

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, न्यायिक सदस्य एवं**  
**श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.No.507/Vizag/2017**  
(निर्धारण वर्ष / Assessment Year: 2005-06)

The DCIT, Central Circle  
Vijayawada

(अपीलार्थी / Assessee)

M/s. CONZUG Logistics Pvt. Ltd.  
Visakhapatnam  
[PAN No.AACCC2833J]

(प्रत्यार्थी / Respondent)

**C.O. No.79/Vizag/2017**  
(Arising out of I.T.A.No.507/Vizag/2017)  
(निर्धारण वर्ष / Assessment Year: 2005-06)

M/s. CONZUG Logistics Pvt. Ltd.  
Visakhapatnam

(अपीलार्थी / Assessee)

The DCIT, Central Circle  
Vijayawada

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Assessee by  
प्रत्यार्थी की ओर से / Respondent by

: Shri V. Srinivasa Rao, DR  
: Shri G.V.N. Hari, AR

सुनवाई की तारीख / Date of hearing

: 15.03.2018

घोषणा की तारीख / Date of Pronouncement

: 04.04.2018

## **आदेश / O R D E R**

### **PER D.S. SUNDER SINGH, Accountant Member:**

This appeal filed by the revenue is directed against order of the Commissioner of Income Tax (Appeals)-3, {CIT(A)}, Visakhapatnam vide ITA No.42/2015-16/CIT(A)-3/VSP/2017-18 dated 30.6.2017 for the assessment year 2005-06. The cross objection filed by the assessee is in support of the order of the Ld. CIT(A).

2. Brief facts of the case are that the assessee company is engaged in the business of handling and transport contractors at Visakhapatnam and consignment agent of RINL, Nagpur. The assessee filed its return of income for the A.Y.2005-06 originally on 01.10.2005 admitting the total income of Rs.1,33,430/-. Consequent to search and seizure operations in the case of M/s. Maha Maruthi Logistics Private Limited, a notice u/s.153A of the Income Tax Act, 1961 (hereinafter called as 'the Act') was issued on 29.12.2010 and in response to the notice, the assessee filed the return of income on 14.2.2011 admitting the total income of Rs.1,33,430/-. The assessment was completed u/s. 143(3) r.w.s. 153A of the Act vide order dt.29.12.2011 wherein the income of the assessee was

assessed at Rs. 1,33,430/-. Vide order dt.03.03.2014. u/s. 263 of the Act, the Commissioner of Income Tax (Central) held that the assessment order dt.29.12.2011 is erroneous and prejudicial to the interest of Revenue on the ground that the Assessing Officer did not properly examine some of the issues relating to bank deposits and TDS. Consequently the Assessing Officer has taken up the case for reassessment as per the direction of the order passed under section 263 of the act and given effect to the revision order by passing assessment order dt.26.03.2015 u/s. 143(3) r.w.s. 263 of the Act. Thus the total income was assessed at Rs.74,50,790/- by making an addition of Rs.27,00,000/- towards unexplained cash credit and addition of Rs.46,17,360/- towards disallowance of expenditure u/s. 40(a)(ia) of the Act.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) allowed the appeal of the assessee deleting both the addition of ₹ 27,00,000/- in respect of cash credits and the addition made in respect of disallowance u/s 40(a)(ia) of the Act.

4. Aggrieved by the order of the Ld.CIT(A), the revenue is in appeal before us against the addition u/s 40(a)(ia) of the Act. All the grounds of appeal are related to the deletion of addition for made u/s 40(a)(ia) of the Act. During the appeal hearing, the Ld. D.R. argued that the payment was made to CONCOR, a company which is engaged in the carriage of goods. Since the payment was not directly made to the Railways, the Ld. D.R. contended that the payment attract the TDS u/s 194C of the Act. Since the assessee failed to deduct the TDS, the A.O. has rightly made the addition, hence, requested to confirm the order of the A.O.

5. On the other hand, the Ld. A.R. argued that as per section 194C of the Act, in explanation (iv)(c), work shall include carriage of goods or passengers or any mode of transport, other than by Railways. Since the CONCOR is a subsidiary organization of the Indian Railways and the Railways have carried the goods, there is no case for TDS u/s 194C of the Act. He relied on the order of the coordinate bench of ITAT, Hyderabad in the case of Ras Polybuild Product Pvt. Ltd. Vs. DCIT (2016) 48 CCH 254 (Hyd) (Trib).

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The assessee has transported the goods by Railways through CONCOR, there is no dispute with regard to the fact that goods were carried by the Indian Railways. As per sub clause (c) of explanation (iv) of section 194C of the Act from the definition of "work", the carriage of goods by Railways is excluded for the purpose of deduction of tax at source u/s 194C of the Act. The Ld. CIT(A) has dealt the issue in detail in para No.6.3 of the CIT(A) order, which is extracted for the sake of clarity and the same reads as under:

*6.3) Ground No.2: This ground is directed against addition of ₹ 46,17,360/- towards disallowance u/s 40(a)(ia) of the Act. The short dispute is whether the amount paid by the appellant to CONCOR towards railway freight attracts the provisions of Section 194C of the Act or not. In this regard, it is pertinent to consider the relevant provisions of Section 194C of the Act, which are extracted as under:*

*194C. Payment to contractors – (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to-*

*(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;*

*(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,*

*of such sum as income-tax on income comprised therein.*

.....

*EXPLANATION: For the purposes of this section:*

.....

*“work” shall include-*

- (a) advertising;*
- (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;*
- (c) carriage of goods or passengers by any mode of transport other than by railways;*
- (d) catering;*
- (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.*

*From the above explanation, it is very much clear that the expression 'work' does not include carriage of goods by railways. Further, the provisions of Section 194C are applicable only for sum paid for carrying out a work. A simple reading of the provisions makes it very clear that when the amount paid is for carrying out a job which includes carriage of goods by railways, then such amount paid to any person shall not be treated as a payment for work in terms of Section 194C of the Act. It is nowhere stipulated in this section that the payment has to be made directly to Railways. The appellant has rightly placed reliance in the decision of Hyderabad Bench of ITAT in the case of **RasPotybuild Products Pvt Ltd. Vs. DCII (2016) 48 CCH 254 (Hyd)(Trib)**. The Hon'ble Tribunal held as under in their order:*

*6. We have carefully considered the rival contentions and perused the record. As rightly pointed out by the Learned Counsel appearing on behalf of the assessee, Section 194C speaks of payment made to contractors with an exception that even payments made to contractors would stand outside the purview of that provision if such payment is made towards carnage charges. In the instant case, the assessee categorically submitted that the payment was made to M/s. Exim Services towards freight charges that too for corn goods\_by rail. This claim of the assessee is not disputed by the tax authorities except stating that the payment is not made directly to the railways but to the Agent. In our considered opinion the opening part of Section 194C refers to payments made to contractors but at the same time makes*

*an exception to the payments made to such contractors if that amount has to be utilised for payment of rail fares. if the intention of the legislature was to make the payment directly to the railway authorities, then the exception provided in the Explanation should not have been introduced in Section 194C of the Act. Thus, on a conspectus of the matter, we are of the view that even if payment is made to an Agent so long as the payment is meant for meeting the expenditure in the form of payment to the railways, it stands excluded from the provisions of Section 194C of the Act. Under these circumstances, we accept the plea of the assessee by holding that there was no need to deduct tax at source with respect to the impugned payment to the contractor. Even otherwise, in the light of decision of the ITAT, Hyderabad Bench in the case of ACIT, Central Circle-2, Hyderabad vs., MIs. Janapriya Properties Pvt. Ltd., Hyderabad (supra) Section 40(a)(ia) cannot be invoked in respect of payments already made before the end of the accounting year. We direct the A.O. accordingly.*

*Respectfully following the above decision of ITAT, Hyderabad Bench, I hold that the impugned payment does not fall within the scope of the provisions of Section 194C of the Act and consequently the disallowance provided in Section 40(a)(ia) is also not applicable. The Assessing Officer is directed to delete the disallowance of Rs.46,17,360/-."*

7. The Ld. CIT(A) has followed the order of the coordinate bench of Hyderabad and the facts are not disputed by the Ld. D.R., The Ld. D.R. also did not bring any other decision in favour of the revenue. Therefore, respectfully following the view taken by the coordinate bench, we hold that the impugned payment does not attract the TDS u/s 194C of the Act and no disallowance is called for u/s 40(a)(ia) of the act. Hence the order of the Ld. CIT(A) is upheld and the appeal of the revenue is dismissed.

8. **CO/79/Viz/2007**: CO is supportive of the order Ld.CIT(A).

Since we have upheld the order of the Ld. CIT(A) cross objection of the assessee is sustained.

9. In the result, the appeal filed by the revenue is dismissed and the CO is allowed.

The above order was pronounced in the open court on 4<sup>th</sup> Apr'18.

Sd/-

(वी. दुर्गराव)

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 04.04.2018

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 04.04.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Assessee – The DCIT, Central Circle, Vijayawada
2. प्रत्यार्थी / The Respondent – M/s. CONZUG Logistics Pvt. Ltd., C/o Maha Maruthi Logistics Pvt. Ltd., D.No.50-20, P&T Colony, Seethammadhara, Visakhapatnam-530013.
3. आयकर आयुक्त / The Principal CIT(Central), Visakhapatnam
4. आयकर आयुक्त (अपील) / The CIT (A)-3, Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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Sr. Private Secretary  
ITAT, VISAKHAPATNAM