आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA No.430/PUN/2015
निर्धारण वर्ष / Assessment year : 2010-11

Shriram Jawahar Sahakari
Sakhar Udyog
Phaltan – 415523,
District Satara. ..... अपीलार्थी / Appellant

PAN : AACAS5389M.

बनाम v/s

The Dy. Commissioner of Income Tax,
Satara Circle, Satara. ..... प्रत्यर्थी / Respondent

Assessee by : Shri Kishore Phadke &
Shri Vivek Agarwal.

Revenue by : Shri S.B. Prasad, CIT.

सुनवाई की तारीख / Date of Hearing : 28.03.2019		घोषणा की तारीख / Date of Pronouncement: 07.06.2019

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 4, Pune dt.09.01.2015 for the assessment year 2010-11.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Society stated to be engaged in the business of manufacturing and sale of white crystal sugar and its bye-products. Assessee initially electronically filed its return of income for A.Y. 2010-11 on 25.09.2010 declaring total income at Rs. Nil.

Subsequently, assessee electronically filed revised return of income on 29.09.2011 declaring total income at Rs.69,750/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.21.03.2013 and the total income was determined at Rs.6,72,50,330/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.09.01.2015 (in appeal No.PN/CIT(A)-4/Circle-Satara/135/2013-14) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now before us and has raised the grounds which have been later modified and the modified grounds read as under :

> *"1. The learned CIT(A)-4, Pune erred in law and on facts in sustaining the addition of Rs.6,07,91,993/- (out of total addition of Rs.6,71,80,576/-) u/s 40(a)(ia) of the ITA, 1961; made by the learned AO, on the analogy that the payment of Rs.6,07,91,993/- to Shriram Sahakari Sakhar Karkhana Ltd. (Shriram SSK) is in the nature of contract work and therefore, subject to provisions of section 194C of the ITA, 1961.*
>
> *2. The learned CIT(A)-4, Pune and the learned AO erred in law and on facts in not appreciating the fact that, payments made to Shriram SSK is in the nature of reimbursement of salary & wages and not for any contract work.*
>
> *3. The learned CIT(A)-4, Pune and the learned AO erred in law and on facts in not appreciating that no any mark-up has been charged by Shriram SSK to the appellant for providing the employees."*

3. All the grounds being inter-connected are considered together.

4. During the course of assessment proceedings, AO noticed that assessee had made payment of Rs.6,71,80,576/- to Shriram SSK Ltd., Assessee was asked to furnish the TDS details on the payments made to Shriram SSK Ltd. Assessee inter-alia submitted that it had entered into a Joint Venture with Shriram SSK Ltd., and as per the terms of Joint Venture agreement, Shriram SSK Ltd., had to depute its employees for which the assessee had to reimburse the salary and wages to Shriram

SSK Ltd. It was further submitted that in terms of understanding, the employees were working on deputation for the new venture and that the assessee was reimbursing the salary on cost to cost basis to Shriram SSK Ltd and therefore the requirement of deducting TDS was not applicable. The submission of the assessee was not found acceptable to the AO. AO was of the view that assessee was required to deduct TDS u/s 194C of the Act as the payments made by assessee to Shriram SSK Ltd., were not covered under the exceptional provisions of the Act. He thereafter relying on the decision of the Hon'ble Apex court in the case of Associated Cement Company Ltd., Vs. CIT reported in (1993) 111 CTR (SC) 165 held that since assessee has committed default within the meaning of Sec.194C of the Act, the expenses of Rs.6,71,80,576/- were liable for disallowance u/s 40(a)(ia) of the Act. He accordingly disallowed the aforesaid payment made by assessee to Shriram SSK Ltd. u/s 40(a)(ia) of the Act.

Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A). Ld.CIT(A) after considering the submissions of the assessee noted that the reimbursement of salary of Rs.63,88,583/- by the assessee to Shriram SSK Ltd., was not subject to the provisions of Sec.194C r.w.s 40(a)(ia) of the Act and therefore deleted addition to the extent of Rs.63,88,583/-. However, with respect to the payment of wages amounting to Rs.6,07,91,993/- he held that the payments falls within the ambit of Sec.194C of the Act and since assessee has failed to deduct TDS, he has upheld the disallowance to the extent of Rs.6,07,91,993/-. Aggrieved by the order of Ld.CIT(A), assessee is now before us.

5. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that assessee is a partnership of two Sugar Factories namely, Shriram Sahakari Sakhar Kharkhana Ltd. (SSK Ltd.,) and Jawahar Shetkari Sahakari Sakhar Karkhana Ltd., registered vide deed of partnership dated 09.10.2006. The main object of the partnership was to process the sugarcane through the existing unit of Shriram Sahakari Sakhar Kharkhana Ltd. As per the partnership deed, SSK Ltd., was to make available the services of the employees for the operation and running of the sugar plant and for which it was to be reimbursed the wages and salary. He pointed to the Clause 15 of the Partnership Deed which is placed at Page 50 onwards of the Paper Book. It was submitted that the assessee was not the principal employer of the employees and the responsibility of deduction of tax was the responsibility of SSK Ltd. He submitted that the payments made to SSK Ltd., was disbursed to the employees on cost to cost basis and had no element of profit and therefore assessee was not liable for deduction of TDS. He submitted that AO was of the view that reimbursement of salary made by assessee was liable for deduction of TDS u/s 194C of the Act. He submitted that the present arrangement was continuing since A.Y. 2007-08 onwards but there was no disturbance by Revenue authorities from 2007-08 to 2009-10 and for the first time amount was disallowed u/s 40(a)(ia) of the Act. He further submitted that wherever applicable, if the salary of the individual employee was in excess of the prescribed limits, SSK Ltd., had deducted TDS if applicable. Ld.A.R. therefore reiterated and submitted that since the amounts have been reimbursed without any markup, assessee was not liable to deduct TDS and consequently no disallowance u/s 40(a)(ia) of the Act is called for in the present case.

6. Ld. D.R. on the other hand took us through the orders of lower authorities and submitted that relying on the decision of Hon'ble Apex Court in the case of Associated Cement Co., Ltd., (supra), AO has rightly invoked the provisions of Sec.40(a)(ia) of the Act. He thus supported the order of lower authorities.

7. We have heard the rival submissions and perused the material on record. The issue in the present appeal is with respect to disallowance u/s 40(a)(ia) of the Act. It is assessee's case that as per the Memorandum of Understanding (MOU) entered between two parties name Shriram SSK Ltd., and Jawahar Shetkari Sahakari Sakhar Kharkhana Ltd., Shriram SSK was required to depute its employees for running the sugar plant and for which the assessee was required to reimburse the salary / wages of the employees deputed by it. As per the terms of agreement, assessee had reimbursed the wages to Shriram SSK Ltd., on cost to cost basis, without any element of profit and Shriram SSK in turn had disbursed the salary / wages to the concerned employees. The aforesaid contentions of assessee have not been controverted by Revenue. The argument of Revenue is that on the salary / wages that has been paid / reimbursed by assessee to Shriram SSK Ltd., assessee should have deducted TDS u/s 194C and since assessee had failed to deduct TDS, provisions of Sec.40(a)(ia) of the Act are applicable and therefore expenses cannot be allowed as deduction. The contention of the assessee as noted above that the payments made by assessee to Shriram SSK Ltd., is on cost-to-cost basis, has no element of profits, has not been controverted by Revenue. In such a situation, we are of the view that when the amounts that have been paid are by way of

reimbursements without any element of profits or mark up, then the provisions of Sec.40(a)(ia) of the Act are not applicable. For our aforesaid view, we find support by the decision of Hon'ble Delhi High Court in the case of CIT Vs. DLF Commercial Project Corporation (2015) 379 ITR 538 (Del) wherein the Hon'ble High Court has held reimbursement of expenses cannot be regarded as revenue receipts and hence tax need not be deducted at source from such payments. We also find the Hon'ble Bombay High Court in the case of CIT Vs. Karma Energy Ltd. (2015) 375 ITR 264 (Bom) has held that when the payments made to a group company was not in the nature of income but was expenditure which was reimbursed then disallowance u/s 40(a)(ia) of the Act was not warranted. Relying on the aforesaid decisions, we are of the view that in the present case, AO was not justified in invoking the provisions of Sec.40(a)(ia) of the Act. We therefore set aside the order of AO on this issue and thus the grounds of assessee are allowed.

8. **In the result, the appeal of assessee is allowed.**

Order pronounced on 7th day of June, 2019.

Sd/-	**Sd/-**
(**SUSHMA CHOWLA**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 7th June, 2019.
Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-4, Pune.
4. Pr. CIT/CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.