

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.2297/Kol/2016
Assessment Year :2007-08

Vansh Project Services, 73, Purna Das Road, Kolkata-29 [PAN No.AADFV 9729 L]	V/s.	Income Tax Officer (TDS) Ward-3(3), 10B, Middleton Row, Kolkata-71
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri K.K. Goswami, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri A. Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	09-07-2018
घोषणा की तारीख/Date of Pronouncement	-10-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2007-08 arises against the Commissioner of Income Tax (Appeals)-24, Kolkata's order dated 24.11.2015, passed in case No.659/CIT(A)-24/Kol/2011-12, in proceedings u/s. 201(1)/201(1A) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive ground pleaded in the instant appeal challenges correctness of the CIT(A)'s action partly affirming the assessing authority's findings holding it to be an assessee in default for short deduction of TDS of ₹9,48,336/- along with interest of ₹4,55,207; totalling to ₹14,03,527/-; respectively 201(1) & 201(1A) as follows:-

"4. The AO has record the short deduction of tax us. 194I of R.9,48,336/ and interest thereon of Rs.4,55,207/- aggregating to Rs.14,03,537/-. The order was passed ex-parte as the appellant did not respond to the AO's notice. In appeal the grounds have been raised against the said levy of tax and interest. The submissions contained in SOF enclosed to Form No.35 on the point is as under:-

'As the composite amount is paid for hiring the machinery & supply of manpower and the same cannot be segregated by the assessee, the TDS cannot be deducted on the whole amount and as such section 194I is not applicable. Further the assessee obtains the contract from the principal in his personal capacity as a contractor and enters contracts with the sub-contractors for carrying out the work undertaken by him and the assessee is solely responsible for the act committed by him and the assessee is solely responsible for the aft committed by him and the supplier of machinery & vehicles are not fastened with such liability and the individual vehicle and machinery owners are simple hirer of the same and as such the Section 194C is also not applicable.

Without prejudice to the above the total payment of Rs.42,26,099/- includes Rs.2,58,099/- which are less than Rs.1,20,000/- in each case are not attracted to the provision of Section 194I and no TDS is required to be deducted.

Without prejudice to the above the rate of 22.44% worked out for deduction of tax is not applicable for payment made to the individuals and HUF's which amount to Rs.37,26,148/-.'

The appellant has submitted a chart according to which most of Rs.42,26,099/- is shown as hiring charges of vehicle and tractor. Some other charges are shown against dozer, JCB and machinery charges. Thus the claim of the appellant that hiring charges of machinery, dozers and tractor being composite one including the supply of operators. Sec. 194I and Sec. 194C cannot be attracted, is not correct. Machines have admittedly been hired and charges therefore have been paid by the appellant. Small amounts are shown as transport charges. Both from the details it is quite apparent that the amounts involved are substantive for hiring of various machines. By way of transportation charges only Rs.1,23,692/- is shown to have been paid in its submission dt. 17.07.2015. Thus the appellant's claim that Sec. 194I is not applicable is not correct. As regards provisions u/s. 194C it can be said to be applicable only to a small amount being Rs.1,23,692/- as per the appellant's own claim vide the said submission.

The appellant's claim that even Sec. 194C is not applicable is also found not correct. In respect of small amount of transportation charges of Rs.1,23,692/- the AO is directed to recompute shortage of tax and interest thereon. In respect of balance amount out of Rs.42,26,099/- the appellant seems to have defaulted and therefore liability for tax and interest needs to be computed.

A break up has been given by the appellant vide its submission dtd. 17.07.2015 at page No.2 which is summarized as under:-

Less than Rs.1,20,000 and/or Rs.50,000 (where no TDS u/s194I is required to be deducted without prejudice to anything else stated)	:	Rs.2,58,099/-
Individuals	:	Rs.37,26,148/-
Firms	:	Rs. 2,41,852/-
Total	:	Rs.42,26,099/[-

The AO is directed to verify whether the payees are individuals in respect of payment amounting to Rs.37,26,148/- as claimed above. AO is further directed to verify whether payments to firms are of Rs.2,41,852/- and whether payments of less than Rs.,1,20,00/- and/or Rs.50,000/- in respect of Sec. 194I and 194C has rightly been claimed as above. The AO is thus directed to modify the order u/s 201(1)/201(1A), dt. 21.03.2011 according to the findings on the above points and some amounts being less than Rs.1,20,000/- and/or Rs.50,000/- and payments being to individuals and firms as above. It is reiterated that the grounds objecting to the application of sec. 194I and sec. 194C are rejected. On grounds concerning payees being

individuals//HUFs, the appeal order is treated as partly allowed for statistical purpose a the rates have to be reduced according to the status of the resident as may be determined in pursuance of the enquiry directed as above.”

3. Some key facts emerge from the instant case file. There is no dispute even as per assessee's stand that it had entered into contract with its principal followed by its sub-contracts with the payee parties. We make it clear that it has not placed on record the said sub-contracts indicating it to have not passed over the corresponding liabilities to the payees concerned. We make it clear that sec. 194C of the Act in assessment year 2007-08 question duly applied in case of sub-contractual payments as well. Coupled with this, there is no evidence much less cogent one on record which could suggest that payees concerned had themselves retained all control and possession of the vehicles, tractors, bulldozer, JCD and other machineries qua sec. 194I issue. Case file makes it clear that the Assessing Officer has passed his consequential order / received on 05.10.2016 reducing the impugned demand from ₹14,03,537/- to ₹6,26,719/- only. We therefore do not see any merit in assessee's above sole substantive grievance in these peculiar facts and circumstances.

4. This assessee's appeal is dismissed.

Order pronounced in the open court 05/10/2018

Sd/-
(लेखा सदस्य)
(Dr. A.L. Saini)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 05/10/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Vansh Project Services, 73, Purna Das Road, Kolkata-29
2. प्रत्यर्थी/Respondent-ITO(TDS) Wd-3(3), 10B, Middleton Row, Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता ।