

**IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR**

**BEFORE SH. G.D.AGRAWAL, HON'BLE PRESIDENT AND
SH. MAHAVIR SINGH, JUDICIAL MEMBER**

ITA No.446/NAG/2014
(Assessment Year: 2008-09)

ACIT, Amravati Circle, Amravati, Aayakar Bhawan, Ambapeth, Amravati-444601.	VS	Akash Rameshwar Panpalia, Ward no.14, Dhamangaon Railway, Distt.-Amravati-4447-9. PAN-AIOPP8687J
(Appellant)		(Respondent)
Appellant by		Sh.R.K.Baral, Sr.DR
Respondent by		Sh.K.P.Dewani, Adv.
Date of Hearing		08.03.2018
Date of Pronouncement		08.03.2018

ORDER

PER BENCH

This appeal by Revenue is arising out of the order of Ld.CIT(A)-II, Nagpur vide Order No.CIT(A)-II/517/2010-11 dated 02.07.2014. The assessment was framed by ACIT, Amravati Circle, Amravati u/s 143(3) of the Income Tax Act, 1961 (in short "Act") for A.Y. 2008-09 vide his order dated 28.12.2010.

2. The only issue in this appeal of Revenue is against the order of Ld.CIT(A) deleting the disallowance of expenses made by the Assessing Officer by applying the provision of section 40A(3) of the Act i.e. making cash payment in excess of Rs.20,000/-. For this, the Revenue has raised the following ground:-

1. *"Whether on the facts and circumstances of the case and in law the learned CIT(Appeal)-II, Nagpur was right in deleting disallowance of expenses of Rs.1,19,18,353/- made without deduction of TDS and the payments for the same were made for more than Rs.20,000/- in a single*

day in cash, contravening section 194C and 40A(3) of the I.T.Act, 1961 respectively.”

3. It is clarified that the Revenue has raised the issue for contravention of provision of section 194C for making disallowance as the payments are made without deduction of TDS and also for making cash payment in excess of Rs.20,000/- in a single day in violation of provision of section 40A(3) of the Act. But we have gone through the assessment order, and it is noticed that the Assessing Officer has not invoked the provision of section 40(a)(ia) of the Act for making disallowance and hence the issue remains the applicability of the provision of section 40A(3) of the Act.

4. Briefly stated facts are that the assessee is a civil contractor maintained its books of accounts and audited the same under section 44AB of the Act. The assessee has produced books of accounts and verified by the Assessing Officer. According to the Assessing Officer, the assessee has made payment of Rs.1,19,18,353/- on account of labour charges for F.Y 2007-08 relevant to the A.Y 2008-09 to 52 persons. Before the Assessing Officer, the assessee claimed that he has paid labour charges directly to the group (Sardars) and the group in turn made payment to individual person on different dates and all these payments are made in cash less than Rs.20,000/- individually to the labourers in the single day. But the Assessing Officer has not accepted the explanation of the assessee stating that the assessee has made payment exceeding to Rs.20,000/- in a single day as prescribed in chart to different individual is reproduced in the assessment order. The Assessing Officer accordingly

disallowed a sum of Rs.1,19,18,353/-. Aggrieved, the assessee preferred appeal before Ld.CIT(A).

5. Ld.CIT(A) deleted the addition by observing that the assessee has made payment to the labourers which was below prescribed limit as prescribed by the provisions of section 40A(3) of the Act i.e. less than Rs.20,000/-. Ld. CIT(A) dealt this issue in para 7 as under:-

7. *“The above judicial pronouncements have been delivered in identical set of facts as in the case of the appellant. In such circumstances there is clear evidence to establish that each payment was made to individual labourer which is below the threshold limit prescribed by section 40A(3) and hence there is no question of any violation of provisions of section 40A(3) & 40(a)(ia) and in view of the same, the addition made amounting to Rs.11918353/- is directed to be deleted.”*

Aggrieved, now the Revenue is in appeal before us.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee has paid wages to individual workers and vouchers was obtained from representative workers or the sardars, who is employee of the assessee for accounting purpose in respect of payments made to individual labourers. It was explained by Ld. Counsel for the assessee that the payment made to various individual labourers being in nature of labourer charges was paid below Rs.20,000/-, the provision of section 40A(3) will not apply. Even the muster register explain the submissions of the assessee that the payments have been made towards daily wages and are not in respect of any contract and which are below Rs.20,000/-

as can be evidenced from page 12 to 17 of the assessee's paper book. In view of the above, we are of the view that Ld.CIT(A) has rightly deleted the addition and we confirm the same.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 08th March, 2018.

Sd/-
(G.D.AGRAWAL)
HON'BLE PRESIDENT

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Dated: 08th MARCH, 2018

Amit Kumar

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A), Nagpur*
4. *The CIT, Nagpur*
5. *The DR, Bench, ITAT, Nagpur*

By Order

Assistant Registrar
ITAT, Nagpur Bench, Nagpur