IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND

SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA no.345/Nag./2015
(Assessment Year : 2011–12)

Income Tax Officer (TDS)
Ward–2(3), Chandrapur 442 401 …… Appellant

v/s

Ultratech Cement Ltd.
Unit Awarpur Cement Works
Awarpur, Tal Koparna ……. Respondent
Dist: Chandrapur 442 917
TAN – NGPUO1449A

C.O. no.13/Nag./2016
(Arising out of ITA no.345/Nag./2015)
(Assessment Year : 2011–12)

Ultratech Cement Ltd.
Unit Awarpur Cement Works
Awarpur, Tal Koparna …… Cross Objector
Dist: Chandrapur 442 917 (Original Respondent)
TAN – NGPUO1449A

v/s

Income Tax Officer (TDS) ……. Respondent
Ward–2(3), Chandrapur 442 401 (Original Appellant)

ITA no.347/Nag./2015
(Assessment Year : 2012–13)

Income Tax Officer (TDS)
Ward–2(3), Chandrapur 442 401 …… Appellant

v/s

Ultratech Cement Ltd.
Unit Awarpur Cement Works
Awarpur, Tal Koparna …… Respondent
Dist: Chandrapur 442 917
TAN – NGPUO1449A

ITA no.346/Nag./2015
(Assessment Year : 2013–14)

Income Tax Officer (TDS)
Ward–2(3), Chandrapur 442 401 …… Appellant

v/s

Ultratech Cement Ltd.
Unit Awarpur Cement Works
Awarpur, Tal Koparna …… Respondent
Dist: Chandrapur 442 917
TAN – NGPUO1449A

C.O. no.14/Mum./2016
(Arising out of ITA no.346/Nag./2015)
(Assessment Year : 2013–14)

Ultratech Cement Ltd.
Unit Awarpur Cement Works
Awarpur, Tal Koparna …… Cross Objector
Dist: Chandrapur 442 917 (Original Respondent)
TAN – NGPUO1449A

v/s

Income Tax Officer (TDS) …… Respondent
Ward–2(3), Chandrapur 442 401 (Original Appellant)

ITA no.348/Nag./2015
(Assessment Year : 2014–15)

Income Tax Officer (TDS)
Ward–2(3), Chandrapur 442 401 …… Appellant

v/s

Ultratech Cement Ltd.
Unit Awarpur Cement Works
Awarpur, Tal Koparna …… Respondent
Dist: Chandrapur 442 917
TAN – NGPUO1449A

ITA no.349/Nag./2015
(Assessment Year : 2015–16)

Income Tax Officer (TDS)
Ward–2(3), Chandrapur 442 401 …… Appellant

v/s

Ultratech Cement Ltd.
Unit Awarpur Cement Works
Awarpur, Tal Koparna …… Respondent
Dist: Chandrapur 442 917
TAN – NGPUO1449A

Revenue by : Shri Gitesh Kumar
Assessee by : Shri Chaitanya D. Joshi

Date of Hearing – 08.05.2018	Date of Order – 09.05.2018

O R D E R

PER BENCH

The aforesaid five appeals by the Revenue and two cross objections by the assessee are against the impugned separate orders of even dated 9th October 2015, passed by the learned CIT(A)–II, Nagpur, pertaining to the assessment years 2011–12, 2012–13, 2013–14, 2014–15 and 2015–16.

2. Before us, the learned Counsel for assessee, at the very outset, submitted that the issues involved in these appeals being common, are covered in favour of the assessee by several decisions of the Tribunal which are given below:–

i) ITO (TDS) v/s Manikgarh Cement (Division of Century Textiles & Industries), ITA no.316–319/Nag./2015, dated 23.11.2016 (Trib.) (Nag.);

ii) ITO (TDS) v/s Raymond UCO Denim Pvt. Ltd., ITA no.351–352/Nag./2015, dated 30.09.2016 (Trib.) (Nag.);

iii) Soma Rani Ghosh v/s DCIT, 74 taxmann.com 90, (Trib.) (Kol.)

iv) ACIT (TDS) v/s ACC Ltd., ITA no.651–652/Chd./2015, dated 29.10.2015 (Trib.) (Chd.).

3. Insofar as assessee's cross objections are concerned, the learned Counsel for assessee submitted that since the issue involved in these cross objections is covered in favour of the assessee on merits, hence, he shall not be pressing the grounds raised in these cross objections which relates to the learned CIT(A) not adjudicating ground no.1 before him for the reason that the proceedings were time barred.

4. The common grounds in Revenue's appeal read as under:–

1. Whether on the facts and circumstances of the case, the Ld.CIT(A) is justified in deleting the demand of Rs. 61,78,095/- for A.Y. 2011-12 & Rs.57,84,468/- for A.Y. 2012-13 raised u/s 201/201(1A) of the Act.

2. Whether on the facts and circumstances of the case, the Ld.CIT (A) is justified in not appreciating that the phrase in section 194C (6) during the course of plying, hiring and leasing of goods carriages" does not apply to contractor only but to both the parties i.e. Principal as well as contractor.

3. Whether on the facts and circumstances of the case, the Ld.CIT(A) is justified in holding that only contractor should be in the line of business of plying, hiring and leasing of goods carriages whereas the section 194C(6) nowhere mention that only contractor should be in the business of plying, hiring and leasing of goods carriages.

4. Whether on the facts and circumstances of the case the Ld.CIT(A) is justified in ignoring the true spirit in which

section 194C(6) was brought to the statute w.e.f. 1-10-2009 particularly when prior to introduction of this section TDS was being made on identical payments to transporters.

5. Whether on the facts and circumstances of the case the Ld.CIT(A) is justified in not appreciating that by virtue of amendment to section 194C(6) w.e.f. 16-2015 an exemption has been provided to transporters owning up to 10 goods carriages and prior to that date, there was no exemption provided u/s 194C(6) of the Act from TDS to any person.

6. Whether on the facts and circumstances of the case the Ld.CfT(A) is justified in not appreciating the fact that the circular no.5/2010 dated-3.06.2010 is irrelevant in assessee's case as almost all the payments were made to big transporters who are out of the purview of section 44AE.

7. Whether on the facts and circumstances of the case Id CIT (A) is justified in admitting fresh grounds regarding double taxation without giving an opportunity to the Ao., since the said grounds were not raised before the A.O. during proceedings u/s 201/201A.

8. Whether on the facts and circumstances of the case the Id CIT(A) is justified in not appreciating the ruling of 1st proviso to section 201(1) and holding that onus is on revenue to demonstrate that taxes have not been recovered from the person who had primary liability to pay tax i.e. contractor.

9. Whether on the facts and circumstances of the case the Ld.CIT (A) is justified in allowing the assessee's plea that the order u/s 201/201A passed is beyond time limit eventhough the said order is passed within the time limit, prescribed as per law.

5. Brief facts of the case are that, during the assessment proceedings, the Assessing Officer noted that the assessee had not deducted TDS under section 194C of the Act in respect of freight charges paid by it to transport contractors. A survey under section 133A(2A) was conducted at the business premises of the assessee on 10th October 2014 and during the course of survey, it was found that

no TDS had been deducted on freight payment made in respect of transportation charges. It was explained by the assessee that as per the provisions of section 194C(6) of the Act and as per clear Explanation provided in Circular No.5/2010 dated 3rd June 2010, issued by CBDT with regard to explanatory notes to the provisions of Finance Act, 2009, the assessee was not required to make any TDS if the transporter PAN is quoted. The Assessing Officer considered the various submissions of the assessee and has also considered the provisions of the relevant section of the Act and came to the conclusion that the payments made by a person who is in the business of plying, hiring or leasing goods carriages to contractor are exempt from the purview of TDS if the contractor furnished his PAN to the deductor. Thus, it was the contention of the Assessing Officer that the deductor should be in the business of plying, hiring or leasing goods carriages to avail the benefit of section 194C(6) of the Act. In view of the above facts, the Assessing Officer came to the conclusion that the assessee is required to be treated as assessee in default for non-deduction of TDS under section 194C of the Act and was, therefore, directed to pay the tax amounting to ₹ 61,78,095, ₹ 57,84,468, ₹ 69,27,997, ₹ 2,43,03,965 and ₹ 34,30,645 under section 201(1) of the Act for the assessment year 2011–12, 2012–13, 2013–14, 2014–15 and 2015–16 respectively.

6. Upon assessee's appeal, the learned CIT(A) deleted the disallowance / additions by holding as under:–

> *"6. I have considered the facts of the case and submissions of the appellant. There is substantial force in the submissions made. The legislative history of Section 194C of the Income Tax Act, 1961 makes it very clear that the action of the Id. AO is based on an erroneous interpretation of the said section. In this regard, it is vital to go through the legislative history of the said section 194C. Considering the hardships faced by small truck owners in getting credit of TDS deducted in view of the amendments introduced in Section 194C(3) of the Income Tax Act, 1961 vide Finance (No 2) Act, 2004, a proviso was inserted in section 194C(3) by Finance Act, 2005 to the effect that no deduction of TDS shall be made from any payment to a sub-contractor during the course of business of plying, hiring and leasing of goods carriage, if such sub-contractor is an individual who has not owned more than two goods carriage at any time during the previous year. The proviso reads as follows:*
>
> *"Provided further that no deduction shall be made under sub-section (2), from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year"*
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> *6.1 Thus the explanatory memorandum to Finance Bill, 2005 clearly explained that the provision has been introduced to give relief to small individual sub-contractor transporters who do not own more than two trucks. Subsequently the existing section 194C of the Act was completely replaced with a new section 194C by Finance (No. 2) Act, 2009 and a specific subsection (6) contained therein provided in respect of payments to transporters as follows:*
>
> *"(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum."*
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> *6.2 It is abundantly clear from the aforesaid amended section*

194C(6) substituted by the Finance (No. 2) Act, 2009 w.e.f 01-10-2009 that no deduction of tax is required to be made from any sum credited or paid to a transport operator, if the said contractor furnishes his PAN. The explanatory memorandum of Finance (No 2) Bill, 2009 explains the legislative intent behind the provisions as follows:

b. Provisions for payments and tax deducted at source to transporters:

Under Section 194C, tax is required to be deducted on payment to transport contractors engaged in the business of plying, hiring or leasing goods carriages. However if they furnish a statement that they do not own more than two goods carriages, tax is not to be deducted at source. Transport operators report problem in obtaining TDS certificates as these are not issued immediately by clients and they are not able to approach the client again as they may have to move across the country for their business. It is, therefore, proposed to exempt payments to transport operators (as defined in section 44AE) from the purview of TDS. However, this would only apply in cases where the operator furnishes his Permanent Account Number (PAN) to the deductor. Deductors who make payments to transporters without deducting TD.S (as they have quoted PAN) will be required to intimate these PAN details to the Income Tax Department in the prescribed format.

……

These amendments will take effect from the 1st day of October, 2009 and will accordingly apply to transaction on or after such date."

6.3 It is pertinent to note that the amended provisions of Act in this regard have been explained by CBDT vide circular No 05 of 2010 dated 03-06-2010 being explanatory notes to the provisions of the Finance (No. 2) Act, 2009. The relevant clauses of circular are reproduced below:

"49.3 Provisions for payments and tax deducted at source to transporters:

A) Under Section 194C, tax is required to be deducted on payments to transport contractors engaged in the business of plying, hiring or leasing goods carriages. However if they furnish a statement that they do not own more than two goods carriages, tax is not to be deducted at source. Transport operators are reporting problem in obtaining TDS certificates as these are not issued immediately by clients and they are not able to approach the client again as they may have to move across the country for their business.

a. It is, therefore, the Act has been amended to exempt payments to transport operators (as defined in section 44AE) from the purview of TDS. However, this would only apply in cases where the operator furnishes his Permanent Account Number (PAN) to the deductor. Deductors who make payments to transporters without deducting TDS (as they have quoted PAN) will be required to intimate these PAN details to the Income Tax Department in the prescribed format.

6.4 Thus it is evident that vide Clause 49.2 (B) of the circular, the Board has prescribed that new rate of TDS w.e.f. 1-10-2009 in respect of payment to subcontractor and contractor in transport business as Nil if the transporter quotes his PAN. It has also been prescribed that if PAN is not quoted, the rate will be 1% for an individual/ HUF transporter and 2% for other transporters up to 31-3-2010.The plain reading of the section 194C(6) w.e.f. 1-10-2009 along with the above explanatory notes do not leave any confusion in this regard and it is clear that any payment made to a transporter (contractor) is exempt from TDS if such transporter (contractor) provides his PAN to the deductor and the deductor furnishes details of such payment and PAN to Income Tax Department in prescribed format. In the case of the appellant it is not disputed that the method of reporting as has been prescribed in Rule 31A (4)(vi) of Income Tax Rules has been duly complied by the appellant. In face of such clear provisions of section 194C(6) as explained by circular issued by CBDT as above, the Ld. ITO had no reason to hold that the payment made by transport operators to other contractors are exempt from TDS and not the payment made to transport operators.

6.5 Further clarity on this issue has been made available as it has been further reiterated by Government while placing Finance bill 2015 in the Lok Sabha vide explanatory memorandum for Provisions relating to direct taxes. It has been clarified in Clause 43 that though the intention was to reduce the compliance burden on the small transporters while making amendment in 2009, however, the existing language of sub section (6) of section 194C of the Act does not convey the desired intention and as a result all the transporters, irrespective of their size, are claiming exemption from TDS under the existing provisions of sub section (6) of section 194C of the Act on furnishing of PAN.

6.6 Therefore, the section has been proposed to be amended w.e.f 1st June 2015 to expressly provide that the relaxation under sub section (6) of section 194C of the Act from non-deduction of tax shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor who is engaged in the business of transport and who is eligible to compute income as

per the provisions of section 44AE of the Act and who shall also furnish a declaration to this effect along with his PAN.

6.7 It may be noted that only amendment proposed in section 194C(6) is substitution of existing words 'on furnishing of" by "where such contractor owns ten or less goods carriage at any time during the previous year and furnishes a declaration to that effect along with". The amendment does not alter any position with regards to status of transport operator as a recipient of transport charges for exemption from TDS if they furnish PAN to the deductor.

6.8 With this amendment and clarification it is abundantly clear that non- deduction of tax while making payment to transport operators for transport charges w.e.f. 1-10-2009 is absolutely as per the provisions of section 194C(6) and there cannot be any default in this regard if the PAN of transporter has been collected and reported by the deductor.

6.9 Therefore, the interpretation of Ld. ITO while treating the appellant as "assessee in default" for non deduction of tax while making freight payment to transport operators is not as per law to the extent it not only interprets the provision an erroneous manner but also contrary to legislative intent and binding CBDT Circulars. In view of the above, the order passed by Id. AO u/s 201(l) and 201(1A) of the Act, holding the appellant as "assessee in default" in respect of transport charges paid to transport operators without deduction of TDS in compliance with provisions of section 194C(6) is required to be cancelled. In Such facts, tne action or the Id. AO of raising the demand for tax of Rs. 61,78,095/-, Rs. 57,84,468/-, Rs. 69,27,997/-, Rs. 2,43,03,965/- & Rs. 34,30,645/- u/s 201(1) of the Act for AY 201112, 2012-13$_1$ AY 2013-14, AY 2014-15 & AY 2015-16 respectively is held to be erroneous and is therefore directed to be deleted.

7. Further, it has to be noted that the appellant had provided complete details in respect of each of the transport operators including their invoices, PAN etc. and hence it had duly discharged the onus cast upon it and that it cannot be treated as an assessee in default till it is found that deductees had also failed to pay such tax directly. It is evident that the details of all the persons from whom tax was required to be deducted was available on record before the Ld. A.O. and the onus was on the A.O. to ascertain the facts related to payment of tax on income of the transport contractors directly from the recipient of such income. Reliance in this regard is placed on Hindustan Coca Cola Beverages Pvt. Ltd Vs CIT 293 ITR 226, Jagran Prakashan Ltd Vs. DCIT 21 taxmann.com 489 and Agra ITAT judgment in the case of Allahabad Bank Vs. ITO bearing ITA Nos.448 to 454/ Agra /2011.

7.1 The Hon'ble ITAT, Agra Bench, Agra in ITA Nos. 448 to 454/Agra/2011 vide recent order dated 20/06/2014 in the case of Allahabad Bank has held as under:–

"…… In our considered view, it is important to bear in mind the settled legal position that a short deduction of tax at source, by itself does not result in a legally sustainable demand u/s 201(1) and u/s 201(1A). As held by Hon'ble Supreme Court in the case of Hindustan Coco Cola Beverage Pvt. Ltd. Vs. CIT (293 ITR 226), the taxes cannot be recovered once again from the assessee in a situation in which the recipient of income has paid due taxes on income embedded in the payments from which tax withholding requirements were not fully or partly, complied with. Hon'ble jurisdictional High Court, in the case of .Jagran Prakashan Ltd. vs. DCIT (2012) 21 taxmann.com 489 All also has, inter alia, observed as follows:

"…… It is clear that deductor cannot be treated an assessee in default till It is found that assessee has also failed to pay such tax directly. In the present case, the Income tax authorities had not adverted to the Explanation to Section 191 nor had applied their mind as to whether the assessee has also failed to pay such tax directly. Thus, to declare a deductor, who failed to deduct the tax at source as an assessee in default, condition precedent is that assessee has also failed to pay tax directly. The fact that assessee has failed to pay tax directly is thus, foundational and jurisdictional fact and only after finding that assessee has failed to pay tax direct, deductor can be deemed to be an assessee in default in respect to such tax ....."

