

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: BANGALORE**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
and
SHRI JASON P.BOAZ, ACCOUNTANT MEMBER**

**ITA No.1368/Bang/2013
(Assessment year: 2005-06)**

M/s.Kohinoor Granites & Marbles,
21/1, Bannerghatta Main Road,
Bangalore-560030. ... Appellant
PAN:AAGTS 4396 D

Vs.

Asst. Commissioner of Income-tax,
Circle 10(1),
Bangalore. ... Respondent

Appellant by: Shri Suresh Muthukrishnan, CA.
Respondent by: Shri P.Dhivahar, JCIT (DR).

Date of hearing : 24/02/2015.
Date of pronouncement: 27/02/2015.

O R D E R

Per Smt. P.MADHAVI DEVI, JM:

This is an appeal filed by the assessee against the order of the CIT(A)-V, Bangalore, dated 19/08/2013 upholding the disallowance of Rs.30,70,650/- made u/s 40(a)(ia) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] in respect of transportation charges paid by the assessee, for the assessment year 2006-07.

2. According to the assessee, the transportation charges were not liable for deduction of tax at source u/s 194C of the Act. Without prejudice to this ground, the assessee has also raised a ground that since these transportation charges were already paid and there were no expenses payable at the end of the year, the disallowance made u/s 40(a)(ia) of the Act was unwarranted and is liable to be deleted. However, at the time of hearing, it was noticed that the assessee had not raised such a ground of appeal before the CIT(A) and therefore the same was sought to be raised as an additional ground before the Tribunal. The assessee, thereafter, filed it as an additional ground of appeal before this Tribunal vide letter dated 12/02/2015

3. Brief facts of the case are that the assessee is a firm engaged in the business of trading in granites and marbles. It filed its return of income for the relevant assessment year disclosing income of Rs.11,08,990/-. During the assessment proceedings u/s 143(3) of the Act, the AO perused the books of account of the assessee and found that the assessee had debited several cash expenses under the head 'lorry freight charges' each one exceeding Rs.20,000/- at a time. He observed that these payments attracted the provisions of sec.194C of the Act as the assessee had not deducted tax at source and therefore he made disallowance u/s 40(a)(ia) of the Act.

4. Aggrieved, the assessee preferred an appeal before the CIT(A) who confirmed the same and the assessee is in second appeal before us.

5. The learned counsel for the assessee reiterated the submissions made before the authorities below stating that these transportation charges were, in fact, part of the purchase price but they were shown separately in the bills and since there was no privity of contract between the assessee and the transporter, the provisions of sec.194C of the Act are not attracted. He further placed reliance on the decision of this Tribunal in the case of *Anand Marakala* in ITA No.1584/Bang/2012 for the proposition that where payments are made before 31st March of every year, the provisions of sec.194C are not attracted. Copy of the said order is placed before us. As regards the CIT(A)'s observation at para.7.2 that the assessee has claimed these transportation expenses in the subsequent assessment year is concerned, the learned counsel for the assessee submitted that this observation is erroneous and in support of this contention, he placed before us the copies of the acknowledgment of the return of income filed for the assessment years 2006-07 to 2010-11 to demonstrate that they were never claimed in the subsequent assessment years. The learned counsel for the assessee, therefore, prayed that the disallowance be deleted.

The learned Departmental Representative, on the other hand, supported the orders of the authorities below.

6. Having regard to the rival contentions and the material on record, we admit the additional ground of appeal raised by the assessee since it is a legal ground which can be raised at any stage of the proceedings, as held by the Hon'ble Supreme Court in the case of *NTPC vs. CIT* (229 ITR 383)(SC). . As regards merits of the issue is concerned, we find that the CIT(A) has already given a finding that transportation charges are not part of the purchase price as claimed by the assessee. However, as regards the additional ground raised by the assessee, we find that the issue is covered in favour of the assessee by the decision of the co-ordinate bench of this Tribunal in the case of *Anand Marakala* (cited supra). Therefore, we deem it fit and proper to admit the additional ground of appeal and remand the issue to the file of the AO for verification as to whether the payments claimed by the assessee are paid before 31st of March of the relevant previous year and also whether the assessee had claimed these amounts in the subsequent assessment years. The AO shall verify the records of the assessee and if it is found that the assessee had made payment before 31st of March of the relevant previous year and has also not claimed the same in the subsequent assessment year, then no disallowance u/s 40(a)(ia) shall be made.

7. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on 27th February, 2015.

sd/-
(Jason P Boaz)
ACCOUNTANT MEMBER

sd/-
(Smt. P.Madhavi Devi)
JUDICIAL MEMBER

eksrinivasulu

Copy to:

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore