

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" Bench, Mumbai**

**Before Shri C.N. Prasad, Judicial Member  
and Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No. 2071/Mum/2016**  
(Assessment Year: 2011-12)

Income Tax Officer-17(3)(4)  
1st Floor, Aayakar Bhavan  
M.K. Road, Mumbai 400020

M/s. Sugarchem  
Kshamalaya, 3rd Floor  
Vs. Marine Lines  
Mumbai 400020

PAN – AAYFS3762P

**Appellant**

**Respondent**

Appellant by: Shri Purushottam Kumar  
Respondent by: Shri Bhpendra Shah

Date of Hearing: 23.11.2017  
Date of Pronouncement: 21.02.2018

**ORDER**

**Per C.N. Prasad, JM**

This appeal is filed by the Revenue against the order of the CIT(A)-28, Mumbai dated 22.01.2016 for A.Y. 2011-12.

2. The only issue in the appeal of the Revenue is that the CIT(A) erred in deleting the disallowance made under Section 40(a)(ia) of the Income Tax Act, 1961 (hereinafter “the Act”) ignoring the fact that the assessee has failed to comply the cumulative conditions specified in sections 194C(6) and 194C(7) of the Act.

3. The brief facts of the case are that the assessee, engaged in the business of trading in aromatic and other chemicals, filed its return of income on 29.09.2011 declaring income of ₹14,02,350/-. The assessment was completed under Section 143(3) of the Act on 24.03.2014 determining the income at ₹94,46,466/-. The AO, while computing the income of the assessee, disallowed ₹80,23,971/- representing payment made to transport agencies. According to the AO the assessee made payments to

transport contractors without fulfilling the conditions laid down in sections 194(6) and 194(7) of the Act and both these provisions are cumulative nature. Since the assessee failed to furnish information regarding payment made to transporters without deduction of tax in prescribed form with the prescribed authority, he was of the opinion that the assessee did not fulfil the conditions specified in section 194C(7) of the Act. The AO also observed that the applicability of provisions of Section 194C(6) for non deduction is not complete without the fulfilling of the conditions laid down under Section 194C(7) of the Actg. Therefore he was of the opinion that both these provisions are cumulative.

4. On appeal the learned CIT(A), following the decision of the Hyderabad Bench of the Tribunal in the case of ACIT vs. Mohammed Suhail in ITA No. 1536/Hyd/2014 dated 13.02.2015, held that the provisions of Section 194C(6) are independent of the provisions of Section 194C(7) and mere non compliance to the procedure laid down in Section 194C(7) would not trigger a disallowance. Against this order of the CIT(A) Revenue is in appeal before us.

5. The learned counsel for the assessee at the outset submits that the issue in the appeal is squarely covered by the decisions of the Kolkata Bench of the Tribunal in the case of Kali Kinkar Roy vs. Income Tax Officer in ITA No. 1676/Kol/2016 dated 31.10.2017, copy of which is placed on record. Referring to this order the learned counsel submits that the Kolkata Bench in this case held that provisions of Section 194C(6) and 194C(7) are independent of each other. The learned counsel submits that the assessee has complied with the provisions of Section 194C(6) by submitting the PAN of the contractors before the AO and there was no prescribed format or authority under the provisions of Section 194C(7) at that point of time to furnish the details. The learned counsel, referring to the notification No. 16/2011 dated 24.03.2011 submitted that the format and the prescribed authority to whom the details were to be submitted has been notified only by the above said notification and such notification was not available at the time of the payments made by the assessee. The

learned counsel also relied upon the decision of the Kolkata Bench in the case of Soma Rani Ghosh vs. DCIT in ITA No. 1420/Kol/2015 dated 09.09.2016 and the decision of the Nagpur Bench of the Tribunal in the case of ITO vs. Manikgarh Cement in ITA Nos. 316 to 319/Nag/2015 dated 23.11.2016 in support of the above contentions.

6. The learned D.R., on the other hand, vehemently supported the order of the Assessing Officer.

7. We have heard the rival submissions and perused the orders of the authorities below. The AO in the course of assessment proceedings requested the assessee to furnish the reasons why no TDS was deducted in respect of transportation charges. The assessee furnished PAN details of the transporters to the tune of ₹67,24,412/- out of ₹80,23,971/- in respect of nine transporters referred to in the assessment order and claimed that no TDS was deductible on the payments made as the transporters have furnished their PAN details to the assessee as per provisions of Section 194C(6) of the Act. However, the AO was of the view that since the assessee did not furnish in the prescribed format the details of those contractors where no TDS was made to the prescribed authority as per provisions of Section 194C(7), the assessee was not entitled to the benefit of provisions of Section 194C(6) and therefore he invoked provisions of Section 40(a)(ia) to disallow the payments made to transporters amounting to ₹80,23,971/-. The learned CIT(A), following the decision of the Hyderabad Bench in the case of Mohammed Suhail (supra) held that provisions of Section 194C(6) are independent of Section 194C(7). Similar view has been taken by the Kolkata Bench in the case of Kali Kinkar Roy (supra) wherein it has been held that sections 194C(6) and 194C(7) are independent of each other and cannot be read together to attract disallowance under Section 40(a)(ia) of the Act. While holding so the Kolkata Bench observed as under: -

*“8. Heard rival submissions and perused the material available on record. It is an admitted fact that since all the payees submitted their Permanent Account Numbers in the assessment proceedings. The provision contemplated in Sec 194C(6) permits no deduction of TDS shall*

*be made u/s. 194C(1) if the payee furnishes PAN to the payer. We find that the requirement of Section 194C(6) of the Act submission of Permanent Account Number which enable the payer from no deduction of TDS. The finding of the AO was that the Permanent Account Numbers furnished cannot be accepted as it was not filed with the appropriate authority as required u/s. 194C(7) of the Act and whether such failure attracts and invokes the jurisdiction under Section 40(a)(ia) of the Act. At this juncture, we may refer the order of Coordinate Bench of this Tribunal which held that provisions of section 194C(6) and section 194C(7) are independent to each other and can join together not be read together to attract the disallowance U/Section 40(a)(ia) of the Act. The relevant portion of which is reproduced hereunder:*

*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.*

*9. In the present issue as discussed the fact remains admitted the payees furnished PANs to the Assessee, but, the Assessee could not furnish the same to the prescribed authority within time and whether such failure attracts the addition and disallowance under section 40(a)(ia) of the Act, in our opinion there is violation of section 194C(7) and disallowance under section 40(a)(ia) does not arise as held by the Coordinate Bench supra, accordingly, the impugned addition made thereon shall go and thus, ground no's 2 and 3 raised by the Assessee are allowed."*

8. Similar view has been taken by the Nagpur Bench in the case of Manikgarh Cement (supra). It has been held 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. Respectfully following the said decision we hold that both the sections, i.e. Section 194C(6) and Section 194C(7) are independent of each other and cannot be read together to attract disallowance under Section 40(a)(ia) r.w.s. 194C of the Act.

9. On a perusal of the assessment order we find that the assessee made payments to transport contractors amounting to ₹80,23,971/- whereas the assessee has provided the details and PAN only in respect of nine transporters to the tune of ₹67,24,412/- during the course of assessment proceedings. As per provisions of Section 194C(6) if the

transport contractors furnish the details in respect of their PAN to the person paying or crediting to such contractors TDS need not be deducted. In the case in hand we can see from the assessment order that the assessee has provided details of PAN only in respect of nine contractors amounting to ₹67,24,412/- and no details have been furnished in respect of balance amount of ₹12,99,559/-. Therefore, even if we say that the assessee has complied with provisions of Section 194C(6) it is only to the extent of ₹67,24,412/-. Therefore, since the assessee has not furnished the details of PAN in respect of other contractors, the assessee has not complied with the provisions of Section 194C(6) at least to the tune of ₹12,99,559/-. Therefore, in our view the said amount is liable to be disallowed under Section 40(a)(ia) of the Act as the assessee did not furnish PAN details to the AO and the assessee was under the obligation to deduct TDS on this amount. Thus, we direct the AO to restrict the disallowance under Section 40(a)(ia) to ₹12,99,559/- and delete the balance addition and recompute the income of the assessee.

10. In the result, the appeal filed by the Revenue is partly allowed.

Order pronounced in the open court on 21<sup>st</sup> February, 2018.

Sd/-  
**(Manoj Kumar Aggarwal)**  
**Accountant Member**

Sd/-  
**(C.N. Prasad)**  
**Judicial Member**

Mumbai, Dated: 21<sup>st</sup> February, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -28, Mumbai*
4. *The Pr. CIT - 17, Mumbai*
5. *The DR, "D" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.