

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“ C ” BENCH, BENGALURU**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA Nos.3412 & 3413/Bang/2018  
(Assessment Years : 2008-09)

Sri Pethan Namasivayam Murughan & Smt. Thangaraju Logambal, L/H of  Late Sri Thangaraj Pethan, Prop: JSR Logistics, Authorised Rep. Raghavendra K Busetty, S/o B Krishnamurthy, No.5,Ganesh Colony, 1 <sup>st</sup> Main ,SN Pet, Ballari-583 101.	Vs.	The ACIT, Circle-1, Aayakar Bhavan, Staff Road, Fort, Ballari-583 102
<b>PAN No.AODPP1802L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Siva Prasad Reddy, IRS (Retd.)
<b>Respondent by :</b>	Smt. R.Premi, JCIT

<b>Date of Hearing</b>	04-03-2020
<b>Date of Pronouncement</b>	06-03-2020

**ORDER**

**PER PRADIP KUMAR KEDIA : AM**

The captioned appeals relate to quantum assessment and consequential penalty levied under sec.271(1)( c) of the IT Act, 1961 (The Act) emanating from the quantum assessment.

2. We shall first deal in **ITA No.1312/Bang/2018** in respect of quantum assessment concerning assessment year 2008-09 in question. The captioned appeal arising from the order of the CIT(A) dated 24-09-2018 in relation to assessment order passed by the AO under sec.143(3) of the Act dated 27-12-2010 concerning assessment year 2008-09.

3. While the assessee has raised several grounds, the assessee in essence has sought to challenge the action of the revenue authorities on two counts namely (i) in making disallowance of Rs.58,11,275/- by resorting to provisions of sec.40(a)(ia) of the Act and (ii) addition of Rs.76,90,966/- alleging under-reporting of receipts/sales for the purpose of computation of taxable income.

4. When the matter was called for hearing before the Tribunal, the Id. AR for the assessee submitted at the outset that the assessee is a transport contractor engaged in the business of transportation of iron ore and coal etc., The assessee has *inter-alia* made transport payments aggregating to Rs.24.01 Crores. It was submitted that the AO has disputed a meager amount of Rs.58.11 lakhs in the context of the case. The AO has alleged that assessee has violated the provisions of sec.194C of the Act and has failed to deduct TDS on transport payment to the tune of Rs.58,11,275/-. The AO thus, invoked the provisions of sec.40(a)(ia) and added the aforesaid amount to the total income of the assessee. In these background facts, the Id.AR referred to para-3 of the assessment order showing tabulation of transport payment of Rs.58,11,275/- and submitted that an amount of Rs.21,50,000/- relates to one 'Saravanan,P.N.'. It was submitted that the aforesaid amount of Rs.21,50,000/- does not concern any transport payment but is an ordinary transaction where the assessee had received Rs.21,50,000/- from this party and also re-paid to the extent of Rs.21.00 lakhs during the year through banking channel. Consequently, an ultimate outstanding amount of Rs.50,000/- was shown in

the balance sheet. It was contended that the aforesaid amount of Rs.21,50,00/- does not form part of the expenses claimed towards transport charges and therefore, disallowance under sec.40(a)(ia) is uncalled for. It was next submitted that the remaining amount represents very small payments towards transportation in the context of magnitude and volume of transport business of the assessee. The occasional cash payments for hiring individual trucks on spot basis etc. ,at times, demands payment in cash. It was submitted that the payment has been made below the benchmark limit of Rs.20,000/- on each occasion and therefore, the provisions of sec.194C is not attracted and consequently, disallowance made under sec.40(a)(ia) of the Act is without any basis.

6. As regards issue no.2 concerning addition of Rs.76,90,966/- made on account of difference between receipts declared in the return of income by the assessee and receipts found credited in favour of the assessee as per form no.16A, it was contended that the AO as well as the CIT(A) has misdirected themselves on facts in holding suppression of turnover by the assessee. It was pointed out that actual transport receipts accounted and disclosed in the return of income were higher as compared to transport receipts shown in form no.16A. It was further contended that reconciliation statement towards difference in accounting of receipts was provided to the lower authorities but proper opportunity was not given to explain the cause for such difference. It was also submitted that the financial accounts were maintained on mercantile basis and accordingly, invoices are raised prior to payments. Form no.16A for TDS payments are however, provided to the assessee subsequently. The differential income ultimately gets reported in the later year on its accrual and there is no suppression of receipts *per se* when seen holistically.

7. The Id. DR for the revenue on the other hand supported the order of the lower authorities. The Id. DR also submitted that the issue involved are factual in nature and thus cannot be decided in favour of the assessee without its proper appreciations by the AO.

8. We have carefully considered the rival submissions and perused the orders of the CIT(A) and the AO. As regards the disallowance under sec.40(a)(ia) of the Act for non-deduction of TDS on transport payments, the assessee has disputed both the quantum covered by the AO i.e Rs.58,11,275/- as well as applicability of S. 194C in the facts of the case. It is contended that a part of the disallowance is not in the nature of transport payment. It is also contended on behalf the assessee that transport payments in question have been paid below threshold limit specified under sec.194C of the Act in cash does not call for any disallowance. On appreciation of facts placed before us, the case of the assessee cannot be brushed aside on either count. The assessee has produced ledger account in relation to the amount attributable to Saravanan, P.N. amounting to Rs.21,50,000/- where the repayment of Rs.21.00 lakhs was shown to be paid through banking channel. Likewise, the remaining amount paid in cash is claimed to be below stipulated limit of Rs.20,000/- These facts, in our opinion, would call for proper verification and appreciation of facts at the end of the AO. We thus, restore the issue back to the file of the AO for *denovo* consideration of the facts concerning the issue. The AO shall decide the issue afresh after giving proper opportunity to the assessee.

9. We now advert to the second issue alleged under-reporting on sales. The assessee has submitted certain details showing reconciliation and explanation towards difference in receipts between books of accounts and TDS form-16. It was simultaneously claimed by the assessee that the receipt difference occurred has been duly accounted for in one year or in other. The

reconciliation between the books and form no.16A as well as their reporting in another year would, in our opinion, call for some verification at the end of the AO. We thus set aside the order of the CIT(A) on this score too and restore the issue back to the file of the AO fresh determination in accordance with law after giving proper opportunity to the assessee.

10. Issue no.2 is also allowed for statistical purpose.

11. In the result, the appeal of the assessee in ITA No.3412/Bang/2018 is allowed for statistical purpose.

12. Appeal in **ITA No.3413/Bang/2018** (for assessment year 2008-09) concerns penalty under sec.271(1)(c) of the Act imposed by the AO as a result of quantum addition discussed in ITA No.3412/Bang/2018(supra). Since the quantum order giving rise to the cause of action for imposition of penalty under sec.271(1)(c) of the Act has been set aside to the file of the AO for re-adjudication, the basis of imposition of penalty under sec. 271(1)(c) of the Act does not survive at present.

13. On due consideration of facts and circumstances of the case, we find that sub-clause (iii) of sec.271(1)(c) of the Act provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable by him which shall not be less than but shall not exceed 3 times of the amount of tax sought to be evaded by reason of concealment of income or furnishing of inaccurate particulars of income. In other words, the quantum of penalty, at the first place, is dependent upon the additions made to the returned income of the assessee. Up to and until the issue regarding determination of taxable income is finalized, penalty under sec.271(1)(c) of the Act cannot be imposed upon the assessee. The

determination of taxable income of the assessee is presently sub-judice before the AO by virtue of captioned order of the ITAT in ITA No.3412/Bang/2018 in quantum proceedings. Thus, after the adjudication of the issue of quantum on merits, it shall be open to the AO to initiate the penalty proceedings afresh on the issues involved in accordance with law. It shall be open for the assessee to make all legal and factual submissions before the AO in this regard.

14. In the result, the appeal of the assessee is allowed for statistical purpose

**This Order pronounced in Open Court on 06-03-2020**

Sd/-  
(N.V.VASUDEVAN)  
VICE PRESIDENT  
Place: Bengaluru  
Dated: 06-03-2020  
\*am

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Copy of Order Forwarded to:-

1. Revenue
2. Assessee
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Bengaluru.
6. Guard file.

By order

Asst. Registrar

