

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5333/MUM/2016  
Assessment Year: 2006-07**

Mr. Pritesh C. Haria, Flat  
No. 401, Shree Nidhi  
Building, Bhaudaji Road,  
Opp Bank of Baroda,  
Matunga (East), Mumbai-  
400019.

**PAN No. AAAPH1885N  
Appellant**

Vs. The Income Tax Officer  
26(2)(4) Pratykshkar Bhavan,  
C-12, 604 Bandra Kurla  
Complex, Bandra, Mumbai-  
400051.

**Respondent**

Assessee by : Mr. Dinesh Shah, AR  
Revenue by : Mr. Saurabhkumar Rai, DR

Date of Hearing : 15/05/2018  
Date of pronouncement: 31/07/2018

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2006-07. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-38, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) r.w.s 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1.1 The Assessing Officer as well as Ld. CIT (A)-38 wrongly applied the provision of section 194C read with Se. 40 (a)(ia) for payment made to twenty-five creditors for transporters amounting to Rs.15,22,422/- during the year. The payment to such creditors exceeded Rs.50,000/- during the year. The payments were made for the earlier year as well as current,

1.2 The Appellant has incurred liabilities for the A.Y 2006-07 (i.e. current year) for such twenty-five persons less than 50,000/- (Rupees less than fifty thousand) and such amounts were claimed as expenses during the A.Y. 2006-07. The Appellant has not violated the provisions of 194C r.w.s. 40 (a) (ia) and hence disallowance of Rs.15,22,422/-be deleted.

1.3 The provision of section 194C is attracted in the A.Y. 2006-07. If single payment exceeds Rs.20,000/- and or total expenses incurred for the AY 2006-07 is more than Rupees Fifty Thousand and same is claimed as expenses than the provision of Section 194C are applicable.

1.4 The Appellant has not the Crossed the above limit and hence addition confirmed u/s 194C read with Sec.40 (a) (ia) amounting to Rupees 15,22,422/- be deleted.

3. Briefly stated, the facts of the case are that the assessee is a transport commission agent. Before the Ld. CIT(A), the main issue was whether the provisions of section 194C are applicable on the payments of Rs.2,55,97,851/-, as while making the above payment, the assessee failed to make TDS as per the provisions of section 194C(2), thereby attracting the provisions of section 40(a)(ia) of the Act. After considering the remand report submitted by the AO and also the submission filed by the assessee, the Ld. CIT(A) observed that (i) the assessee has taken services of lorry truck owners which are more than 800 in number and that the receipts by way of transport charges are of

Rs.2,82,89,450/-, out of which Rs.2,55,97,851/- is paid to the lorry/truck owners, (ii) the issue is whether the provision of section 194C(2) will be applicable on such payments and if he yes, then whether TDS has been made on such payments, (iii) the AO has submitted in the remand report that an additional amount of Rs.1,81,283/- is paid exceeding Rs.50,000/- in the financial year and therefore, the same may be added in addition to Rs.15,22,422/-.

The Ld. CIT(A) thus concluded:

“xi. In view of the above factual position and judgments, I am of the considered view that the appellant was liable to deduct tax under section 194C on the payments made to the truck owners. It is pertinent to mention here that the AO has examined the issue of payment exceeding Rs.20,000/- per trip or in aggregate of Rs.50,000/- paid during the entire financial year irrespective of the fact whether it was paid or payable during the year. From the remand reports of the AO and JCIT, who have examined this issue after conducting a factual verification of the transactions, have given a clear cut finding in regard to the payment made to the lorry drivers/truck owners and have found that the payment made to them is less than Rs.20,000/- per transaction and that during the year the payment does not exceed Rs.50,000/-except the payment of Rs.17,03,705/- (Rs.15,22,422/- plus Rs.1,81,283). In view of the above facts and circumstances of the case, it is observed that the payment of Rs.1,98,21,424/- (Rs.2,15,25,129 – Rs.17,03,705) does not attract the provisions of section 194C and hence the applicability of section 40(a)(ia) is not found to be applicable on this amount and therefore the disallowance u/e 40(a)(ia) is not called for on this amount. However, the total addition sustained is at Rs.17,03,705/- (Rs.15,22,422 + Rs.1,81,283) and the appellant gets a relief on the balance amount of Rs.1,98,21,424/-.”

4. Before us, the Ld. counsel of the assessee submits that the appellant is a transport contractor and engages truck/lorry on hire for carrying out his business of transport and has made payments to the lorry owners/truck drivers. The assessee has running accounts of such lorry owners. It is stated that payment has been made to such transporters/lorry owners in A.Y. 2005-06 & A.Y. 2006-07 exceeding Rs.50,000/- in aggregate during the year but less than Rs.20,000/- at a time except for two truck owner/lorry owners. The Ld. counsel submits that the AO as well as the Ld. CIT(A) wrongly applied the provisions of section 194C r.w.s. 40(a)(ia) for payment made to 25 creditors for transporters/lorry operators amounting to Rs.15,22,422/- during the year. The details as pointed out by him are that payment of Rs.5,42,093/- was made for the earlier year and Rs.10,61,735/- for the current year. It is stated that the assessee had incurred liabilities for AY 2006-07 for 25 persons less than Rs.50,000/- and such amount was claimed as expenses during the impugned assessment year.

The Ld. counsel submits that there is violation in case of payments made to two lorry owners and the disallowance thereon comes to Rs.49,649/-. Thus it is stated that an amount of Rs.49,649/- be disallowed and the balance amount of Rs.14,72,773/- be allowed.

5. On the other hand, the Ld. DR submits that a perusal of the remand report submitted by the AO dated 23.05.2014 to the Ld. CIT(A) clearly indicates that there are some cases in which the aggregate payment made by the assessee is more than Rs.50,000/- or at a time more than Rs.20,000/-. In this category, the total payments made by the

assessee works out to Rs.15,22,422/-. Thus it is stated by him that the Ld. CIT(A) has rightly restricted the disallowance to Rs.15,22,422/-.

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

The issue raised in the instant appeal has been addressed in CBDT Circular No. 715, dated August 8, 1995. The question raised in the above Circular is whether each GR is a separate contract. It states that “Normally, each GR can be said to be a separate contract, if the goods are transported at one time. But if the goods are transported continuously in pursuance of a contract for specific period or quantity, each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of the tax deduction”.

We find that the above aspects have not been examined either by the Ld. CIT(A) or the AO. Therefore, we set aside the order of the Ld. CIT(A) and remit the matter to the file of the AO to examine it in the light of our above observation and pass an order afresh, after giving reasonable opportunity of being heard to the assessee. We also direct the assessee to file the relevant documents/evidence before the AO.

7. In the result, the appeal is allowed for statistical purposes.

**Order pronounced in the open Court on 31/07/2018.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER  
Mumbai;

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Dated: 31/07/2018  
*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**