

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

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

ITA No.3435/Bang/2018
Assessment year : 2010-11

Sri Rahim Sab Hiriyyur Hyder Ali, Prop : M/s AFRA Transport, Mirza Extn., Hiriyyur, Chitradurga Dist. PAN – ACKPH 4805 L	Vs.	The Income-tax Officer, Ward-1, Chitradurga.
APPELLANT		RESPONDENT

Appellant by	:	Shri V Srinivasan, Advocate
Respondent by	:	Shri Karuppusamy, Addl. CIT

Date of hearing	:	17.12.2019
Date of Pronouncement	:	.12.2019

ORDER

ORDER

Per B.R Baskaran, Accountant Member :

The appeal filed by the assessee is directed against the order dated 25/4/2016 passed by Id CIT(A), Davangere and it relates to asst. year 2010-11.

2. The assessee has raised following issues in this appeal.

- a) Validity of reopening of asst. u/s 148 of the Act.
- b) Disallowance made u/s 40(a)(ia) of the Act.

3. The assessee is a transport contractor. He filed his return of income for the year under consideration declaring total income of Rs.1,90,900/-. The assessment was completed u/s 143(3) of the Act determining the total income at Rs.4,88,626/-. Subsequently the AO reopened the asst. u/s 148 of the Act on the basis of internal audit objections, wherein it was pointed out that the assessee has not deducted tax at source from transport payments and hence addition u/s 40(a)(ia) of the Act is warranted.

3. Before the AO the assessee submitted that the provisions of sec. 194C shall not apply to him, since in the immediately preceding year (i.e., in FY 2008-09 relevant to AY 2009-10), the assessee was not liable to get his accounts audited u/s 44AB of the Act. The AO noticed that the assessee declared turnover of Rs.1.51 crore in FY 2007-08 relevant to asst. year 2008-09. Accordingly he took the view that the assessee is liable to deduct tax at source u/s 194C of the Act in the year under consideration. Since the assessee has not deducted tax at source from transport payments, the AO disallowed a sum of Rs.91.32 lakhs to the income of the assessee. The Id CIT(A) also confirmed the same.

4. We have heard the parties and perused the record. There is no dispute with regard to the fact that the assessee is an individual. The provisions of sec.194C shall not apply to individual except in a situation mentioned in sec.194C of the Act. We notice that the

provision of sec.194C has undergone change w.e.f 1/10/2009 and it will apply to individual, if he falls under the category of “specified individual”. As per explanations (i) of amended Sec.194C, the “specified person” shall mean -;

(i) *Any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person, -*

A) *Does not fall under any of the preceding sub-clauses; and*

B) *Is liable to audit of accounts under clause (a) or clause (b) of section 44AB **during the financial year immediately preceding the financial year** in which such sum is credited or paid to the account of the contractor;*

5. Prior to amendment, the proviso to section 194C (2) was applicable and the same reads as under:-

*“Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year **immediately preceding the financial year in which such sum is credited or paid to the account of the sub-contractor,** shall be liable to deduct income-tax under this sub-section.”*

6. A reading of amended provisions as well as pre-amended provisions would show that the provision of 194C shall apply in respect of an "individual" in a particular year, only if he is liable to get his accounts audited u/s 44AB of the Act for the financial year immediately preceding that year in question.

7. Before the AO the assessee submitted that in the immediately preceding year, i.e in AY 2009-10 (F.Y 2008-09) his accounts are not liable to be audited u/s 44AB of the Act. In support of the same the assessee has filed a letter dated 28/3/2016 before AO, which reads as under:-

"With respect to above cited subject, I submit as under:

As my gross receipts for the previous year 2008-09 (Assessment year 2009-10) is not liable for tax audit U/s 44AB of Income Tax Act,1961. Further, For Financial Year 2008-09, total credits in my State Bank of Mysore CA No. 64021877345 account is Rs.8,00,502/- and The Karnataka Bank SB A/c No. 23860 account is Rs.7,97,169/-. Total amounts Rs.15,97.671/- for the financial year 2008-09. Hence, I have not comes under the purview of Section 44AB of Income Tax Act,1961 for the Assessment Year 2009-10. Copy of the bank statements is enclosed for your reference.

Further, for the financial year 2009-10 (Assessment year 2010-11) liable for tax audit U/s 44AB of Income Tax Act, 1961. However. As per 194C explanation (I) (B) liable to audit of accounts under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor:

Since, I am not comes under the purview of Section 44AB of Income Tax Act, 1961 for the Assessment Year 2009-10. Hence. I am not liable to deduct the tax at source for the financial year 2009-10 (Assessment Year 2010-11).”

8. However, the AO has taken the view that since the assessee was liable to get his accounts audited u/s 44AB of the Act in the asst. year 2008-09 (Fin. Year 2007-08), i.e., the year preceding the immediately preceding year, the assessee would be liable for deduction of tax at source from transport payment made during the year under consideration. We find that the above said interpretation made by AO and confirmed by ld CIT(A) is not in accordance with the provisions of sec. 194A of the Act.

9. However, we noticed that the assessee has not filed his return of income for asst. year 2009-10 and he has claimed that the transport receipts to be Rs.15.97 lakhs for financial year relevant to the asst. year 2009-10 on the basis of amounts credited to his

bank accounts. When a specific query was asked by the Bench as to whether the assessee was maintaining the books of accounts, even though the assessee has not filed a return of income, the ld AR submitted that, according to the information given to him, the assessee has not maintained the books of account. However, we noticed from the paper book filed by the assessee that the assessee has furnished financial statements viz. balance sheet, profits and loss account, capital account etc., along with the return filed for the year under consideration. Hence the possibility is that the assessee could have maintained books of account in the immediately preceding financial year also. Accordingly the Bench expressed the view that the matter may be restored to the file of the AO for limited purpose of examining as to whether the assessee has maintained books of account for asst. year 2009-10 and if so, whether the turnover of the assessee for that year did not exceed limit prescribed u/s 44AB of the Act in that year. The ld AR also agreed to the same.

10. We heard the ld DR and perused the record.

11. We have already held that the assessee shall not be liable for deducting tax at source from transport payment, if his accounts of the immediately preceding financial year i.e FY 2008-09 (A.Y 2009-10) are not be liable for audit u/s 44AB of the Act. In the letter furnished by the assessee before the AO, the assessee has claimed that he was not liable for getting his accounts audited u/s 44AB of the Act in the immediately preceding financial year.

12. In view of the discussion made Supra, for the limited purpose of examining the above said claim of the assessee, we restore this issue to the file of the AO. If the assessee has maintained books of account for the immediately preceding year and he was not liable for getting his accounts audited u/s 44AB of the Act, then the impugned disallowance is not warranted. If the AO was satisfied that the assessee has not maintained books of accounts, then the claim of the assessee needs to be accepted that the provisions of sec.44AB shall not apply in the immediately preceding year. In that case also, the impugned disallowance is not warranted. If the assessee has maintained books of accounts for the immediately preceding year and the same is liable to audit u/s 44AB of the Act, then the impugned disallowance needs to be sustained.

13. Accordingly we direct the AO to examine all these aspects in the light of discussions made supra, after affording adequate opportunity of being heard. The order passed by the Id CIT(A) on this issue is accordingly set aside.

14. With regard to issue relating to validity of reopening of assessment, the assessee did not furnish the copy of reasons recorded by the AO. In the absence of the same we are unable to express any view on this issue.

15. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on **December, 2019.**

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,

Dated, the **December, 2019.**

/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar ITAT, Bangalore