

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA**

Before: **Shri P. M. Jagtap, Accountant Member and  
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A No.443/Kol/2014**  
(Assessment Year: 2010-11)

**A.C.I.T, Cir – 3, Asansol**

Revenue/Department

Vs

**Deepak Gupta**  
[PAN: AHYPG 4709 K]

Assessee

**&**

**I.T.A No.491/Kol/2014**  
(Assessment Year: 2010-11)

**Deepak Gupta**  
[PAN: AHYPG 4709 K]

Assessee

Vs

**A.C.I.T, Cir – 3, Asansol**

Revenue/Department

For the Assessee : Shri Subash Agarwal, Advocate  
For the Revenue/Department : Shri Sallong Yaden, Addl. CIT

Date of hearing : 31.08.2017  
Date of pronouncement : 29.11.2017

**ORDER**

**Shri S.S. Viswanethra Ravi, JM:**

Both these cross appeals by the Revenue and assessee against order dated 28.02.2013 passed by the Commissioner of Income Tax (Appeals), Asansol for the assessment year 2010-11.

2. The Ld.AR prayed to take up his appeal first and decide the issues in terms of revised grounds of appeal. The Ld. DR agreed for the same. Since, the issues raised in both these appeals by the revenue and assessee are identical and similar to the facts. Therefore, we proceed to hear the assessee's appeal and pass a consolidated order for convenience.

3. First, we shall take up ITA No.491/Kol/2014 of Assessee.

4. Ground No's-1 and 2 are relating to disallowance made on account of failure for deduction of TDS. The AO during the course of scrutiny proceedings found that the assessee did not explain why payees did not furnish Form No.15J and Form No.15I. Accordingly, notice u/s 133(6) was issued to four transport operators for verification. Out of which, three letters addressed to Mr. Satish Kumar, Mr. Amarjeet Bhagat & Mr. Bidyut Kar returned unserved with postal remarks – not known/incomplete address/not found. A show-cause notice was issued to the assessee on account of the amounts paid to the said three transporters should not be allowed in view of the non-compliance notices issued u/s 133(6) of the Act. The AO observed that the assessee did not give proper explanation in producing required details of persons for verification and veracity of said transaction. The AO by placing reliance in the case of CIT Vs. Durga Prasad More reported in 82 ITR 54 and in the case of CIT vs. Calcutta Agency Ltd. reported in 19 ITR 191 disallowed on account of transporting charges to an amount of Rs.48,09,914/- pertaining to these four transporters, **likewise** an amount of Rs.54,18,875.69 was also disallowed to the transactions made with one Mr.Rajendra Gupta for not submitting 15J and for not complying notices u/s133(6) and added the both to the total income of the assessee for violation of section 194C of Act by invoking the provision u/section 40(a)(ia) of the Act.

5. The CIT(A) decided the both the issues together and partly allowed as under:

(a) The amounts paid during the period 01-04-2009 to 30-09-2009 were confirmed for not obtaining form 15-I prior to payment from Mr. Amarjeet Bhagat,

Mr. Bidyut Kar,  
Mr. Shivanath Gorai,  
Mr. Satish Kumar and  
Shri Rajendra Gupta

(b) Deleted the impugned amounts paid during the 01-10-2009 to 31-03-2009 on finding that the assessee made compliance to section 194C (6) of the Act.

6. The Id. AR submits that the CIT (A) has given relief partly and the issue challenged is to be decided in terms of revised grounds of appeal raised before this Tribunal involving the amounts paid during the period from 01-04-2009 to 30-09-2009 to an extent of Rs.26,29,505/- which was the amount confirmed by the CIT-A. The Ld.AR argued that alternatively that in view of the insertion of second proviso to section 40(a)(ia) of the Act and prayed to restore the issue on hand to the file of AO and placed reliance on Judgment dt. 26-8-2015 of Hon'ble High Court of Delhi in the case of CIT-1 Vs. Ansal Land Mark Township(P) Ltd reported in 377 ITR 635 (Del). The Ld.AR argued that the Assessee would provide all the details regarding the payees and the AO can verify whether such recipients declared the amounts received from the assessee in their returns of income.

7. Before us, the Id. DR submits that the Assessee failed to provide any evidence relevant to the impugned amounts and failing which the AO rightly added the said amounts for violation of statutory provisions. The Ld. DR relied on the order of AO.

8. Heard both sides and perused the materials available on record. The Ld.AR made alternative arguments in restoring the issue to the file of AO in view of the insertion of second proviso to section 40(a)(ia) of the Act being declaratory and has retrospective effect

from 01-04-2005. We are of the view that the facts therein are similar to the facts of the case on hand. The Id. AR relied on the order of this Tribunal in the case of Soma Rani Ghosh vs. DCIT in ITA no.1420/Kol/2015. The Id. AR referred to Para No.3.1 to 3.3. The relevant portion from the judgment of this Tribunal is reproduced herein below:

*"33. In view of the above and respectfully following the judicial reasoning delineated in the above judgments, we find that if the assessee complies with the provisions of section 194C(6), disallowance under section 40(a)(ia) does not arise just because there is violation of provisions of section 194C(7) of the Act. 34.*

*34. From our above discussion it follows that,-*

*i) in the context of Section 194C(1), person undertaking to do the work is the Contractor and the person so engaging the contractor is the contractee;*

*ii) that by virtue of the Amendment introduced by Finance Act (No.2) 2009, the distinction between a contractor and a sub-contractor has been done away with and Cl. (iii) of Explanation under 194C(7) now clarifies that "contract" shall include sub-contract;*

*iii) subject to compliance with the provisions of Section 194C(6), immunity from TDS under sec. 194C(1) in relation to payments to transporters, applies transporter and non-transporter contractees alike;*

*iv) under Sec. 194C(6), as it stood prior to the amendment in 2015, in order to get immunity from the obligation of TDS, filing of PAN of the Payee-Transporter alone is sufficient and no confirmation letter as required by the learned CIT is required;*

*v) Sections 194C(6) and Section 194C(7) are independent of each other, and cannot be read together to attract disallowance u/s 40(a)(ia) read with Section 194C of the Act; and*

*vi) If the assessee complies with the provisions of Section 194C(6), no disallowance u/s 40(a)(ia) of the Act is permissible, even there is violation of the provisions of Section 194C(7) of the Act.*

*35. Consequent to our findings in the preceding paragraphs, we reach a conclusion that the authorities below are not justified in treating the expense incurred by the assessee for Carriage inward and carriage outward as disallowable under section 40(a)(ia) of the Act, and adding back Rs.1,63,78,648/- claimed as expense towards Carriage Inward and Rs.1,13,00,980/- claimed as expense towards Carriage Outward, and such additions shall stand deleted."*

9. Respectfully following the Judgment of the Hon'ble High Court of Delhi *supra* and order of Coordinate Bench of Kolkata Tribunal, we remand the case to AO for examination and for verification of the required details of the payees i.e Mr. Amarjeet Bhagat, Mr. Bidyut Kar, Mr. Shivanath Gorai, Mr. Satish Kumar and Shri Rajendra Gupta and direct the assessee to cooperate in completing the

assessment. Grounds raised by the assessee in this regard are allowed for statistical purposes.

10. Now, we shall take up ITA No.443/Kol/2014 for A.Y 2010-11 by the revenue.

11. In this appeal, the only ground is to be decided whether the CIT-A was justified in deleting the disallowance in respect of payment to transporters during 01.10.2009 to 31.03.2010 in the facts and circumstances of the case. We find that the Assessee contended before the CIT-A that the PAN's were obtained by the payees prior to the payments and the CIT-A found satisfied on examination of the bills containing PAN's sought remand report from AO which are at pages 56 to 70 of the paper book. We find from the remand report at page no-59 of paper book the AO availed information from ITD/AIS system and reported that the PAN's of payees i.e Mr. Shivanath Gorai, Mr. Bidyut Kar, Mr. Satish Kumar and Mr. Amarjeet Bhagat were generated and obtained prior to the payments made by the assessee. Therefore, we find no infirmity in the order of CIT-A and it is justified. Thus, grounds raised by the Revenue in this regard are dismissed.

12. In the result, the appeal of the assessee is allowed for statistical purposes and appeal of the revenue is dismissed

Order pronounced in the open court on 29.11.2017.

Sd/-  
**P. M. Jagtap**  
**Accountant Member**

Sd/-  
**S.S. Viswanethra Ravi**  
**Judicial Member**

Dated : 29.11.2017  
Place : Kolkata  
RS(SPS)

Copy of the order forwarded to:

1. Assessee – Deepak Gupta, C/o. M/s. Gupta Brothers, 16, C.L.M. Lane, Raniganj-713347, W.B.
2. Revenue/Department– ACIT, Circle-3, Asansol, 54, G.T. Road(West), Asansol-713304.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

//True Copy//

By order,

Sr.PS/H.O.O  
ITAT, Kolkata