

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1032/MUM/2019 (A.Y: 2011-12)

M.S. Hipack 208, Pragati Industrial Estate N.M. Joshi Marg, Mumbai – 400 011 PAN: AADFH6242C	v.	ACIT Income Tax Officer – 15(1)(2) Matru Mandir, Tardev Road Mumbai – 400 007
(Appellant)		(Respondent)

Assessee by : **Shri D.J. Shukla**
Department by : **Shri R. Bhoopathi**

Date of Hearing : **10.02.2020**
Date of Pronouncement : **29.09.2020**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-48, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 05.11.2018 for the A.Y. 2011-12.
2. The only issue in the appeal of the assessee is that Ld.CIT(A) erred in confirming the disallowance made by the Assessing Officer in respect of transportation expenses for non-deduction of tax at source.

3. Briefly stated the facts are that, the Assessing Officer while completing the assessment noticed that assessee incurred transportation charges and not deducted tax at source. Assessing Officer noticed that assessee has not complied with the requirement of filing Form-26Q, accordingly, disallowance was made by the Assessing Officer. On appeal the Ld.CIT(A) sustained the disallowance as he was not convinced with the submissions made by the assessee.

4. Ld. Counsel for the assessee before us submitted that the assessee has complied with the provisions of section 194C(6) of the Act as it had filed revised and corrected Form-26Q giving the details of PAN details of transport contractors and not deducted TDS complying with the provisions of section 194C(6) of the Act. Learned Counsel for the assessee submitted that as per the provisions of section 194C(6) of the Act the only requirement for non-deduction of tax at source is that the transport contractors has to furnish their PAN details and the assessee has duly obtained PAN details of the contractors and incorporated in corrected Form-26Q. Therefore, it is submitted that there is no justification in making disallowance.

5. Ld. DR vehemently supported the orders of the authorities below.

6. We have heard the rival submissions, perused the orders of the authorities below. In view of the submissions of the assessee that it had corrected Form-26Q by furnishing the PAN details of the transport contractors and complied with the provisions of section 196C(6) of the Act, we are of the view that this matter has to be examined by the Assessing Officer in the light of the submissions of the assessee and in the interest of the justice, we restore this issue to the file of the Assessing Officer for *denovo* adjudication. The Assessing Officer shall take note of the fact of assessee filing the corrected Form-26Q and the assessee is at liberty to file all necessary information before the Assessing Officer. Thus, we restore the issue to the file of the Assessing Officer who shall complete the assessment in accordance with law after providing adequate opportunity of being heard to the assessee.

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

8. Before parting, we noticed that this appeal was heard on 10.02.2020 and the pronouncement is delayed due to lockdown in view of COVID-19 pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound

periods specified by Hon'ble High Court by removing the period under lockdown. This aspect was also dealt with in detail by the Mumbai Bench of the Tribunal in case of DCIT v. JSW Steel Vide order dated 14.05.2020 in ITA.No. 6264/Mum/2018.

Order pronounced on 29.09.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai / Dated 29/09/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum