

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

**[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member]**

**I.T.A. No. 1873/Kol/2017**

Assessment Year: 2014-15

**Income Tax Officer, Ward -2(2), Burdwan.....Appellant**

**M/s. Nur Egg Centre.....Respondent**

**142, Spandan Complex**

**G.T. Road**

**Burdwan - 713101**

**[PAN : AACFN 4999 F]**

**Appearances by:**

*Shri Palas Chattopadhyay, C.A. & Malay Das Gupta, C.A., appeared on behalf of the assessee.*

*Shri C.J. Singh, JCIT, Sr. D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : April 3<sup>rd</sup>, 2019

Date of pronouncing the order : May 10<sup>th</sup>, 2019

**O R D E R**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals) - Burdwan, ("ld. CIT(A)") passed u/s. 250 of the Income Tax Act, 1961, (the 'Act'), dt. 30/05/2017, for the Assessment Year 2014-15, on the following grounds:-

*"1) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law as well as in fact in deleting the addition of Rs.75,48,200/- made for violation of section 194C(7) of the I.T. Act, 1961 ?*

*2) Whether the Ld. CIT(A) has erred in law while giving relief of Rs.75,48,200/- more so, when the assessee has admitted violation of provisions of Section 194C(7) of the I.T. Act, 1961 before the A.O as well as before the Ld. CIT(A)?*

*3) Whether on the facts and in the circumstances of the case Ld. CIT(A)'s order is perverse inasmuch as the assessee did not have any TAN during the course of scrutiny proceedings, and there is no question of uploading the payment details in the system?"*

2. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

3. The assessee in this case has admittedly complied with the proviso to Section 194C(6) of the Act. There was admittedly no compliance of Section 194C(7) of the Act, where a TDS return is required to be filed with the proper authority within the prescribed time. The assessee's submission is that, the compliance in respect of Section 194C(6) of the Act, was to be treated as substantive compliance in respect of provisions of Section 194C r.w.s. 40(a)(ia) of the Act. Moreover, it is not in dispute that the assessee need not deduct tax at source u/s 194C of the Act, on any of the payments. The Id. CIT(A), in this case, has followed the ratio of law laid down by the 'B' Bench of the ITAT in the case of *Soma Rani Ghosh vs. DCIT in ITA No. 1420/Kol/2015; Assessment Year 2012-13, order dt. September 9<sup>th</sup>, 2016*, wherein it has been held that 194C(6) and 194C(7) of the Act, are independent of each other and cannot be read together to attract disallowance u/s 40(a)(ia) fo the Act.

4. The Hon'ble Gujarat High Court in the case of *CIT vs. Valibhai Khanbhai Mankad [2013] 261 CTR 538 (Gujarat)* held 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)(ia):- 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 XVII-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 under sub-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, fulfilment 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 it 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 Shree Pramukh Transport Co. Ltd. (supra) , 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."*

5. As the order of the Id. CIT(A) is line with the decision of the Hon'ble High Court of Gujarat in the case of *CIT vs. Valibhai Khanbhai Mankad (supra)*, we uphold the order of the Id. CIT(A) and dismiss the appeal of the revenue.

5. In the result, appeal of the revenue is dismissed.

***Kolkata, the 10<sup>th</sup> day of May, 2019.***

***Sd/-***

**[S.S. Viswanethra Ravi]**  
 Judicial Member

***Sd/-***

**[J. Sudhakar Reddy]**  
 Accountant Member

Dated : 10.05.2019  
 {SC SPS}

*Copy of the order forwarded to:*

- 1. M/s. Nur Egg Centre  
 142, Spandan Complex  
 G.T. Road  
 Burdwan - 713101***
- 2. Income Tax Officer, Ward -2(2), Burdwan***

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
 By order

Assistant Registrar  
 ITAT, Kolkata Benches