

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'A', KOLKATA

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 57/Kol/2014  
Assessment Year: 2005-06

*M/s. Advantage Equifund Pvt. Ltd. ....Appellant*  
*C/o S.S. Lohia & Co.*  
*27, Brabourne Road, 7<sup>th</sup> Floor, Room No. 711*  
*Kolkata - 700001*  
*[Pan : AADCA2517J]*

*A.C.I.T., Circle-3.....Respondent*  
*P-7, Chowringhee Square, Aayakar Bhawan*  
*4<sup>th</sup> Floor*  
*Kolkata - 700069*

**Appearances by:**

*Shri Subhash Agarwal, Advocate appearing on behalf of the Assessee.*  
*Shri Sallong Yaden, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : August 31, 2017

Date of pronouncing the order : September 22, 2017

**ORDER**

**Per P.M. Jagtap, AM**

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) – XXIV, Kolkata dated 24.10.2013 and the solitary issue involved therein relates to the addition of Rs. 48,62,715/- made by the AO and confirmed by the Ld. CIT (A) by way of disallowance u/s 40(a)(ia) of the Act for non-deduction of tax at source from the payments made to various parties against expenditure incurred.

2. The assessee in the present case is a company which is engaged in the business of construction and share trading. The return of income for the year under consideration was filed by it on 31.10.2005 declaring a total income of Rs. 33,76,340/-. During the course of

assessment proceedings the issue relating to compliance by the assessee company of the relevant TDS provisions was examined by the AO. On such examination he found that the payments made by the assessee to the following parties against various expenses incurred were liable for tax deduction at source.

NAME	NATURE	AMOUNT
Munnalal Punnalal Const. P. Ltd	Sub-contractor	Rs. 3,69,610/-
Dayaram Karhtay	Cross drainage work	Rs. 2,86,724/-
Dinea Verma	Do	Rs. 1,54,362/-
Gambhir Singh	Do	Rs. 2,56,982/-
Hiralal	Do	Rs. 1,35,112/-
Mosim Khan	Do	Rs. 1,28,503/-
Pramod Vyas	Do	Rs. 64,443/-
Santosh	Do	Rs. 24,904/-
Satish Pujari	Do	Rs. 12,99,201/-
Ashok Gole	Murram Transporta.	Rs. 96,889/-
Pramod Vyas	Do	Rs. 23,700/-
Ashiq Bhai	Sand Transportation	Rs. 8,53,000/-
Guljar Bhai	Do	Rs. 5,36,310/-
Shajad Bhai	Do	Rs. 2,77,775/-
Indoor Surat Road Lines	Do	Rs. 6,07,480/-
Promod Vyas	Do	Rs. 1,17,330/-
	Total	Rs. 48,62,715/-

Since there was failure on the part of the assessee to deduct tax at source from the aforesaid payments, disallowance of Rs. 48,62,715/- was made by the AO by invoking the provision of section 40(a)(ia).

3. The disallowance made by the AO u/s 40(a)(ia) was challenged by the assessee in the appeal filed before the Ld. CIT (A). During the course of appellate proceedings before the Ld. CIT (A), the assessee submitted additional evidence to support and substantiate its case that there was no requirement of deduction of tax at source from the concerned payments made by it going by the nature of expenditure

and the disallowance as made by the AO u/s 40(a)(ia) was not called for. This additional evidence filed by the assessee along with submission was forwarded by the Ld. CIT (A) to AO seeking the remand report. As per the direction of the Ld. CIT (A), the matter was again verified by the AO and remand report was submitted by him to the Ld. CIT (A) giving his comments. When the said remand report was confronted by the Ld. CIT (A) to the assessee, a rejoinder was also filed by the assessee. After considering this entire material available on record, the Ld. CIT (A) decided the issue relating to disallowance u/s 40(a)(ia) vide his impugned order as under:

*"I have carefully considered the observation of the AO in assessment order, submission of the appellant, remand report of the AO, rejoinder of the appellant and case law cited by the AR. I found that the appellant paid/credited the amount to the sub-contractor without deducting the TDS. The argument of the appellant that payment made towards, supplying of construction machinery / items on hire, supply of hand machines, supply of sand. The payment of detail is as under:*

NAME	NATURE	AMOUNT
Munnalal Punnalal Const. P. Ltd	Sub-contractor	Rs. 3,69,610/-
Dayaram Karhtay	Cross drainage work	Rs. 2,86,724/-
Dinea Verma	Do	Rs. 1,54,362/-
Gambhir Singh	Do	Rs. 2,56,982/-
Hiralal	Do	Rs. 1,35,112/-
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Indoor Surat Road Lines	Do	Rs. 6,07,480/-
Promod Vyas	Do	Rs. 1,17,330/-
	Total	Rs. 48,62,715/-

The above all activity comes under the contracts. In this case the appellant made payment to sub-contractors. The AR taken the argument that Rent or hire of Machines and equipment is not correct. He had given the contract of transportation that comes under the purview of Section 194C of the IT Act. Therefore, the cited case law of the appellant are not applicable in this case. The argument of the appellant that some material was used in the work. The material is not subject matter of the TDS. This argument of the appellant is not correct because from the perusal of the bills it is noticed that sub contract awarded was for a work. For executing the said contract work some materials were required which was purchased by the subcontractors. Said contract being a composite contract as apparent from the nature of work, cannot be bifurcated into material and labour work contract. No separate agreement was made for the material contract and requirement of labour for execution of work. Both are part of the same contract and are inseparable. Hence assessee was to deduct TDS on whole amount of contract work being a composite contract.

For the reasons given above, the Ld. CIT (A) confirmed the disallowance of Rs. 48,62,715/- made by the AO u/s 40(a)(ia) for the failure of the assessee to deduct tax at source from the relevant payments. Aggrieved by the order of the Ld. CIT (A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has contended that the expenditure stated to be incurred by the assessee on payment to sub-contractor and for cross drainage work on the basis of nomenclature used actually represented hire charges paid by the assessee for construction machineries and equipments and there was thus no requirement of deduction of tax at source from the payments made by the assessee

against the said expenditure. In order to support and substantiate this contention, he has relied on the copies of relevant bills placed in his paper book. A perusal of the said bills however shows that the bills were raised by the concerned parties at specific rates for the quantum of work done and going by the same, we find it difficult to agree with the contention of the learned counsel for the assessee that the said bills were for hire charges of construction machineries and equipments. Going by the contents of the relevant bills, we find ourselves in agreement with the authorities below that the said bills were raised by the concerned parties for some work done on contract basis and the assessee was liable to deduct tax at source from the payment made against the said work. As regards the other bills for supply of hard murrum and sand, we however are inclined to agree with the contention of the learned counsel for the assessee that the same, going by the description given in the relevant bills, were for supply of hard murrum and sand and not for the transportation of hard murrum and sand as taken by the authorities below. In our opinion, the assessee therefore, was not liable to deduct tax at source from the payments made against the supply of material and disallowance made u/s 40(a)(ia) to that extent is not sustainable. We accordingly modify the impugned order of the Ld. CIT (A) and allow partly the appeal of the assessee on this issue by deleting the disallowance made u/s 40(a)(ia) in respect of payments made against supply of hard murrum and sand.

**5. In the result, the appeal of the assessee is partly allowed.**

Order Pronounced in the Open Court on 22<sup>nd</sup> September, 2017.

Sd/-

(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 22/09/2017**

Biswajit, Sr. PS

Copy of order forwarded to:

1. Advantage Equifund Pvt. Ltd., C/o. S.S. Lohia & Co., 27,  
Brabourne Road, 7<sup>th</sup> Floor, Room No. 711, Kolkata -700001.
2. ACIT, Circle 3, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata