

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1414/Del/2015
(Assessment Year: 2007-08)**

PSLR Engineers Pvt. Ltd. C/o. MnM Legal, D-184, Sector-47 Noida Uttar Pradesh, Pin-201304	Vs.	ITO Ward-14(1) New Delhi
PAN No: AADCP2324G		
APPELLANT		RESPONDENT

Revenue By : Sh. Atique Ahmed, Sr. DR
Assessee By : Sh. Tapas Mishra, Adv.

Per Anadee Nath Misshra, AM

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)- 7 [“Ld. CIT(A)”, for short], dated 23.12.2014 for Assessment Year 2007-08. Grounds taken in this appeal of Assessee are as under:

"1. That on the facts and in the circumstances of the case, the CIT(A) erred on facts and in law in confirming the disallowance of Rs. 49,88,608/- on account of alleged failure to deduct tax on the payment of Rs. 48,38,330/- made to sub-contractor and Rs. 1,50,278/- for jobwork.

2. That on the facts and in the circumstances of the case, the CIT(A) erred on facts and in law in not appreciating that the said sum of Rs. 48,38,330/- included Rs. 22,98,330 being payments made to various vendors for purchase of material on which there was no need for deduction of tax at source.

3. That on the facts and in the circumstances of the case, the CIT(A) erred on facts and in law in not appreciating the fact that the contractee had paid, after deducting tax, Rs. 25,44,000/- to subcontractors directly, and hence the appellant was not responsible under section-194C of the Act for deduction of tax.

3.1 That on the facts and in the circumstances of the case, the CIT(A) erred on facts and in law in not appreciating that the appellant, not being the person responsible for paying the sub-contractors and not being liable under section 194C of the Act to deduct tax, could not be subjected to disallowance u/s 40(a)(ia) of the Act.

3.2 That on the facts and in the circumstances of the case, the CIT(A) on facts and in law in not appreciating that the contractee, M/s Meat Products of India Limited, a public sector undertaking, had confirmed having paid directly to the sub-contractors.

4. That on the facts and in the circumstances of the case, the CIT(A) erred on facts and in law in not appreciating that there was nothing on record that could justify disallowance of Rs. 1,50,278 to job workers and that the assessing officer had brought nothing on record to suggest that any tax was deductible (and not deducted) from the same.

The appellant craves leave to add to, alter, amend or vary from the aforesaid grounds of appeal at or before the time of hearing."

(B) The assessee is in the business of contractor of waste water treatment . The disputes in the present appeal before us pertain to disallowance amounting to Rs. 49,88,608 (which included Rs. 48,38,330/- being payments to sub-contractors and Rs. 1,50,278/- being job-work payments) made by the Assessing Officer ("AO" for short) under section 40(a)(ia) of Income Tax Act, 1961 ("IT Act" for short) on the ground that the assessee failed to deduct

tax at source. The failure of the assessee to deduct tax at source was reported by statutory auditor in the audit report. Relevant portion of assessment order is reproduced below :

"3. As in the past, the assessee company continues to engaged in the business of contractor of waste water treatment for Pvt. / Govt. Department. During the year under consideration the assessee company has declared income from Business only and no other income has been declared by the assessee company.

4. During the course of assessment proceedings it was observed that during the year Assessee Company has debited an amount of Rs. 66,06,324/- on account of "Other Project Expenses" under Direct Expenses. The assessee company was asked to furnish the details thereof along with Bills and details of TDS vide order sheet entry dated 14.12.2009. The AR of the assessee company furnished the details of Direct Expenses which is as under :

Cartage Paid	Rs. 4,290/-
Jobwork Paid	Rs. 1,50,278/-
Labour charges Paid	Rs. 86,560/-
Site Expenses	Rs.15,26,866/-
Sub-contractors	<u>Rs. 48,38,330/-</u>
Total	66,06,324/-

It was observed that the assessee company had not deducted tax on the payment of job-work and payment to sub-contractor thereby attracting the provisions contained in Section 40(a)(ia). According to this section, any interest, commission or brokerage, 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), 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 during the previous year, or in the subsequent year before the expiry of the time prescribed under sub section (1) of section 200, then the same will not be allowable in the P.Y. The Ld. Auditors of the company have reported this fact in their audit report. The assessee was asked to furnish details of TDS made/ deposit thereof, if any. Therefore, an amount of Rs. 1,50,278/- paid on account of Job-work and Rs. 48,38,330/- on account of payment made to subcontractor on which tax was deductible at source under Chapter XVII-B and such tax have not been deducted, are disallowed u/s 40(a)(ia). I am satisfied that the assessee company to conceal the taxable income and furnished inaccurate particulars of income, hence, is liable to penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961."

(C) The aforesaid disallowance of Rs. 49,88,608/- was confirmed by Ld. Commissioner of Income Tax (Appeals) ["Ld. CIT(A)", for short] vide her impugned appellate order dated 23.12.2014; holding as under :

"5. Ground No. 2 & 3 is in respect of addition of Rs. 49,88,608/-. The appellant was awarded a contract from M/s. Meat Product of India Ltd. for construction of effluent Treatment Plant in Kerala. The Appellant engaged two local sub-contractors M/s. Lee Builders and M/s. Power on Engineers for the execution of the contracts. The appellant claimed an amount of Rs.66,06,324/- as other projects expenses. The appellant stated that M/s. Meat Product of India Ltd. made payment directly to the sub-contractors. M/s. Lee Builders and M/s. Power on Engineers of Rs.25,40,000/- and deducted TDS. Further the appellant stated that he made purchases of contract material for Rs.22,98,330/-. The appellant is stating that the work was given to sub-contractors and he is showing Rs.48,38,330/- as payment made to sub-contractors. The appellant had also shown Rs.1,50,278/- as, other projects expenses on which no TDS was deducted and it was disallowed u/s 40(a)(ia).

5.2. The appellant has claimed payment made to sub-contractors at Rs.48,38,330/- as an expense. In view thereof TDS was to be done by the appellant. No tax has been deducted by the appellant on payment made to sub-contractors. The appellant was also required to deduct TDS on job work of Rs.1,50,278/- which was not done. The action of the AO in disallowing the amount of Rs.49,88,608/- is confirmed. The ground of appeal is ruled against the appellant."

(D) At the time of hearing before us, Ld. Counsel for the assessee submitted that the aforesaid amount of Rs. 48,38,330/- included payment of Rs. 25,40,000/- which was paid by the contractee directly to the sub-contractors, due to which there was no requirement for the assessee to deduct tax at source. He further submitted that the aforesaid amount of Rs. 48,38,330/- included Rs.22,98,330/- which was the payment made for purchase of contract material, and not for work; because of which the assessee was under no

requirement to deduct tax at source. In respect of the aforesaid amount of Rs. 1,50,278/- he submitted that it included smaller amounts each of which was either below the threshold limit of Rs. 20,000/- as provided u/s 194C(5) of IT Act or was payment made for purchase of materials for the project; due to which the assessee was not required to deduct tax at source. In view of the foregoing, he submitted that aforesaid disallowances totaling Rs. 49,88,608/- be deleted. The Learned Senior Departmental Representative ("Ld. Sr. DR", for short) relied on the orders of Ld. CIT(A) and AO.

(E) We have heard both sides. We have perused the materials on record. We find from the perusal of the assessment order of the AO that the submissions made before us have not been mentioned in the assessment order passed by AO. It is the assessee's case, vide letter dated 14.07.2014 addressed to Ld. CIT(A) that the AO did not make any inquiry into the break-up of expenses and unknown to the assessee, the assessee's authorized representative did not volunteer further information. Also, though these submissions have been mentioned in the impugned order of Ld. CIT(A); we find that the Ld. CIT(A) has not commented on it. We also find that vide letter dated 14/07/2014 the assessee made application for admission of additional evidence during appellate proceedings before Ld. CIT(A). However, on perusal of order of Ld. CIT(A), we find that she has not made any recording under Rule 46(2) of Income Tax Rules, 1962. In view of the foregoing, there is lack of clarity about facts. We are of the view that submissions made before us on assessee's behalf by the Ld. Counsel for the assessee are factual in nature; and require detailed factual verification. As we do not have the benefit of such detailed factual

verification in the orders passed by either the AO or the Ld. CIT(A); we are inclined to remand the matter to AO for detailed verification of facts of the case; under the facts and circumstances of the present appeal before us. In view of the foregoing, we set aside the issues in dispute in the present appeal before us; to the file of the AO with the direction to pass fresh order on these specific issues, as per law; after providing reasonable opportunity to the assessee. This appeal is disposed off in accordance with aforesaid directions. For statistical purposes the appeal is partly allowed.

Order pronounced in the open court on 02/03/2021.

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 02/03/2021

Vinita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI