

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri N.V.Vasudevan, VP & Shri B.R.Baskaran, AM

ITA No.154/Bang/2017 : Asst.Year 2008-2009

Shri B.H.Ramachandra Contractor, Beechagondanahalli Valagerahalli Post Hassan District PAN : AGWPR0436R.	Vs.	The Income Tax Officer Ward 1 Tiptur.
(Appellant)		(Respondent)

Appellant by : Shri Guduswamy, ITP

Respondent by : Shri R.N.Siddappaji, Addl.CIT

Date of Hearing : 12.02.2019	Date of Pronouncement : 15.02.2019
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ORDER

Per B.R.Baskaran, AM :

The assessee has filed this appeal challenging the order dated 25-10-2016 passed by Ld CIT(A)-7, Bengaluru and it relates to the assessment year 2008-09. The assessee is challenging the validity of reopening of assessment and also is challenging the addition u/s 40(a)(ia) of the Act confirmed by Ld CIT(A).

2. The assessee is an Individual and is executing contract works for Government departments. The assessment for the year under consideration was completed by the AO u/s 143(3) of the Act. Subsequently, it was noticed by the AO that the assessee has not deducted tax at source on the payments made to sub-contractors and hence the disallowance of such

payments is required to be made u /s 40(a)(ia) of the Act. Hence the AO reopened the assessment by issuing notice u/s 148 of the Act on 12.03.2014, i.e., after expiry of four years from the end of the relevant assessment year. In the reopened the assessment, the AO disallowed the alleged sub-contract payment of Rs.21,13,200/- u/s 40(a)(ia) of the Act. The above said payments are in the nature of labour charges paid to four persons. The Ld CIT(A) also confirmed the same.

3. The Ld A.R submitted that the assessee had furnished all the details to the AO during the course of original assessment proceedings. He submitted that the assessing officer has also acknowledged in the original assessment order that the assessee has furnished all the bills and vouchers before him. He submitted that the assessee has paid the labour charges to various labourers and for the sake of convenience, he has booked the expenditure under the name of group leaders. He submitted that the assessee has not given any contract to these persons and hence the question of deducting tax at source from these payments does not arise. Accordingly he submitted that the AO has reopened the assessment merely on surmises and conjectures and hence the reopening is bad in law. He further submitted that the AO did not bring any tangible material on record to show that there was failure on the part of the assessee to deduct tax at source, which has resulted in escapement of income. Accordingly he submitted that the reopening of assessment is liable to be quashed on this ground also. On merits, the Ld A.R submitted that the labour charges paid through group leaders does not attract

any of the TDS provisions and hence the addition made u/s 40(a)(ia) of the Act is liable to be deleted.

4. The Ld D.R submitted that the assessee did not object to the reopening of assessment before the AO. He did not ask for reasons for reopening also. The contention of the assessee that the reopening was done on account of change of opinion was also rejected by Ld CIT(A) by placing reliance on the decision rendered by Hon'ble Delhi High Court in the case of Usha International Ltd (348 ITR 485)(Del). The AO has noticed that the assessee has made sub-contract payment for labour supplies to four persons and the assessee admitted that he did not deduct tax at source. Before the AO, the assessee furnished certificates obtained from a Chartered Accountant certifying that the income of each of the labour contractor was less than taxable limit. The AO rejected the same, as it was bald and did not give any precise detail. Hence the AO has disallowed the labour charges u/s 40(a)(ia) of the Act, as the assessee has failed to deduct tax at source from the said payments. The Ld D.R further submitted that the Ld CIT(A) has confirmed the addition by following the CBDT Circular No.10/DB/2013 dated 15.12.2013, wherein the CBDT has expressed the view that the TDS provisions shall apply to the amount paid as well as payable.

5. The Ld D.R also placed reliance on the Circular No.681 dated 08-03-1994 and also the decision rendered by Hon'ble Supreme Court in the case of Associated Cement Co. Ltd vs. CIT (1993)(67 Taxman 346) in order to contend that the

payment made for supply of labourers is also covered by the provisions of sec.194C of the Act. Accordingly he contended that the order passed by Ld CIT(A) does not call for any interference.

6. In the rejoinder, the Ld A.R submitted that the assessee had furnished full details before the AO during the course of original assessment proceedings. The labour charges were disbursed by the assessee through group leaders and the quantum of payment made to each of the labourers does not warrant deduction of tax at source. He further submitted that there is no contract between the assessee and group leaders that would require deduction of tax at source. The assessing officer has also not brought on record any material to show that there existed any contract. Accordingly he submitted that there is no requirement of deduction of tax at source.

7. We have heard rival contentions and perused the record. In the original assessment order passed on 22-12-2009 passed by the AO u/s 143(3) of the Act for the year under consideration, we noticed that the assessing officer has recorded that the assessee has produced the books of accounts, bank pass sheets, bills and vouchers. He has also mentioned that the books of account and other details have been examined in detail. In the reassessment order, the AO states that he has noticed subsequently that the assessee has made sub-contract payments without deducting tax at source and hence such payments are liable to be disallowed u/s 40(a)(ia) of the Act. Apparently, the AO has referred to the

labour charges paid by the assessee. Accordingly he has reopened the assessment by issuing notice u/s 148 of the Act, that too, after the expiry of four years from the end of the relevant assessment year.

8. It is pertinent to note that the AO was not aware of the details of payees to whom the impugned labour charges were paid by the assessee, at the time when he issued notice u/s 148 of the Act. In response to the notice issued u/s 142(1) of the Act during the course of re-assessment proceedings, the assessee has furnished the details of labour charges paid by him, vide his letter dated 25-07-2014. Upon examination of those details only, the AO has come to know that the assessee has booked the labour charges payments in the name of four persons. The submission of the assessee, in any case, is that he has not given any contract to any of the above said four persons. According to the assessee, he has appointed these four persons as group leaders and the labour payments were disbursed through them.

9. Now the question that arises is whether the AO was having any material with him to form the opinion that the income of the assessee has escaped the assessment. From the orders, we notice that the AO has not referred to any tangible material, on the basis of which, he had formed the view. It appears that the AO has presumed that the labour charges paid by the assessee would attract TDS provisions and accordingly formed the opinion that there was escapement of income. In that case, it has to be held that the

assessing officer has reopened the assessment only on the basis of surmises and conjectures.

10. In the case of Orient Craft Ltd (354 ITR 536), the Hon'ble Delhi High Court has held that the reopening of assessment without any tangible material is not valid. In the instant case also, it was not shown that the assessing officer was having any tangible material to show that the assessee has violated the provisions of sec.194C of the Act warranting addition u/s 40(a)(ia) of the Act. Hence we are of the view that the assessing officer has reopened the assessment on surmises and accordingly we hold that the reopening is bad in law. The various case laws discussed by Ld CIT(A) are, in our view, not applicable to the facts of the present case. Accordingly we set aside the order passed by Ld CIT(A) and quash the assessment order.

11. Since we have quashed the assessment order on legal ground, there is no necessity to adjudicate the issues urged on merits.

12. In the result, the appeal of the assessee is allowed.

Order pronounced on this 15th day of February, 2019.

Sd/-
(N.V.Vasudevan)
Vice-President

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Bangalore ; Dated : 15th February, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr.CIT-7, Bengaluru.
4. CIT(A)-7, Bengaluru.
5. DR, ITAT, Bangalore
6. Guard file.

True copy

BY ORDER,

(Asstt. Registrar)
ITAT, Bangalore