

**आयकर अपीलीय अधिकरण, "डी" न्याय पीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI**  
**श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष**  
**BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT**  
**AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.305/Chny/2020

(निर्धारणवर्ष / Assessment Year: 2012-13)

The Assistant Commissioner of Income Tax, Circle -1, Vellore.	Vs	M/s. Kramski Stamping & Molding India Pvt.Ltd Eraiyankadu Village, Anaicut Block, Via Vrinchipuram, Vellore-632 104.
		PAN:AADCK3119L
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. AR.V.Sreenivasan , Addl.CIT
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. B.Ramakrishnan, FCA

सुनवाई की तारीख/Date of hearing	:	27.10.2020
घोषणा की तारीख /Date of Pronouncement	:	27.10.2020

**आदेश / ORDER**

**PER G.MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the Revenue is directed against the order of the learned Commissioner of Income Tax (Appeals)-13, Chennai dated 05.11.2019 and it pertains to assessment year 2012-13.

2. The Revenue has raised the following grounds of appeal:-

“1. The order of The Commissioner of Income tax (Appeals) is contrary to facts and circumstances of the case.

2. The learned CIT(A) ought to have upheld the disallowance u/s.40a(ia) for the A.Y 2012-13 as the assessee did not submit any confirmation from the payee to the effect that returns of income including receipts from the assessee was filed u/s.139(1) of the Act by the payee.

3. The learned CIT(A) erred in allowing the appeal for the

*A.Y 2012-13 of the assessee by relying on certificate issued by the payee for the A.Y 2013-14.”*

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading in stamping and molding components filed its return of income for the assessment year 2012-13 on 30.09.2012 declaring loss of ₹ 4,42,45,209/-. The case was taken up for scrutiny assessment and during the course of assessment proceedings, the Assessing Officer noticed that assessee has paid an amount of ₹ 2,76,67,052/- to M/s.Spectronic Plating Pvt. Ltd., however, not deducted TDS u/s.194C of the Income Tax Act (hereinafter referred to as “the Act”) and hence, called upon the assessee to explain as to why expenditure incurred towards payment made to M/s.Spectronic Plating Pvt. Ltd., cannot be disallowed u/s.40a(ia) of the Act for non-deduction of TDS u/s.194C of the Act. In response, the assessee submitted that amount paid to M/s.Spectronic Plating Pvt. Ltd., does not come under the provisions of section 194C of the Act, because the payment made to the party is not in the nature of job work charges but it is in the nature of sales which attracts CST @ 2%, therefore no TDS is applicable on said payment. The Assessing Officer was not convinced with the explanation of the assessee and according to him, the amount paid to M/s.Spectronic

Plating Pvt. Ltd., is nothing but job work charges paid for gold plating done on the materials supplied by the assessee. Although the invoices raised by the assessee includes CST at 2%, but the nature of payment is very much within the definition of job work charges as defined u/s.194C. Accordingly, the assessee ought to have deducted TDS as per section 194C of the Act. Since the assessee has failed to deduct TDS, he has disallowed the total payment made M/s.Spectronic Plating Pvt. Ltd., u/s.40a(ia) of the Act for non-deduction of TDS as per provisions of section 194C of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the CIT(A), the assessee has challenged the findings of the Assessing Officer in coming to the conclusion that amount paid to M/s.Spectronic Plating Pvt. Ltd is job work which comes under the definition of job work as defined under section 194C of the Act in the light of copies of invoices issued by the supplier and argued that M/s.Spectronic Plating Pvt. Ltd. Purchases gold plates directly from supplier and makes value addition and then sell goods to the assessee charging central sales tax and thus, amounts paid for purchase

cannot be treated as contract payment which is subjected to provisions of TDS u/s. 194C of the Act. Further, the assessee has also made alternative submission that certificate furnished by the Chartered Accountant of the supplier proves that payee has included the amount received from the assessee and paid necessary taxes and hence, once payee has paid tax on the amount received from the assessee, the requirement of disallowance u/s.40a(ia) of the Act does not arise. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of Hindustan Coco cola Beverage Vs. CIT (293 ITR 226) and the decision of Hon'ble Delhi High Court in the case of CIT Vs. Ansal Land Mark Township P.Ltd. vide its order dated 26.08.2015.

5. The learned CIT(A) after considering the submissions of assessee and also taken support from the decisions of Hon'ble Supreme Court in the case of Hindustan Coco cola Beverage Vs. CIT(supra) and the decision of Hon'ble Delhi High Court in the case of CIT Vs. Ansal Land Mark Township P.Ltd.(supra) has deleted the additions made towards disallowance of amount paid to M/s.Spectronic Plating Pvt. Ltd. under section 40a(ia) of the Act, for non-deduction of TDS under section 194C of the Act, by holding

that impugned payment does not come under the purview of the provisions of section 194C of the Act and consequently, the assessee need not to deduct TDS. Further, when the impugned payment does not come under the purview of TDS provisions, then no disallowance could be made u/s.40a(ia) of the Act. The learned CIT(A) further noted that the assessee has also proved the fact that payee has included the impugned amounts in their income tax returns and paid necessary taxes and hence, once particular receipt is taxed in the hands of payee, then disallowance u/s. 40a(ia) cannot be made for non-deduction of TDS u/s.194C of the Act. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

6. The learned DR submitted that the learned CIT(A) ought to have upheld the disallowances made by the Assessing Officer u/s.40a(ia) of the Act, as the assessee did not submit any confirmation from the payee to the effect that return of income included receipts from the assessee was filed u/s.139(1) of the Act. The learned DR further submitted that the CIT(A) has erred in allowing the appeal of the assessee on the basis of certificate issued by the payee for the assessment year 2013-14 without

appreciating the fact that payment relates to assessment year 2012-13, whereas the certificate issued by the assessee pertains to assessment year 2013-14.

7. The learned A.R., on the other hand, strongly supporting the order the learned CIT(A) submitted that there is no error in the findings recorded by the learned CIT(A) in the light of various evidences filed by the assessee including bills for supply of materials, certificate of Chartered Accountant of assessee certifying the credit of amount received from the assessee in the hands of payee and consequent payment of tax, has rightly deleted the additions made towards disallowance of payment made to M/s.Spectronic Plating Pvt. Ltd. on the ground that the said payment does not come under the definition of job work as defined under section 194C of the Act, consequently, no disallowance could be made u/s.40a(ia) of the Act for non-deduction of tax at source. The learned AR for the assessee further referring to the decision of Hon'ble Supreme Court in the case of Hindustan Coco cola Beverage and the decision of Hon'ble Delhi High Court in the case of CIT Vs. Ansal Land Mark Township P.Ltd.(supra) submitted that once payee included the amount received from payer and paid

consequent taxes, then no disallowance could be made u/s.40a(ia) of the Act for non-deduction of tax at source on said payment.

8. We have heard both parties and perused the materials on record along with the case laws cited by the assessee. We find that the CIT(A) has recorded categorical finding to the effect that gold plating done by the supplier M/s.Spectronic Plating Pvt. Ltd., would not come within the mischief of section 194C of the Act, because the payment was in the nature of purchase of materials which attracts central sales tax. We further noted that learned CIT(A) has also recorded categorical findings in the light of the decision of the Hon'ble Supreme Court in the case of M/s. Hindustan Coco cola Beverage (supra) that when the payee has included the amount received from the assessee in its return of income and also paid taxes on the said receipts, then there was no question of making any addition u/s. 40a(ia) of the Act for failure to deduct TDS u/s.194C of the Act. The learned CIT(A) has also taken support from the decision of Hon'ble Delhi High Court in the case of M/s.Ansal Land Mark Township P.Ltd. (supra) that as long as the payee filed return of income disclosing payment received from the payer and in which the income earned by it is embedded and

also paid tax on such income, the assessee would not be attracted as person in default, consequently no disallowance can be made u/s.40a(ia) of the Act for non-deduction of TDS under section 194C of the Act.

9. As regards, the argument of the Revenue in ground no.3, we find that payments related to assessment year 2012-13 and the learned CIT(A) has passed rectification order rectifying the mistakes in the order dated 05.11.2019, insofar as assessment year is concerned stated that in the appellate order inadvertently assessment year 2013-14 has been mentioned instead of assessment year 2012-13. From the above, it is very clear that the learned CIT(A) has examined the case in the light of the certificate issued by the Chartered Accountant of the assessee certifying the payments included in the income-tax return filed by recipient. Therefore, we are of the considered view that there is no error in the findings recorded by the learned CIT(A) to delete the addition made by the Assessing Officer towards disallowance of expenditure u/s.40a(ia) of the Act for the failure to deduct TDS u/s.194C of the Act. Hence, we uphold the findings of the learned CIT(A) and dismissed the appeal filed by the Revenue.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 27<sup>th</sup> October, 2020

Sd/-  
(महावीर सिंह)  
(Mahavir Singh)  
उपाध्यक्ष / Vice-President

Sd/-  
(जी.मंजुनाथ )  
(G. Manjunatha )  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 27<sup>th</sup> October, 2020

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.