It is thus clear that the onus is on the revenue to demonstrate that the taxes have not been recovered from the person who had the primarily liability to pay tax, and it is only when the primary liability is not discharged that vicarious recovery liability can be invoked. Once all the details of the persons to whom payments have been made are on record, it is for the Assessing Officer, who has all the powers to requisition the information from such payers and from the income tax authorities, to ascertain whether or not taxes have been paid by the persons in receipt of the amounts from which taxes have not been withheld. As a result of the judgment of Hon'ble Allahabad High Court in Jagran Prakashan's case (supra), there is a paradigm shift in the manner in which recovery provisions under section 201(1) can be invoked. As observed by Their Lordships, the provisions of section 201(1) cannot be invoked and the 'tax deductor cannot be treated an assessee in default till it is found that assessee has also failed to pay such tax directly". Once this finding about the non-payment of taxes by the recipient is held to a condition precedent to invoking Section 201(1), the onus is on the Assessing Officer to

demonstrate that the condition is satisfied. It going without saying that the assessee is duty bound to submit all such information about the recipients as he is obliged to maintain under the law. But once this information is submitted, it is for the Assessing Officer to ascertain whether or not the taxes have been paid by the recipient of income. This approach, in our humble understanding, is in consonance with the law laid down by Hon'ble Allahabad High Court.

It is also important to bear in mind that the lapse on account of non- deduction of tax at source is to be visited with three different consequences - penal provisions, interest provisions and recovery provisions. The penal provisions in respect of such a lapse are set out in Section 271C. So far as penal provisions are concerned, the penalty is for lapse on the part of the assessee and it has nothing to do with whether or not the taxes were ultimately recovered through other means. The provisions regarding interest in delay in depositing the taxes are set out in Section 201(1A). These provisions provide that for any delay in recovery of such taxes is to be compensated by the levy of interest. As far as recovery provisions are concerned, these provisions are set out in Section 201(1) which seeks to make good any loss to revenue on account of lapse by the assessee tax deductor. However, the question of making good the loss of revenue arises only when there is indeed a loss of revenue and the loss of revenue can be there only when recipient had a liability to pay the tax and he has not paid the tax. Therefore, recovery provisions under section 201(1) can be invoked only when loss to revenue is established, and that can only be established when it is demonstrated that the recipient of income has not paid due taxes thereof and the recipient of the amounts had the liability to tax. In the absence of the statutory powers to requisition any information from the recipient of income, the assessee is indeed not always able to obtain the same. The provisions to make good the short fall in collection of taxes may thus end up being invoked even when there is no shortfall in fact. On the other hand, once assessee furnishes the requisite basic information, the Assessing Officer can very well ascertain the related facts about payment of taxes on income of the recipient directly from the recipients of income. It is not the revenue's case before us that, on the facts of this case, such an exercise by the Assessing Officer is not possible. It does put an additional burden on the Assessing Officer before he can invoke Section 201(1) but that's how Hon'ble High Court has visualized the scheme of Act and that's how, therefore, it meets the ends of justice.

As far as levy of interest under section 201(1A) is concerned, this interest is admittedly a compensatory interest in nature and it seeks to compensate the revenue for delay in realization of taxes. Hon'ble Bombay High Court, in the case of Bennett Coleman & Co.

Ltd. vs. ITO (157 ITR 812) has held so. Therefore, levy of interest under section 201(1A) is applicable whether or not the assessee was at fault.

However, since it is only compensatory in nature it is applicable for the period of the date on which tax was required to be deducted till the date when tax was eventually paid. However, in a case in which the recipient of income had no tax liability embedded in such payments, there will obviously he no Question of de1a, in realization of taxes and the orovisions of section 201(1A) will not come into play at all. The computation of interest is to be redone in the light of this legal position.

