IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.130/ALLD/2019
Assessment Year: 2009-10

Shakuntala Kushwaha 105/54, Kareli Allahabad	v.	Income Tax Officer 2(3) Allahabad
TAN/PAN:AODPK2329D		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Godbole, C.A.		
Respondent by:	Shri S. K. Madhuk, CIT (DR)		
Date of hearing:	12	02	2020
Date of pronouncement:	13	02	2020

O R D E R

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the ld. CIT(A), Allahabad, dated 19/9/2019, for assessment year 2009-10.

2. The sole issue involved in this appeal relates to the addition of Rs.9,32,378/- made by the Assessing Officer under section 40(a)(ia) of the Act and confirmed by the ld. CIT(A).

3. The assessee is an individual and proprietor of M/s Deepak Sales Agency and was engaged in wholesale business of PVC pipes and stationery item, for which regular books of accounts were maintained by the assessee. The assessee filed return of income on 19/02/2009 declaring an income of Rs.2,01,374/-. The Assessing Officer completed the assessment on an income of Rs.3,79,930/-, vide order dated 22/11/2011, passed under section 143(3) of the Income Tax Act.

4. Thereafter, proceedings under section 263 of the Act were initiated, on the ground that on the freight paid during the year, amounting to Rs.9,32,378/- (8,09,896/- + 1,71,216/-), TDS was not deducted and the same should be disallowed under section 40(a)(ia) of the Act. In this regard, the assessee filed the detailed submission stating that TDS is not attracted, as the freight payments are not contractual in nature and moreover the transporter have their PAN number and the entire freight payments were paid during the year, hence the provisions of section 40(a)(ia) of the Act is not applicable. The ld. CIT, after considering the entire facts and evidence placed on record, set aside the order of the Assessing Officer and issued the following direction to the Assessing Officer:

> *"In this view of the matter, I hereby set aside the said assessment order of Assessing Officer with the direction that he would verity as to on what expenditure TDS provisions were applicable and on what amount TDS was not made. He would also verify as to what amounts (on which TDS was liable to be deducted) were still payable at the end of F. Y. and only those amount shall be disallowed under section 40(a)(ia) of the IT Act."*

5. During the second round of proceedings before the Assessing Officer, the assessee had filed necessary details before the Assessing Officer, who, after considering the details furnished by the assessee, passed an order under section 263/143(3) of the Act, disallowing the freight and cartage expenses claimed by the assessee.

6. Before the ld. CIT(A), the submission of the assessee was that there is no doubt that the assessee made freight payment to two transporters, namely Thangagaji Golden Transport Company and Delhi Rajasthan Company, amounting to Rs.8,09,896/- and

Rs.1,71,216/-, totaling to Rs.9,32,378/-; that during the assessment proceedings, the assessee had furnished the details of transporters, namely Thangagaji Golden Transporter and Shiv Shakti Associates, their PAN number, service tax registration number, confirmation from the transporters that they are income tax assessee, having PAN number; that there was no contractual agreement between the assessee and the transporters; and that moreover, the assessee had made payment as per bills issued by the suppliers and since there was no expressed or implied contract between the assessee and the transporters, the assessee was not liable to deduct TDS under section 194C of the Act. After considering the submissions of the assessee and the material available on record, the ld. CIT(A) confirmed the order of the Assessing Officer.

7. As contended before the authorities below, the ld. Counsel for the assessee has contended before us that since there was no contractual agreement between the assessee and the transporters, disallowance under section 40(a)(ia) of the Act is against the law. He has further submitted that complete details, such as, PAN number, service tax registration number, confirmation from the transporters that they are income tax assessees, were furnished before the authorities below. He has further submitted that the said transporters have duly disclosed the receipts in their respective returns and paid taxes. Therefore, question of any disallowance in the hands of the assessee does not arise. The ld. Counsel for the assessee, placing reliance on the judgment of the Hon'ble Apex Court in the case of 'Hindustan Coca Cola Beverage P. Ltd. vs. CIT', 293 ITR 226, submitted that once the transporters have deposited the tax in accordance with the provisions of the Act, the assessee may not be held to be an assessee in default in respect of such tax.

8. The ld. D.R., on the other hand, has placed reliance on the orders of the authorities below.

9. Heard. Section 40(a)(ia) says that 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 labour 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 of the Act. But, in the present case, as contended by the assessee, there was no contractual agreement between the assessee and the transporters, therefore, the case of the assessee is not covered under section 40(a)(ia) of the Act.

10. Section 201 of the Act provides that where any person, including the principal officer of a company or an employer, who is required to deduct tax at source on any sum, in accordance with the provisions of the Act, does not deduct or does not pay such tax or fails to pay such tax, after making the deduction, then such person shall be deemed to be an assessee in default in respect of such tax. Therefore, section 201 of the Act is applicable in the case of the assessee.

11. We do agree that the freight and cartage charges paid to the transporters are subject to deduction of tax at source, but since the transporters are income tax assessees and once they have shown the said income in their income-tax returns, the Assessing Officer cannot create demand on the assessee.

12. Our aforesaid view is duly supported by the decision of the Hon'ble Supreme Court in 'Hindustan Coca Cola Beverages

Pvt. Ltd. vs. CIT' (supra). We, therefore, in the interest of justice to both the parties, set aside the order of the ld. CIT(A) and restore this issue to the file of the Assessing Officer with a direction that the Assessing Officer shall re-adjudicate this issue and verify from the evidence filed by the assessee, whether transporters have shown the said income in their income-tax returns and duly paid tax thereon. In case the Assessing Officer find that the transporters have duly shown the said income in their income-tax returns and paid tax thereon, the demand raised shall get deleted, as it relates to section 201(1) of the Act

13. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open Court on 13/02/2020.

Sd/-	Sd/-
[T. S. KAPOOR]	[A. D. JAIN]
ACCOUNTANT MEMBER	VICE PRESIDENT

DATED:13/02/2020
JJ:1202

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar