

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.570/Bang/2019
(Assessment year: 2013-14)

M/s.Shivamogga District Co-operative
Milk Producers Society Union Ltd. ... Appellant
NH 206, Machenahalli, Nidige Post,
Shivamoga-577222.
PAN:AAGFS 7684 G

Vs.

Asst. Commissioner of Income-tax,
Circle-1,
Shivamoga. ... Respondent

Appellant by : Shri Siddesh SN Gaddi, Advocate.
Respondent by : Swapna Das, JCIT(DR)

Date of hearing: 09/05/2019
Date of pronouncement: 14/06/2019

O R D E R

Per PAVAN KUMAR GADALE, JM :

The assessee has filed the appeal against the order of the CIT(A), Davangere, passed u/s 143(3) and 250 of the Income-tax Act,1961 ['the Act' for short].

2. The assessee has raised the following grounds of appeal:

1. *The impugned order of Learned Commissioner of Income Tax - (Appeals) ('CIT(A)') upholding disallowance under section 40(a)(ia) of the Income-tax Act, 1961 (the Act') is erroneous and liable to be quashed*

in entirety;

2. *The Learned CIT(A) and Assistant Commissioner of Income Tax, Circle 1, Shivamogga (the Learned AO) have erred in passing order against nonexistent PAN;*
3. *The Learned CIT(A) and the Learned AO have erred in disallowing an amount of Rs. 15,25,51,536/- under section 40(a)(ia) of the Act;*
4. *The Learned CIT(A) has erred in law in not passing speaking order against the grounds / contentions raised by the Appellant;*
5. *The Learned CIT(A) has erred in law and on facts in perversely stating 'the Appellant has not furnished any material in support of his claim', thereby further erred in passing order without considering submissions made;*
6. *The Learned CIT(A), in upholding the order of the Learned AO, has erred in not appreciating that the provisions of section 194C(6) and section 194C(7) are independent in nature;*
7. *The Learned CIT(A) has erred in not appreciating the Appellant is not required to deduct TDS as per provisions of section.194C(6) of the Act;*
8. *For that the Learned CIT(A) has failed to consider the observation of following rulings, wherein it has been categorically observed that the liability to deduct tax ceases the moment the assessee obtains PAN of the contractors. That liability cannot be considered to be reinstated on a subsequent non compliance with the provision of section 194C(7):*

8.1. *Soma Rani Ghosh vs. DCIT [IT APPEAL NO. 1420 (KOL.) OF 2015 [ASSESSMENT YEAR 2012-13]];*

8.2. *ITO vs. Manikgarh Cement (Division of Textiles 86 Industries) I.T.A. Nos. 316 to 319/Nag/2015 [Assessment Years : 2012-13 to 2015-16.],*

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8.3. *I.T.O.(T.D.S.) vs. M/S Raymond Uco Denim Pvt. Ltd. (Fabric Division) I.T.A. Nos.351 86 352/Nag/2015 [Assessment Years : 2013-14 86 201415]*

8.4. *ACIT, Circle-I v. Mr. Mohammed Suhail in ITA no: 1536/Hyd/2014.*

(Total tax effect: Rs. 6,36,92,780/)

On the basis of above grounds and other grounds which may be urged at the time of hearing with the consent of the Honourable Tribunal, it is prayed that the order passed under section 250, to the extent it is against the Appellant, be quashed and relief sought be granted.”

3. Brief facts of the case are that the assessee is a co-operative society engaged in purchase and sale of milk and milk products and filed the Return of income electronically on 29/09/2013 with total income of Rs.1,00,99,240/- and the Return of income was processed u/s 143(1). Subsequently, the case was selected for scrutiny and notice u/s 143(2) of the Act was issued. In compliance, the learned AR appeared from time to time and filed details. On verification of financial statements, it was found that the assessee has debited Rs.15,25,51,536/- under the head 'processing and manufacturing expenses'. In particular, AO found that the assessee has filed the details by letter dated 29/3/2016 in respect of non-applicability of provisions of section 194C. AO was not satisfied with the explanation and found that the assessee has violated the provisions of section 194C(6) as no TDS was deducted and the

same was disallowed and assessed the total income of Rs.16,26,50,780/- vide order dated 31/3/2016.

4. Aggrieved by the order, assessee filed an appeal with the CIT(A) where the CIT(A) has confirmed the addition and dismissed the assessee's appeal.

5. Aggrieved by the order, the assessee filed an appeal with the Tribunal. At the time of hearing, learned AR submitted that the CIT(A) has not considered the submissions made by the assessee and confirmed the application of the provisions of section 40(a)(ia) of the Act. The assessee filed written submissions explaining the reasons on non-applicability of TDS provisions and statement of contractor name, PAN no and works with judicial decisions and prayed for allowing the appeal. Contra, learned DR relied on the CIT(A) order and prayed for dismissal of the appeal.

6. We heard the rival submissions and perused the material on record. The only disputed issue envisaged by the learned AR on disallowance of freight charges for non-deduction of tax u/s 194C of the Act. Learned AR's contention that the CIT(A) has not considered the submissions of the assessee and passed non-speaking order. On perusal of the material filed before the Tribunal, we found that these submissions were not dealt in the

appellate proceedings. Therefore, in the interest of substantial justice, we restore the entire disputed issue to the file of the CIT(A) to adjudicate afresh and pass a speaking and reasoned order after providing adequate opportunity of hearing to the assessee and allow the grounds of appeal for statistical purposes.

7. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 14th June, 2019.

sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Place : Bengaluru
Date : 14/06/2019
srinivasulu, sps

Copy to :

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

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore