



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"I" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA no.5876/Mum./2016  
(Assessment Year : 2011-12)

Asstt. Commissioner of Income Tax  
Circle-24(1), Mumbai

..... Appellant

v/s

Late Shri Francis Joseph Theknath  
(Through Legal heir –  
Shri Richard F. Theknath)  
B-8, Roy Apartment  
Sahara Road, Andheri (East)  
Mumbai 400 069 – AAAPT7607E

..... Respondent

Revenue by : Shri Saurabh Kumar Rai  
Assessee by : Shri Rushabh Mehta

Date of Hearing – 12.04.2018

Date of Order – 25.04.2018

**ORDER**

**PER SAKTIJIT DEY, J.M.**

This is an appeal by the Revenue against order dated 27<sup>th</sup> July 2016, passed by the learned Commissioner (Appeals)-36, Mumbai, for the assessment year 2011-12.

2. The Revenue has filed this appeal being aggrieved with the decision of the learned Commissioner (Appeals) in deleting the

disallowance made of ₹ 1,09,14,920 under section 40(a)(ia) of the Act.

3. Brief facts are, the deceased assessee an individual was engaged in the business of freight forwarding. For the assessment year under dispute, the assessee filed its return of income on 30<sup>th</sup> September 2001, declaring total income of ₹ 2,06,80,634. During the assessment proceedings, the Assessing Officer noticing that the assessee has debited an amount of ₹ 1,09,14,920, called upon the assessee to furnish necessary details. From the details furnished the Assessing Officer observed that the amount was charged to Profit & Loss Account on account of discount paid or payable to parties who have entered into contracts with the assessee for freight space booking in different flights in order to export transport their goods. The Assessing Officer, therefore, called upon the assessee to explain why provisions of section 194C of the Act will not apply to such payment and the assessee having not deducted tax at source why the payment should not be disallowed under section 40(a)(ia) of the Act. In response to the query raised by the Assessing Officer, the assessee filed its reply stating that the amount in question are sales returns which were shown as discount in Profit & Loss Account. It was submitted, the assessee actually has not made any payment towards freight charges

and it was the customers who have paid the freight charges after deduction of tax at source, therefore, there is no liability on the assessee to deduct tax at source under section 194C of the Act. The Assessing Officer, however, was not convinced with the explanation of the assessee and held that the assessee was liable to deduct tax at source under section 194C of the Act on the payment debited to the Profit & Loss Account. The assessee according to the Assessing Officer having not deducted tax at source he disallowed the amount of ₹ 1,09,14,920 under section 40(a)(ia) of the Act. The assessee challenged the disallowance before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the submissions of the assessee found that the assessee as a freight forwarding agent used to handle perishable and time sensitive cargos like mangos, grapes, fruits, flowers, vegetables, etc., which are required to be air freighted. The assessee negotiates rates for cargo space with airlines based on the requirement of the customers. It gets quotation from various airlines based on the timing of the country as required by the customers. The customers accept rates as found reasonable to them and give their confirmation for the acceptance of rate. Thereafter, the shipment of the cargo is done by the customers from their warehouses to the airport and the assessee takes care of all

formalities relating to custom clearance and loading of the cargo in the airline. Thus, assessee's services are rendered when the cargo is handed over to the airlines. The assessee receives a special rate from the airlines based on its relationship and on the quantum of business offered to the airlines. After adding its own margin to special price received from the airlines the assessee quotes the same to the customers. Assessee gets 30 days credit from the airlines for payment and in turn the assessee also gives 30 days credit facility to its customers. Since, the assessee has to pay to the airlines strictly on 30<sup>th</sup> day but the customers do not pay their dues to the assessee on 30<sup>th</sup> day a mismatch between the time of receipt and payment arises. Therefore, in order to make the customers pay on time within 30 days, assessee allow certain discount which is shown as discount in the debit side of the Profit & Loss Account over the years. Thus, from these facts, the learned Commissioner (Appeals) found that it is not the assessee who has made the payment to attract the provisions of section 194C. Rather, the customers are making payment to the assessee after deducting tax at source and the discount shown in the Profit & Loss Account has been adjusted while receiving such payment. Thus, the learned Commissioner (Appeals) concluded that there was no liability on the assessee to deduct tax at source in terms of section 194C of the Act. Further, learned Commissioner (Appeals) took note of

the fact that though the assessee is following same method of accounting no disallowance was made in assessment year 2012-13 even in scrutiny assessment made under section 143(3) of the Act. Accordingly, he deleted the disallowance.

5. Learned Departmental Representative relied upon the observations of the Assessing Officer.

6. Learned Authorised Representative reiterating the stand taken before the learned Commissioner (Appeals) submitted that the assessee having not made any payment coming within the ambit of section 194C of the Act, no disallowance under section 40(a)(ia) can be made. Further, the learned Authorised Representative submitted, in no other assessment year such disallowance has been made by the Assessing Officer. Therefore, the facts being identical, he should not have made disallowance in the impugned assessment year.

7. We have heard rival submissions and perused material on record. From the modus operandi of the business activity of the assessee, as discussed by the learned Commissioner (Appeals) in Para-7.4 of his order as narrated above, it is evident that the assessee actually has not made any payment attracting the provisions of section 194C of the Act. As rightly observed by the learned Commissioner (Appeals) after

verifying the facts and material on record, it is the assessee's customers who have made the payment towards freight charges to the airlines through the assessee and assessee on its part has received some amount towards its margin. Thus, the facts on record clearly indicate that nothing has been done by the assessee to attract the provisions of section 194C of the Act. The learned Departmental Representative has not brought any material before us to controvert the factual finding of the learned Commissioner (Appeals). Further, it is relevant to note that in no other assessment year similar disallowance has been made by the Assessing Officer, though, the assessee follows the same accounting method and facts are identical. In view of the aforesaid, we uphold the order of the learned Commissioner (Appeals) on this issue by dismissing the ground raised.

8. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 25.04.2018

**Sd/-  
RAJESH KUMAR  
ACCOUNTANT MEMBER**

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 25.04.2018**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

(Asstt. Registrar/Sr.P.S)  
ITAT, Mumbai