

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

**ITA Nos.4711 & 4712/M/2015  
Assessment Years: 2007-08 & 2008-09**

Income Tax Officer 26(1)(1), R. No.505, C-10, 5 <sup>th</sup> Floor, B.K.C. Bandra (E), Mumbai - 51	Vs.	M/s. All India Roadways, Unit No.3, Building No.B- 2, Wadala Truck Terminal, Wadala, Mumbai – 400 037 <b>PAN: AANFA 6118Q</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Rajesh Kumar Yadav, D.R.

Date of Hearing : 28.12.2017  
Date of Pronouncement : 31.01.2018

**ORDER**

**Per D.T. GARASIA, Judicial Member:**

The present appeal has been preferred by the Revenue against the order dated 09.06.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2007-08.

2. The brief facts of the case are as under:

The assessee is a partnership firm engaged in the business of transportation contracts. The assessee firm has two partners viz. Mr. Iqbalsingh Arora and Mrs. Jagjit Kaur Arora sharing profit in equal proportion. In this case, original assessment was completed on 02-

12-2009 u/s. 143(3) determining total income at Rs.85,82,070/- after making disallowance u/s.40(a)(ia) of Rs. 84,36,119/- as the assessee had not complied with the provisions of Section 194C of the I.T. Act, 1961. The breakup of hiring charges of Rs. 84,36,119/- is as under:

Sr. No.	Particulars	Amount in Rs.
(i)	Raj Carriers Prop. Iqbal Singh Arora Partner of All India Roadways	74,11,564
(ii)	Parties falling within threshold limits of Sec. 194C	2,18,995
(iii)	Other parties (net of discount of Rs.7,502/-)	8,05,560
	<b>Total</b>	<b>84,36,119</b>

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has allowed the appeal by observing as under:

"5.15 have considered the above arguments put forth by the assessee. The above amendments have come after my predecessor's order dtd. 28.08.2010. Therefore, considering the factual matrix of the present case and respectfully following the decisions given in-the above cited cases on the same issue, the issue is decided in favour of the appellant by holding that the amendment to 2<sup>nd</sup> proviso to section 40(a)(ia) is applicable in the case of the assessee as the same is retrospective in nature and also keeping into consideration that the payee has shown the hiring charges in his return of income and paid taxes accordingly and therefore, no disallowance can be made u/s.40(a)(ia) in respect of the payments of Rs. 74,11,564/- paid to M/s. Raj Carriers, Proprietor Iqbal Singh Arora. **In view of the above, the addition made by the A.O. of Rs.74,11,564/- is directed to be deleted. This ground is allowed.**

**5.16** As regards to the addition made of Rs.2,18,995/- since the aggregate of transaction was below the threshold limit of Rs.50,000/- as provided u/s.194C of the Income Tax Act, as is evident from Page 33 placed in compilation, entered into with each party during the year, the provisions for disallowance u/s.40(a)(1a) of the Income Tax Act are not applicable. In these circumstances, the disallowance made of Rs.2,18,995/- is directed to be **deleted**.

**5.17** As regards to the payments made to other parties of Rs. 8,05,560/- without deducting tax at source, it is seen that though it is claimed that the payees have paid the taxes on the hiring charges so received, but no certificate by the Chartered Accountant in the prescribed format have been furnished with regard to the above sum. Therefore, this claim of the appellant can't be allowed. Hence, the addition made by the A.O. of Rs. 8,05,560/- is confirmed.

5.18 To sum up, out of the total addition of Rs. 84,36,119/-, addition to the extn of Rs. 8,05,560/- is confirmed and the balance addition of 6,30,559/- is directed to be deleted.”

4. Having heard both the parties, we are of the view that issue in controversy is covered by the decisions of various Tribunals and we find that the Ld. CIT(A) has verified that the assessee has made payment to Raj Carriers Prop. Iqbal Singh Arora Partner of All India Roadways and Ld. CIT(A) has verified the certificate from Chartered Accountant placed at page No.51 to 68 of compilation before the Ld. CIT(A) and they have shown this income in his return of income. Therefore, Ld. CIT(A) has allowed. Therefore, in our opinion, there is no merit in Revenue's appeal.

5. In the result, appeal of the Revenue is dismissed.

**Order pronounced in the open court on 31.01.2018.**

**Sd/-**  
**(N.K. Pradhan)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(D.T. Garasia)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 31.01.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.