The matter thus stands restored to the file of the Assessing Officer for fresh adjudication in accordance with the law and in the light of our observations above. While doing so, the Assessing Officer will give a due and fair opportunity of hearing to the assessee and dispose of the matter by way of a speaking order. We direct so. As regards all other issues, on facts and in law, these issues will be required to be dealt with only in the event of there being a tax demand under section 201(1) and 201(1A) after implementing the above directions. These issues are left open for the time being as these issues are in fructuous at this stage..."

7.2 The Hon'ble High Court of Karnataka in the case of M/s. Shree Manjunath Wines in ITA No.333/07 in judgement dated 13/9/2011 while considering provisions of section 206C of I.T. Act 1961 has also held as under:

"…..Section 206C of the Act which specifically deals with only six types of transactions provides that every person, being a seller, shall at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in Column No. (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in Column (3) of the said Table, of such amount as Income Tax and remit the amounts so collected to the credit of the Central Government or as the Board direct.

From the aforesaid provision, it is clear that though assessee collects the tax and remit the money to the Government, the said amount remitted will be to the account of the buyer. In other words, the said amount will be given deductions towards the tax payable by the buyer. If in a given case the assessee has not collected the tax from the buyer and if the buyer has paid tax to the revenue, the revenue is not deprived of the tax which is legitimately due to them. It is in that context, before proceeding

against the assessee, it is necessary to find out whether the buyer has paid tax in accordance with the provisions of the Act and only in the event the buyer has not paid the tax then the authorities can proceed against the assessee who was under the obligation to collect tax and remit to the Government.....”

7.3 On careful observation, it is clearly seen that the ratio laid down by the Hon'ble ITAT, Agra Bench, Agra and Hon'ble Karnataka High Court squarely applies to the facts in the case of the appellant. The details of all the persons from whom tax was required to be deducted at source are available on record and with the Ld.AO. The permanent account numbers (PANs) of such parties are also available before the Id. AO. Respectfully following the decision of Hon'ble ITAT, Agra Bench, Agra as well as Hon'ble Karnataka High Court, relief has to be granted to the appellant and the demands raised u/s.201(1) and u/s.201(1A) have to be deleted.

8. However a clear finding has already been given in Para 6.9 on the basis of the substantive provisions of the section 194C itself. It has already been held that the appellant was never required to deduct any TDS as per 194C of the Act. In such facts, the action of the Id. AO of raising the demand for tax of Rs.,1,78,095/-, Rs.57,84,468/-, Rs.69,27,997/ Rs.2,43,03,965/- & Rs.34,30,645/- u/s 201(1) of the Act for AY 2011-12, 2012-13, AY 2013-14, AY 2014-15 & A.Y. 2015–16 respectively is held to be erroneous and is therefore directed to be deleted. These grounds are therefore allowed.”

7. Against the above order, Revenue is in appeal before us.

8. Upon considering the submissions of both the learned Counsel and perusing the record, we find that the issue is covered in favour of the assessee by the orders of the Tribunal as referred to above. Further, the learned Commissioner (Appeals) has passed an elaborate order and we do not feel to interfere on our part. In this regard, we may refer to the decision of the Tribunal in Manikgarh Cement (supra), wherein the Tribunal held as under:–

"12. We have carefully considered the submissions and perused the records. We find that identical issue has been decided in favour of the assessee by this Tribunal in the case of M/s Raymond UCO Denim Pvt. Ltd. (supra) and by Kolkata Tribunal in the case of Soma Rani Ghosh (supra). We may gainfully refer to the Tribunal's decision in these cases as under:–

"M/s Raymond UCO Denim Pvt. Ltd.:

"7. I have heard both the counsel and perused the records. In this regard I may gainfully refer to section 194C(6) as under:

"No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, [where such contractors own ten or less goods carriages at any time during the previous year and furnish a declaration to that effect along with] his Permanent Account Number, to the person paying or crediting such sum."

8. From the above it is clear that TDS is not to be deducted from the payment made to transporters who furnished PAN. The Assessing Officer has wrongly interpreted that this provision is applicable to tax deducted by assessee who are engaged in transport business. This in my considered opinion is an erroneous interpretation not sustainable in law. In my considered opinion learned CIT(Appeals) has correctly appreciated the law and the facts of the case and the same does not need any interference. Accordingly I uphold the order of learned CIT(Appeals).

9. In the result, these appeals by the Revenue stand dismissed."

Soma Rani Ghosh. (Head notes only).

In CIT vs. Valibhai Khanbhai Mankad (Tax Appeal No. 1182 of 2011, order dated 01. 10. 2012), it/s held by the Hon'ble Gujarat High Court at Ahmedabad that:-

Section 194C, as already noticed, makes provision where for certain payments, liability of the payee to deduct tax at source arises. Therefore, if there is any breach of such requirement, question of applicability of section 40(a)(ia) would arise. Therefore, the Tribunal was perfectly justified in taking the view in the impugned judgment. It may be that failure to comply such requirement by the payee may result into some other adverse consequences if so provided under the Act. However, fulfilment of such requirement cannot be linked to the declaration of tax at source. Any such failure therefore cannot be visualized by adverse

consequences provided under section 40(a)(ia) of the Act. (Para 29)

In CIT vs. Sri Marikamba Transport Co. in ITA No. 553 of 2013 reported in 379 ITR 129 (Kam.), Hon'ble Karnataka High Court has formulated a question as to whether non-filing of Form No. 151/J within the prescribed time is only a technical default or the provisions of section 40(a)(ia) of the Act are attracted and proceeded to answer the same. The combined reading of these two provisions make it clear that if there is any breach of requirements of Section 19,9C(3), the question of applicability of Section 40(a)(ia) arises. The exclusion provided in Sub-Section (3) of Section 194C from the liability to deduct tax at source under sub-section(2) would be complete, the moment the requirements contained therein are satisfied. This matter was extensively considered by the ITAT, Ahmedabad Bench in Valibhai Khanbhai Mankad's case (supra) and the said Judgment has been upheld by the High Court of Gujarat reported in (2013) 216 Taxman 18 (Gui) wherein it is held that once the conditions of Section 194C(3) were satisfied, the liability of the payee to deduct tax at source would cease and accordingly, application of Section 40(a)(ia) would also not arise. (Para 30)

It is worth noticing that in ACIT -vs.- Mr. Mohammed Suhail, Kurnool in "ITA No. 1536.Hyd/2014, order dated 13.02.2015, the Coordinate Bench of this Tribunal specifically held that the provisions of section 194C(6) are independent of section 194C(7), and just because there is violation of provisions of section 194C(7), disallowance under section 40(a)(ia) does-not-arise if.the assessee complies with the provisions of section 194C(6). (Para 33)

In view of the above and respectfully following the judicial reasoning delineated in the above judgments if the assessee complies with the provisions of section 194C(61, disallowance under section 40(a) (Ia) does not arise just because there is violation of provisions of section 194C(6) of the Act. (Para 33)

Consequent to findings in the preceding paragraphs, the authorities below are not justified in treating the expenses incurred by the assessee for carriage inward and carriage outward as disallowable under section 40(a)(ia) of the Act, and adding back Rs.1,63,78,648/- claimed as expense towards Carriage Inward and Rs.1,13,00,980/- claimed as expense towards Carriage Outward and such additions shall stand deleted.(Para 35).

In the result, the appeal of the assessee is allowed. (Para 36).

Conclusion

When the assessee has satisfied the conditions of Section 194C(3), liability of payee to deduct tax at source would cease and accordingly, application of Section 40(a)(ia) would also not arise."

13. From the above it is evident that identical issue has been decided in favour of the assessee. No contrary decision has been brought to our notice. It is also not the case that the above decisions have been set aside by the Hon'ble High Courts. Accordingly respectfully following the precedents as above, we do not find any infirmity in the order of learned CIT(Appeals). Accordingly we uphold the same."

9. Respectfully following the precedent as aforesaid, we uphol the order of the learned CIT(A) by dismissing the grounds raised by the Revenue for all the assessment years under consideration.

10. Insofar as the cross objection filed by the assessee are concerned, the learned Counsel for assessee did not wish to press these cross objections, hence, these are liable to be dismissed.

11. In the result, Revenue's appeals and assessee's cross objections are dismissed.

Order pronounced in the open Court on 09.05.2018

Sd/-	**Sd/-**
RAM LAL NEGI	**SHAMIM YAHYA**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 09.05.2018

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A);

(4) The CIT, Nagpur City concerned;

(5) The DR, ITAT, Nagpur;

(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

(Sr. P.S./P.S.)
ITAT, Nagpur