

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Pawan Singh (JM)

I.T.A. No. 5779/Mum/2014
(Assessment Year 2008-09)

Shri Chandrahas A. Shetty Prop. Vikas Bulk Carriers 202/8158, Kannamwar Nagar, Vikhroli East Mumbai-400 083. (Appellant)	Vs.	ITO (TDS)-1(2) Mumbai (Respondent)
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PAN No.ANTPS8222Q

Assessee by	Dr. P Daniel
Department by	Ms. Beena Santosh
Date of Hearing	16.11.2016
Date of Pronouncement	16.11.2016

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 14.7.2014 passed by the learned CIT(A)-14, Mumbai and it relates to A.Y. 2008-09. Demand raised by the TDS officer u/s. 201 and interest raised u/s. 201(1A) of the Act, having been confirmed by the learned CIT(A), the assessee has filed this appeal before us.

2. The assessee is engaged in the business of transportation by using his own vehicle and also by hiring from outside parties. The assessee had paid lorry hire charges of ₹ 2.47 crores without deducting tax at source. Hence TDS officer issued show-cause notice to the assessee to explain as to why he should not be treated as assessee in default in terms of section 201(1) of the Act for non-deduction of tax at source on the above said payment. The assessee submitted that the parties to whom the payments were made did not own more than two vehicles and he has collected Form No. 15-I from them. He also submitted that he has furnished Form No. 15-J along with Form 15-I to the

Income Tax Department. The said explanation was not accepted by the TDS officer and accordingly he raised demand of ₹ 2.80 lakhs u/s. 201(1) and ₹ 1.34 lakhs u/s. 201(1A) of the Act. The learned CIT(A) noticed that the assessee has filed Form No. 15-J alongwith 15-I to the ITO(TDS) and not to the Commissioner of Income Tax as required under the provisions of the Act. Since the assessee did not file Forms to the correct Income Tax authority, the learned CIT(A) took the view that the assessee has committed default in compliance with the provisions of section 194-C of the Act and accordingly he upheld the order passed by the TDS officer. Aggrieved, the assessee has filed this appeal before us.

3. Learned AR submitted that non-furnishing of TDS forms to the correct Income Tax authority would be a procedural lapse only and the same would not make the assessee as assessee in default. He further submitted that the provisions of section 194-C(6) of the Act would also apply to the assessee and Hon'ble Hyderabad Bench of the Tribunal has held in the case of Associated Roadways P. Ltd. (2013) 25 ITR (Trib) 713 that the provisions of section 194-C(6) shall apply retrospectively. Accordingly he submitted that the assessee cannot be treated as assessee in default and paid for deletion of demand raised on him.

4. On the contrary, learned Departmental Representative strongly supported the orders passed by the tax authorities.

5. We heard the parties and perused the record. The undisputed facts remain that the assessee has collected Form 15I as required u/s 194C(3) of the Act and hence the assessee has claimed that he is not required to deduct tax at source. However, the assessee has committed a mistake in furnishing the said forms along with Form No.15J, i.e., he has submitted the forms to the TDS officer instead of the Commissioner of Income tax. The question is whether the above said mistake would render the assessee as an assessee in default. The second proviso to sec. 194C(3) and sec. 194C(3) read as under:-

“194C(3) No deduction shall be made under sub-section (1) or sub-section (2) from—

- (i) The amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided.....

Provided further that no deduction shall be made under sub-section (2), from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.

Provided also that the person responsible for paying any sum as aforesaid to the sub-contractor referred to in the second proviso shall furnish to the prescribed income tax authority or the person authorized by it such particulars as may be prescribed in such form and within such time as may be prescribed.”

In the instant case, the assessee did not deduct tax at source on the strength of second proviso (supra) upon receipt of declaration from the payees in Form No.15I. The liability to furnish those declarations has been placed upon the assessee under third proviso (supra). Thus, it is seen that the assessee has complied with the second proviso and accordingly did not deduct tax at source. There is a mistake in complying with the third proviso, i.e., the prescribed forms have been submitted to the TDS officer instead of Commissioner of Income tax. The third proviso shall come into operation only after fulfilling second proviso. Since the assessee has complied with the second proviso and since he was not liable to deduct tax at source, we are of the view that the assessee cannot be considered to be an assessee in default for the mistake committed in complying with the third proviso. Accordingly we are unable to agree with the view taken by the tax authorities. Accordingly we set aside the orders passed by the tax authorities.

6. In the result, the appeal filed by the assessee is allowed.

Order has been pronounced in the Court on 16.11.2016

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/11/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

PS