

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.299/Ind/2016
Assessment Year: 2009-10

Shri Anil Khandelwal, 113, Sudarshan Complex, Bhavarkuan Main Road, Indore	Vs.	ITO 5(3), Indore
(Appellant)		(Respondent)
PAN No.ACBPK8401C		

Revenue by	Shri P.K. Mitra, Sr.DR
Assessee by	Shri Thribhuvan Sachdeva,C.A
Date of Hearing	05.10.2018
Date of Pronouncement	12.10.2018

ORDER

PER MANISH BORAD, AM.

This appeal of Assessee pertaining to A.Y. 2009-10 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore (in short 'CIT(A)'), dated 30.11.2015 which is arising out of the order u/s 143(3)/263 of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 26.03.2014 by ITO-5(3), Indore.

2. The assessee has raised following grounds;

“1. On the facts and circumstances of the case the Learned CIT has erred in upholding the addition of Rs.22,19,660/- u/s 40(a)(ia) of the IT Act 1961 on account of non deduction of TDS.

2. The Learned CIT Appeals-II and the AO has failed to appreciate and or over looked.

(i) That the payments made to the transporters are not in respect of a transport contract for carriage of goods.

(ii) That the payment made are in respect of hire of transport”

3. Brief facts of the case limited to the issue raised before us are that the assessee is an individual engaged in the business of transport booking. Assessment u/s 143(3) of the Act was completed on 23.12.2011 assessing income of Rs.11,63,710/-. Subsequently Ld. CIT-II, Indore under the powers of Section 263 of Act passed order on 3.6.2013 directing the Assessing Officer to examine the applicability of the provisions of 194C as well as 194I of the Act on the payments to truck operators. Ld. Assessing Officer complying to the order of Ld.CIT(A) initiated the assessment proceedings and completed it on 26.3.2014 u/s 143(3) r.w.r.t Section 263 of the Act after making disallowance u/s 40(a)(ia) of the Act at Rs.22,19,660/- for non deduction of tax at source u/s 194C of the Act. Ld. Assessing Officer observed that the assessee was not deducting tax at source u/s 194C of the Act on account of second

proviso to Section 194(3) of the Act if the truck owner submits Form 15I (Rule 29d(1) of IT rules). Truck owners can give the declaration on Form 15I if they do not own more than two trucks. However in the case of truck owner namely Shri Kishorilal Birla who was owner of three trucks the assessee failed to deduct tax at source. It was pleaded by the assessee that it had no mechanism to verify the correctness of Form 15I and as per the second proviso to Section 194C(3) of the Act if at the time of making payment to the truck owner Form 15I (duly filled) is submitted to the buyer i.e. the assessee, then there is no liability to deduct the tax at source. Ld.A.O was not convinced with this submission and he went ahead making the disallowance u/s 40(a)(ia) of the Act at Rs.22,19,660/-.

4. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and gave detailed submissions along with the gists of judgments but Ld.CIT(A) was not convinced and the assessee failed to get any relief.

5. Now the assessee is in appeal before the Tribunal.

6. At the outset Ld. Counsel for the assessee submitted that Form No.15I was duly received from Shri Kishorilal Birla and he did

not mentioned about the ownership of three trucks rather he gave separate 15I forms during the year mentioning that he owns only one truck. For this reason the tax was not deducted at source by the assessee. Ld. Counsel for the assessee further submitted that in the normal course of business the assessee relies on the genuineness of the documents submitted before him by the payee. It is not the assessee's responsibility to verify the documents submitted to it. The assessee cannot be penalized for action undertaken in good faith and in normal practice of business transactions. The Form 15I obtained from the alleged payee were obtained in a bonafide manner with the belief that the same are genuine and correct. The assessee cannot be made liable for the false or wrong declaration given by the payee and therefore tax cannot be levied on the assessee on this ground that the declaration in Form 15I are invalid. He also added that no criteria was available to the assessee to verify the genuineness of the Form 15I nor assessee has a duty to do so in the normal course of carrying out its business. In support of this contention he referred and relied on the following judgments;

- (i) Steel Authority of India Limited v. Additional Commissioner of Commercial Tax, Jabalpur and Others (2012) 56 VST 84 (MP).
- (ii) The State of Madras Vs M/s. Radio and Electricals Ltd (1967) AIR 234, 1966 SCR 198 (S.C)
- (iii) CIT Vs Valibhai Khanbhai Mankad 216 Taxman 18 (Guj.)
- (iv) CIT Vs Shri Marikamba Transport Co. 379 ITR 129 (Kar.)
- (v) CIT Vs United Rice Land Ltd 322 ITR 0594 (P&H)
- (vi) CIT Vs Poompuhar Shipping Corporation Ltd 282 ITR 0003 (Mad)
- (vii) CIT-II, Indore passed u/s 263

7. On the other hand Ld. Departmental Representative supported the order of lower authorities.

8. We have heard rival contentions and perused the records placed before us. The sole issue raised by the assessee is that both the lower authorities erred in confirming the additions/disallowance u/s 40(a)(ia) of the Act at Rs.22,19,660/- on account of non deduction of tax at source u/s 194C of the Act. We find that the impugned disallowance was made for the reason that the assessee who is engaged in the business of transport booking, did not deduct tax at source u/s 194C of the Act in those cases where truck owners submitted Form 15I (As per Rule 29D(ii) of the Act). During

the year under appeal one of the truck owner Shri Kishorilal Birla received payment for plying of truck at Rs.13,35,253/-, Rs.3,86,301/- and Rs.4,98,016/- on three separate dates. Shri Kishorilal Birla filed three separate 15I forms along with the copy of truck registration documents. In the 15I form he has mentioned detail of one truck for which the payment was received. The assessee during the course of business while making the payment did not deduct tax at source u/s 194C as the truck owners present/submit Form 15I mentioning that he do not own more than two trucks. However during the course of assessment proceedings Ld.A.O while going through the list of trucks vis-à-vis name of truck owners observed that Shri Kishorilal Birla owns three trucks and he therefore cannot file Form 15I and therefore the assessee was liable to deduct tax at source u/s 194C which he failed to do so and therefore disallowance u/s . 40(a)(ia) was made. This view of the Assessing Officer was confirmed by Ld.CIT(A).

9. We find that there is no dispute at the end of Revenue about the genuineness of transactions and the payments made for booking/hiring truck. Now the question before us is that “*whether*

the Assessing Officer was justified in making disallowance u/s 40(a)(ia) of the Act even when the assessee has received duly filled Form 15I from the truck owners”.

10. We find that Hon'ble High Court of Gujarat in the case of CIT Vs Valibhai Khanbhai Mankad (Supra) adjudicated the verbatim similar issues observing as follows;

“3) We have heard the learned counsel for the Revenue as well as for the assessee. Section 194C of the Act, as is well known, pertains to payments to contractors. Sub-section (1) of section 194C, as it stood at the relevant time, required that any person responsible for paying any sum to any resident, contractor for carrying out any work in pursuance of a contract between the contractor and the specified entities, shall credit specified sum as income tax on income comprised therein. Likewise, sub-section (2) of section 194C required a person responsible for paying any sum to resident-sub-contractor to deduct tax at source under given circumstances. It is not in dispute that ordinarily the assessee was required to make such deduction on the payments made to the sub-contractors, unless he was covered under the exclusion clause contained in sub-section (3) of section 194C of the Act. Such provision, as it stood at the relevant time, read as under:-

"Section 194C(3):- No deduction shall be made under sub-section(1) or sub-section (2) from -

(i)the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) or, as the case may be, sub-section (2) shall be liable to deduct income-tax under this section:

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:

Provided also that the person responsible for paying any sum as aforesaid to the sub-contractor referred to in the second proviso shall furnish to the prescribed income-tax authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may be prescribed; or

(ii) any sum credited or paid before the 1st day of June, 1972; or

(iii) any sum credited or paid before the 1st day of June, 1973, in pursuance of a contract between the contractor and a co-operative society or in pursuance of a contract between such contractor and the sub-contractor in relation to any work (including supply of labour for carrying out any work) undertaken by the contractor for the co-operative society.

Explanation-For the purpose of clause(i), "goods carriage" shall have the same meaning as in the Explanation to sub-section (7) of section 44AE."

4) Section 40(a)(ia) of the Act, in turn, provides that certain amounts shall not be deducted in computing the income chargeable to tax under the head 'profits and gains of business or profession', namely, payments made towards interest, commission or brokerage etc., on which tax is deductible at source and such tax has not been deducted or, after deduction, the same has not been paid on or before the due date specified in sub-section (1) of section 139 of the Act. Section 40(a)(ia) of the Act, insofar as it is relevant for our purpose, reads as under:-

"Section 40(a)(i):- Any interest, commission or brokerage, [rent, royalty,] fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labor for carrying out any work), on which tax is deductible at source under Chapter XVU-B and such tax has not been deducted or, after deduction, [has not been paid on or before the due date specified in sub-section (1) of section 139:]"

5) From the above statutory provisions, it can be seen that under section 40(a)(ia) of the Act, payments made towards interest, commission or brokerage etc. would be excluded for deduction in computing the income chargeable under the head 'profits and gains of business or profession', where though tax was required to be deducted at source, is not deducted or where after such deduction, the same has not been paid on or before the due date. Thus for application of section 40(a)(ia) of the Act, the foremost requirement would be of tax deduction at source.

6) 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. Despite such circumstances existing, sub-section (3) makes exclusion in cases where such liability would not arise. We are

concerned with the further . proviso to sub-section (3), which provides that no deduction under sub-section (2) shall be made from the amount of any sum credited or paid or likely to be credited or paid to 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 it in the prescribed manner within the 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.

7) The exclusion provided in sub-section (3) of section 194C from the liability to deduct tax at source under sub-section (2) would thus be complete the moment the requirements contained therein are satisfied. Such requirements, principally, are that the sub-contractor, recipient of the payment produces a necessary declaration in the prescribed format and further that such sub-contractor does not own more than two goods carriages during the entire previous year. The moment, such requirements are fulfilled, the liability of the assessee to deduct tax on the payments made or to be made to such sub-contractors would cease. In fact he would have no authority to make any such deduction.

8) The later portion of sub-section (3) which follow the further proviso is a requirement which would arise at a much later point of time. Such requirement is that the person responsible for paying such sum to the sub-contractor has to furnish such particulars as prescribed. We may notice that under Rule 29D of the Rules. such declaration has to be made by the end of June of the next accounting year in question.

9) In our view. therefore. once the conditions of further proviso of section 194C(3) are satisfied, the liability of the payee to deduct tax at source would cease. The requirement of such payee to furnish details to the

income tax authority in the prescribed form within prescribed time would arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable und rub-section (2) of section 194C of the Act. In our view, 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, fulfillment 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.

10) When on the basis of the record tt is not disputed that the requirements of further proviso were fulfilled, the assessee was not required to make any deduction at source on the payments made to the sub-contractors. If that be our conclusion, application of section 40(a)(ia) would not arise since, as already noticed, section 40(a)(ia) would apply when there is a requirement of deduction of tax at source and such requirement is either not fulfilled or having deducted tax at source is not deposited within prescribed time.

11) With respect to the Tribunal's earlier judgment in case of M/s. shree Pramukh Transport Co. Ltd., neither side could throw any light whether the Revenue had carried the same in appeal or not. However, we have examined the question independently and come to our own conclusion recorded herein above.

12} In the result, tax appeal is dismissed.”

11. Perusal of the above judgments clearly states that once the condition of further proviso of Section 194C(3) of the Act are

satisfied, the liability of the payee to deduct tax at source would cease. Examining the facts of the instant appeal we find that the assessee received Form 15I from the truck owner namely Shri Kishorilal Birla on various dates in which detail of only one truck was mentioned. The conditions provided in further proviso of 194C(3) of the Act was duly complied as Form 15I was received by the assessee from the truck owner who was stated to be a owner of not more than two goods carriers. Due to this reason the assessee did not deduct tax at source accepting the details provided in Form 15I as genuine. It is true that Shri Kishorilal Birla owned more than two trucks but for the wrong statement given by him in Form 15I the assessee cannot be penalized. The assessee being engaged in transport business and come across with hundreds of truck owners and at the time of payment when Form No.15I is received he cannot just raise doubts about the genuineness of the details mentioned therein. If the truck owners make wrong statement then the revenue authorities are free to take action against them as per provisions of law because the details on Form 15I received by the assessee are furnished to the Commissioner of Income Tax within whose area of jurisdiction the office of the contractor is situated.

12. We therefore in the given facts and circumstances of the case and respectfully following the Hon'ble High Court of Gujarat in the case of CIT Vs Valibhai Khanbhai Mankad (supra) are of the considered view that no disallowance was called for u/s 40(a)(ia) of the Act at Rs.22,19,660/- made by the Assessing Officer. We

accordingly set aside the order of Ld.CIT(A) and allow the ground No.1 raised by the assessee.

13. Ground No.2 becomes infructuous as we have already deleted the disallowance u/s 40(a)(ia) of the Act.

14. In the result the appeal of the assessee is allowed.

The order pronounced in the open Court on 12.10.2018.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 12 October, 2018
/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By order
Asstt.Registrar,I.T.A.T., Indore