**IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD "SMC" BENCH, AHMEDABAD
[Coram: Pramod Kumar AM]**

ITA No.2858/Ahd/2016
Assessment Year: 2012-13

Hydco Engineering Pvt. Ltd., ...***Appellant***
Survey No.928/1,
Nr. Gen. Sub-station,
Chhatral Kalal Road,
Chhatral – 382 729.
[PAN: AAFCM 0346 M]

Vs.

Income Tax Officer,
Ward – 2(1)(3), Ahmedabad. ....***Respondent***

Appearances by:

Adity Seth *for the Appellant*
V.K. Singh *for the Respondent*

Date of concluding the hearing : 19.06.2018
Date of pronouncing the order : 11.09.2018

O R D E R

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 29th August, 2016, passed by the learned CIT(A), in the matter of assessment under section 143(3) r.w.s. 144C(1) of the Income Tax Act, 1961, for the assessment year 2012-13.

2. Grievances raised by the appellant are as follows :-

> ***"1) The Ld. CIT(A) has erred in law and on facts in not properly appreciating and considering various submissions, evidences and supporting placed on record during the course of the assessment proceedings, and not properly appreciating various facts and law in their proper perspective.***
>
> ***2) The Ld. CIT(A) has erred in law and on facts in upholding the addition to the income by Rs.3,29,400/- for payment made to Transporters without deducting TDS u/s 194C(6) as the details of PAN of transporter was***

obtained by the assessee company thereby complying the conditions of the law as per section 194C(6).

3) Ld. CIT(A) has erred in law and on facts in not directing the Ld. AO not to charging interest under section 234C and 234D of the Act."

3. To adjudicate on these grievances, only a few material facts are required to be taken note of. The assessee is engaged in the business of manufacturing drilling rig. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee had credited an amount of Rs.99,000/- to V Logistic Services and Rs.2,30,400/- to Prajapati Carriage Services but has not deducted any tax at source. When he probed the matter further, it was explained that these vendors had complied with section 194C(6) and, accordingly, tax deduction at source was not warranted. The Assessing Officer rejected the aforesaid plea, proceeded to make disallowance under section 40(a)(i) and observed as follows :-

> ***"The reply of the assessee company is carefully considered but not found acceptable. In respect of freight and transport charges, the assessee stated that no TDS is required to be deducted in case of payment to transporters if it furnished the PANs is found to be incorrect. The submission made by the assessee has been considered carefully but the same is not acceptable for the reason that as per the provisions of sub-section (7) to Section 194C of the Act the assessee was required to furnish to the prescribed authority such particulars within such time. There is no dispute that the assessee has not furnished the said details to the prescribed authority within the time allowed by the Statute."***

4. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without success. In a very elaborate order, learned CIT(A) confirmed the action of the Assessing Officer by observing as follows :-

"4.3 <u>Decision:</u>

I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The AO has made the disallowance in respect of payments made to V. Logistics Services of Rs.99,000/- and to Prajapati Carriage Services of Rs.2,30,400/- totalling to Rs.3,29,400/- by invoking the provisions of section 40(a)(ia) of the I.T. Act for non compliance of provisions of section 194C of the I.T. Act, 1961.

4.4 The AO observed that as per the provisions of section 194(7), the appellant was required to furnish to the prescribed authority such particulars within such time in such form as is prescribed. Since the appellant had made the payment of freight and transport expenses to the

transporters during the course of business of plying, hiring or goods carriage, he ought to have taken their Permanent Account Number and such Permanent Account Numbers should have been mentioned in the TDS return filed in Form No.26Q i.e. the TDS return, but the appellant has failed to do so, and hence, he has made the default in complying the provisions. Therefore, for non deduction of TDS, the provisions of section 40(a)(ia) of the I.T. Act, 1961 have been invoked.

4.5 On the other side, the appellant has submitted that it has obtained the PAN umbers of parties, but the same have not been mention in the TDS return furnished. The appellant further claimed that the provisions of section 194C(6) are independent and separate to the provisions of section 194(7) of the I.T. Act and merely the provisions of section 194(7) have not been complied with would not debar the appellant from making the advantage provided u/s.194C(6).

4.6 having considered the facts and submission of the appellant, that it has made the payments to the parties towards the freight and transportation expenses and the appellant's claim that it has obtained the PAN from the parties, but did not mention it in Form No.26Q is not supported with any documents. The appellant's contention that it has obtained the PAN from the party before filing of the original TDS return in Form No.26Q is found not correct from the very fact that when the appellant was having its PAN, then what prevented him from quoting such PAN in the original TDS return filed. The appellant did not have any reason for such an act of default. As per the provisions of section 194C, the appellant ought to have made the TDS at the time of credit of the amounts in parties ledger account or payment thereof whichever is earlier. Accordingly, the appellant ought to have in possession of the PAN particulars of the aforesaid parties at the time of credit of such amounts in their ledger account or at the time of payment thereof whichever was earlier. But the appellant has failed to prove by adducing supporting evidences that it had in possession of the PANs as per the aforesaid provisions at the time of credit or payment which was earlier. In absence of having such PANs of the aforesaid parties at the relevant point of times i.e. credit or payment whichever is earlier, it was the violation of the provisions of section 194C(6) of the I.T. Act

4.7 Further, for ready reference, the provisions of section 194C(6) and (7) are reproduced as under :-

> ***"(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the financial year exceeds (seventy-five) thousand rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.***
>
> ***(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish to the prescribed income tax authority or the person authorized by it,***

such particulars, in such form and within such time as many be prescribed."

4.8 Here it is to be mentioned that as per the provisions of section 194(7), the appellant was to submit the PAN particulars in the TDS return filed originally in Form No.26Q within the time limit prescribed u/s. 200 (3) r.w. Rule 31A, whereby the due dates of furnishing the TDS returns are specified. Thus, the time limit for furnishing TDS return in Form No.26Q was 15th July for first quarter, 15th Oct. for second quarter, 15th January or 3rd Quarter and 15th May of the immediately following financial year for the last quarter. Thus, the appellant ought to have submitted the PAN in the form no.26Q filed by the appellant as per the aforesaid due dates. Since, the appellant has not complied the specific provisions of section 194(7) of the I.T. Act, 1961, whereby the time limit for submitting such particulars in Form No.26Q is prescribed, therefore, the appellants' case does not fall under the category of 194(7) of the I.T. Act and therefore, it was not exempt from non deduction of TDS and the AO has correctly invoked the provisions of section 40(a)(ia) of the I.T. Act, 1961 on such default.

4.9 In the present appeal, as discussed in the preceding paras that the appellant has failed to prove of having the PAN of the transporters in its possession while making the credit or payment to such parties and hence, appellant's contention remained unverifiable.

4.10 Further, the case laws relied upon by the appellant are not identical to the facts of the case of the appellant. In respect of the case of Mr. Mohammd Suhail Kornool, cited by the appellant, having possession of the PANs of the transporters by the appellant at the time of credit or payment was not in dispute, while in the preset appeal, as discussed in the preceding paras that the appellant has failed to prove of having the PANs of the transporters in its possession while making the credit or payment to such parties. Further, the aforesaid cited case for the AY 2010-11 is prior to the notification by the Board issued on 15.10.2010 with regard to submission of the prescribe form applicable with effect from A.Y. 2011-12, and hence, the application of provisions of section 194(7) was not in force and the decision has been given by the Hon'ble ITAT only by considering the provisions of section 194C(6) of the Act. While in the appellant's case, which is in respect of A.Y. 2012-13, the provisions of section 194(7) are very much applicable.

4.11 In view of the aforesaid discussion, it apparent that the AO was perfectly in order for invoking the provisions of section 40(a)(ia) of the I.T. Act, as the appellant has failed to comply with the provisions of section 194C(6) & 194C(7) of the I.T. Act, 1961, and therefore, the disallowance made by the AO of Rs.3,29,400/- is found correct and justified and hence, confirmed.

The ground of appeal is accordingly dismissed."

5. The assessee is not satisfied and is in further appeal before the Tribunal.

6. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. I find that the issue in appeal is now squarely covered by a Division Bench decision of this Tribunal in the case of Soma Rani Ghosh vs. DCIT [(2016) 74 taxmann.com 90 (Kol-Trib) wherein the Tribunal has inter alia observed as follows :-

34. From our above discussion it follows that,—

(i) In the context of Section 194C(1), person undertaking to do the work is the Contractor and the person so engaging the contractor is the contractee;

(ii) that by virtue of the Amendment introduced by Finance Act (No.2) 2009. the distinction between a contractor and a sub-contractor has been done away with and Cl. (iii) of Explanation under 194C(7) now clarifies that "contract" shall include sub-contract;

(iii) subject to compliance with the provisions of Section I94C(6). immunity from TDS under sec. 194C(1) in relation to payments to transporters, applies transporter and non-transporter contractees alike;

(iv) under Sec. 194C(6), as it stood prior to the amendment in 2015, in order to get immunity from the obligation of TDS, filing of PAN of the Payee-Transporter alone is sufficient and no confirmation letter as required by the learned CIT is required;

(v) Sections 194C(6) and Section 194C(7) are independent of each other, and cannot be read together to attract disallowance u/s 40(a)(ia) read with Section 194C of the Act; and

(vi) If the assessee complies with the provisions of Section 194C(6), no disallowance u/s.40(a)(ia) of the Act is permissible, even there is violation of the provisions of Section 194C(7) of the Act."

8. Respectfully following the aforesaid binding judicial precedent, I uphold the plea of the assessee and delete the impugned disallowance of Rs.3,29,400/-, as it is not even in dispute that when we read section 194C(6) independently, and not in conjunction with section 194C(7), there is no default in tax withholding obligations

leading to disallowance under section 40(a)(ia). The disallowance of Rs.3,29,400/- thus stands deleted.

9. In the result, the appeal is allowed. Pronounced in the open court today on the 11th September, 2018.

Sd/-

Pramod Kumar
(Accountant Member)

Dated: Ahmedabad, the 11th day of September, 2018.

*PBN/**

Copies to:	*(1)*	*The appellant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad