

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No-956/Del/2016
(Assessment Year: 2010-11)**

**Sunil Kumar
Prop. M/s. Bhawat Golden
Carrier,
1953, Outram Line, Kingsway
Camp, New Delhi
AGVPK9489Q**

vs

**ITO
Ward-20(4)
New Delhi**

Revenue by Sh. K. Sampath Adv, &
Sh. V. Raja Kumar, Adv
Assessee by Sh. Abhishek Kumar, Sr. DR

Date of Hearing 16.05.2019
Date of Pronouncement 17.05.2019

ORDER

PER K. NARSIMHA CHARY, J.M.

Aggrieved by the order dated 21/12/2015 in appeal No. 108/13-14 passed by the learned Commissioner of Income Tax (Appeals)-12, New Delhi ("Ld. CIT(A)"), assessee preferred this appeal challenging the action of the Ld. CIT(A) in confirming the order of the learned Assessing Officer in invoking provisions of section 40(a)(ia) of the

Income Tax Act, 1961 (for short “the Act”) and making disallowance of Rs.42,60,708/-on estimate basis.

2. Briefly stated facts, according to the learned Assessing Officer, assessee is carrying on the business of transportation under the name and style of M/s Bharat Golden Carrier. For the assessment year 2010-11 assessee filed his return of income on 29/9/2010 declaring a total income of Rs. 1,50,734/-after adjusting the brought forward losses for the financial year 2008-09 relevant to assessment year 2009-10 of Rs.64,686/-. During scrutiny proceedings, learned Assessing Officer found that the assessee debited to its profit and loss a sum of Rs. 2,13,03,542/-towards amountfreight paid. The auditor’s report was to the effect that the TDS has not been directed from the freight paid neither any declaration for having one or twotrucks and aggregate of the amount of such sums credited or paid during the financial year does not exceed Rs. 50,000/- nor the PAN numbers of truck owners were obtained. When called upon to explain, assessee submitted that individual truck was settled from market according to the availability of trucks and requirement of the company at a settled freight and after settlement freight at a time not more than Rs. 20,000 was paid. He further stated that trucks are not organised sector, individual truck is arranged and payment of freight is made to him and hence no TDS has been deducted.

3. Learned Assessing Officer further observed that the assessee had not filed any copy of Ledger account of the freight charges paid nor the party wise payment details, in spite of being asked and, therefore, in the absence of any specific details 1/5 of the total claim under this head was estimated to be covered, where liable to deducted the tax was there but

the same was not deducted. Learned Assessing Officer,, therefore, , disallowed a sum of Rs. 42,60,708/-under section 40(a)(ia) of the Act.

4. During the appellate proceedings before the Ld. CIT(A), the impugned order speaks that the assessee produced the party wise details of the freight and after obtaining the remand report from the learned Assessing Officer, Ld. CIT(A) accepted the additional evidence. However, Ld. CIT(A) held that the truck owners were used for actual transportation of work and, therefore, the contract is for transportation of goods and not an arrangement for hiring of vehicles. He, therefore, dismissed the appeal of the assessee holding that the provisions of section 40(a)(ia) of the Act are attracted to the case of the assessee as no TDS was deducted on the amount of Rs. 2.13 crores under section 194C of the Act.

5. Assessee, therefore, filed this appeal. It is the argument of Ld. AR that in this case the assessee is a facilitator and provider of transport and a does not own even a single vehicle for transport. Assessee only arranges the vehicles for the people who transport the goods and this fact is evident from the findings of the Ld. CIT(A) to the effect that the assessee had incurred only office expenditure and no expenditure relating to transportation of goods such as loading, unloading charges etc have been debited to the profit and loss account of the assessee. Ld. AR submits that it is not a case where the assessee renders any services to the transporters nor engages any transporter for transport of his goods and it is only on earning his margins he engages the transporters for the transport of goods of his clients.

6. The second limb of argument of Ld. AR is that the authorities below did not find any single payment of more than Rs. 20,000/- Further, according to the assessee the authorities are not justified in making and sustaining any ad hoc addition, which is impermissible under section 194C of the Act.

7. Per contra, it is the argument of the Ld. DR that for attracting the provisions under section 194C of the Act, is not necessary that there the assessee must own any vehicle, and as could be seen from clause (iv) to explanation to section 194C, it is clear that work includes carriage of goods or passengers by any mode of transport other than by Railways. He, therefore, submitted that the assessee cannot contend that he is not the person responsible to deduct the tax inasmuch as he doesn't own any vehicle. According to the Ld. DR the assessee engages the transporters or vehicle owners as sub-contractors for transportation of goods in respect of which he enters into a contract with the clients. On this ground he justified the impugned orders.

8. As could be seen from the impugned order, it is clear that it's not the case of the revenue that the assessee owns any vehicle. Further during the year under consideration, he received freight receipts to the tune of Rs. 2,25,63,625/- and a paid freight charges of Rs.2,13,03,542/- making and earning of Rs. 2,60,083/- which roughly constitutes 1.15%. Assessee furnished the details of freight received and freight paid. During the appellate proceedings before the Ld. CIT(A) assessee also produced the party wise details of freight along with the PAN numbers.

9. All through the proceedings it is the case of the assessee is that there is no contract between himself and the vehicle owners for transportation of goods but when he secures an order for transport of goods, he was searching for the individual truck in the market and depending upon the availability of the truck and the requirement of the client, at a settled freight, the freight was paid not more than Rs. 20,000/- at a time. Assessee's further contention is that there has never been any contract between the assessee and the vehicle owner and the vehicle owners are engaged in on individual basis and paid on the basis of goods receipts issued for each trip separately.

10. Ld. AR submits that the observations of the Ld. CIT(A) that the truck owners/operators are transporting the goods on behalf of the assessee is a factual error and has no basis at all. He further submitted that the Ld. CIT(A) committed an error in his observation that is not the case of the assessee that he is a commission agent or lorry booking agent merely arranging transportation for various parties; whereas, as a matter of fact, the contention of the assessee has all through been is that he is a commission agent or lorry booking agent merely arranging transportation for various parties and this fact is evident from the observations of the Ld. CIT(A) himself that the assessee had incurred only office expenditure and no expenditure relating to transportation of goods such as loading, unloading charge etc has been debited.

11. Assessee placed reliance on the decisions of the Hon'ble jurisdictional High Court in the case of CIT vs. Cargo Linkers (2009) 179 taxman 151 (del) and CIT vs. Hardarshan Singh (2013) 30 taxmann.com 245 (Delhi) for the principle that in a case where the

assessee was nothing but an intermediary between the clients and the transporters and mainly facilitates the contract for carrying goods, he cannot be held as the “person responsible” for deduction of tax at source under section 194C . In this matter the matching of the freight received and freight paid but for the difference of 1.15% which accounts for the commission of the assessee, indicates that the assessee is nothing but an intermediary between the clients and the vehicle owners/operators and mainly facilitates the contract for carrying goods.

12. Having regard to the volumes of the freight received and paid in contrast to the earnings of the assessee, analyzed in the background of the observations of Ld. CIT(A) that the assessee had incurred only office expenditure and no expenditure relating to transportation of goods such as loading, unloading charge etc has been debited, we are of the considered opinion that the assessee actually engaged himself not in the transportation business, but only facilitating or arranging transportation for various parties and he is a mere lorry booking agent. We, therefore, are of the opinion that the assessee cannot be held as the “person responsible” for deduction of tax at source and to the facts of the case the provisions under section 194C of the Act have no application.

13. No coming to the contention of the assessee that the ad hoc addition on estimate basis is non-sustainable, insofar as the provisions under Chapter XVII-b in general and to section 194C in particular, disallowance on estimate basis cannot be sustained. Viewing from any angle, we find it difficult to sustain the disallowance made by the learned Assessing Officer and, therefore, direct the same to be deleted.

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

Order pronounced in the open court on 17.05.2019

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 17.05.2019

R.N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | 15.05.2019 |
| Date on which the typed draft is placed before the dictating Member | 16.05.2019 |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |