDS, filing of PAN of payee transporter is sufficient, and no confirmation letter as required by Ld.AO is needed.

17. The need to furnish declaration from the contractor's being owners of less than 10 vehicles has been inserted by way of amendment which is effective from 01/06/2015.

18. Ld.AR in the paper book, filed *Explanatory notes to the Provisions of Finance Act 2015* at page 75, wherein, applicability of amendment to section 194C(6) has been said to take effect from 01/06/2015. Therefore, amended provision of clause 6 to section 194 cannot be applied retrospectively. Thus the intention of legislature was very clear to apply the amended clause 6 prospectively.

19. The objection raised by Ld.CIT(A)/AO in this regard therefore does not hold any waters in eyes of law.

20. Categorically in para 4.1 that assessee had provided PAN of 5/7 transporters, before Ld.AO. We therefore do not find any reason to uphold disallowance in respect of payments made to 5 transporters whose PAN were submitted by assessee.

Accordingly we delete the disallowance made in respect of transporters whose PAN was submitted by assessee.

21. It was submitted before Ld.CIT(A) that, in respect of payments to M/s.Precicse Carrier amounting to Rs.34,650/- and M/s.KPR Transport, amounting to Rs.7,230/-, assessee was not

required to deduct TDS as the same was within the limit prescribed under section 194C(5) of the Act. It has been recorded by Ld.CIT(A) that PAN in respect of these two transporters were not submitted. We note that Ld.CIT(A) has not verified these details as submitted by assessee in respect of M/s.Precicse Carrier amounting to Rs.34,650/- and M/s. KPR Transport, amounting to Rs.7,230/- falls within sec.194C(5).

22. We direct Ld.CIT(A) to verify whether any TDS is to be deducted on payments made by assessee to M/s.Precicse Carrier amounting to Rs.34,650/- and M/s. KPR Transport, amounting to Rs.7,230/-. In the event submissions by assessee are found to be correct, no disallowance shall be made.

Accordingly grounds raised by assessee stands allowed as indicated hereinabove.

In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 4th Dec, 2020

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 4th Dec, 2020.
/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-12-2020		Sr.PS
3.	Draft proposed & placed before the second member	-12-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-12-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-12-2020		Sr.PS/PS
6.	Kept for pronouncement on	-12-2020		Sr.PS
7.	Signed Order comes back to Sr.PS/PS	-12-2020		Sr.PS
8.	Date of uploading the order on Website	-12-2020		Sr.PS
9.	If not uploaded, furnish the reason	--		Sr.PS
10.	File sent to the Bench Clerk	-12-2020		Sr.PS
11.	Date on which file goes to the AR			
12.	Date on which file goes to the Head Clerk.			
13.	Date of dispatch of Order.			
14.	Draft dictation sheets are attached	No		Sr.PS