

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'B' BENCH : Hyderabad**

**(Through Video Conference)**

**Before Shri S.S. GODARA, Judicial Member  
and  
Shri L.P. SAHU, Accountant Member**

**ITA No. 321/Hyd./2019  
Assessment Year: 2007-08**

ACIT, Circle 2(1)  
Tirupati

Vs. [Late Sri D.Mahendran]  
represented by  
Legal Heir Sri M. Ashok Kumar  
Puttur

[PAN: ANHPM9031F]

**(Appellant)**

**(Respondent)**

**For Revenue:** Sh. Rohit Muzumdar, CIT-D.R.

**For Assessee:** None

**Date of Hearing** : 15/02/2021

**Date of Pronouncement** : 22/04/2021

**ORDER**

**PER S.S. GODARA, J.M.**

This Revenue's appeal for AY 2007-08 arises against the CIT(A), Tirupati's order dated 03.01.2019 in case no. 10165/2017-18 involving proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act').

Case called twice. None appears at assessee's behest. Accordingly proceed ex parte.

**2.** The Revenue has raised the following substantive grounds in the instant appeal.

1. *The order of the CIT(A) is erroneous both on facts of the case and in law.*
2. *Whether the Ld.CIT(A) is right in deleting addition of Rs.3,94,38,302/- made by the AO u/s 40(a)(ia) of the I.T.Act, 1961 under the facts and circumstances of the case.*
3. *The CIT(A) erred in admitting additional evidence to hold that payment of each party is below Rs.20,000/- and hence provisions of 40(a)(ia) are not applicable without giving an opportunity to the AO to verify these additional evidences produced before Ld.CIT(A) by the assessee as required under Rule 46A of IT Rules, 1962.*
4. *The Ld.CIT(A) erred in deleting addition on the ground that there are no written contracts without appreciating CBDT Circular no.681 dated 8.3.1994 which unequivocally states that sec.194C applies to all types of contracts including transport contracts and the circular further states that the provisions of 194C are wide enough to cover not only written contracts but also oral contracts.*
5. *The Ld.CIT(A) failed to appreciate that the assessee has not complied with provisions of sec.194C(6) and 194C(7) of the I.T.Act which clearly states that the deductor should furnish PANs of the deductees to the prescribed Income tax authorities if payments are made without deducting TDS.*

**2.1.** We next come to CIT(A)'s detailed discussion deleting the impugned sec. 40(a)(ia) disallowance as under.

*"4. The AO disallowed hire charges for non-deduction of tax u/s 40(a)(ia) of the I.T.Act, with an observation that the appellant has not brought on record any supporting evidence that he had hired lorries and trucks in the manner the public hire an auto or a taxi on the road. The AO further observed that the appellant did not produce supporting proof, but each of the truck was hired in a casual manner. The contention of the AR of the appellant was that the appellant doing the transport business for transportation of goods as and when a particular company or person requires goods to be transported from one place to another without any specific contract with regard to the time, rate, etc. The AR of the appellant further contended that there is not even a contract either written or oral with regard to the transport, the relevant company or persons are not deducting any TDS in respect of payment made by them with regard to*

*the transportation of goods undertaken by the appellant. The AR of the appellant further submitted that the appellant, apart from use of his own vehicles, also engaged the vehicles of outsiders as and when requires on need basis without any specific contract. The contention of the AR of the appellant the appellant is doing only transport business and not a transport contract to supply his parties on regular basis. AR of the appellant further submitted that the payment made to outside vehicle owners on simply hire charges and not sub-contract payments which attract provisions sec.194C(2) of the I.T. Act. The AR of the applicant also filed ledger accounts of outside lorry payment and each payment made to various parties are below Rs.20,000/-' along with the written submission dated 3.1.2019. I have considered the submissions of the appellant carefully and also seen the ledger accounts of various parties which shows that each payment is below Rs.20,000/-. The provisions of sec.194C provide that there is no TDS liability on the amount of any sum paid/credited to the account of the contractor or sub-Contractor, if such payment does not exceed Rs.20,000/-. Further, the AO did not bring any material on record to prove that there exists any specific contract or sub-contract between the assessee and various parties and also each payment or aggregate of payment to such parties exceeds Rs.20,000/-. The AO did not found out any existence of any contracts with complete names of the parties and examine the relationship between the assessee and the parties. Unless the fact of existence of the contract or sub-contract is proved by the AO, and also default u/s 194C, if any, is brought on record with positive material, no disallowance can be made u/s 40(a)(ia) of the I.T.Act. Hence, AO is directed to delete the addition”.*

**3.** Mr.Mujumdar vehemently contended during the course of hearing that CIT(A) has erred in law and on facts in deleting the impugned sec.40(a)(ia) disallowance of Rs.3,94,38,302/- made by the Assessing Officer on account of assessee's failure in not deducting TDS on the specified payments. And that too, after admitting additional evidence in violation of Rule 46A of Income Tax Rules. We find no substance in Revenue's instant grievance. The fact remains that CIT(A) has gone by assessee's payment instance(s) already

forming part of assessee's records that the same do not satisfy the threshold limit of Rs.20,000/- each and above for deducting TDS in the relevant previous year. No rebuttal of this clinching fact has come from the Revenue's side qua the impugned statutory limit. We thus decline the Revenue's sole substantive grievance for this precise reason alone.

This Revenue's appeal is dismissed in above terms.

Order pronounced in Open Court on 22/04/2021.

Sd/-

**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

Sd/-

**(S.S. GODARA)**  
**JUDICIAL MEMBER**

Dated: 22d April, 2021

\*gmv

Copy of Order forwarded to:

1. ACIT, Circle 2(1), Tirupathi
2. Late Sri D Mahendran Represented by: Legal Heir Sri M Ashok Kumar, Door no.18-137B, Rajaka Colony, Puttur, Chittoor District
3. JCIT, Range 2, Tirupathi.
4. CIT(A), Tirupathi
5. Pr.CIT, Tirupathi.
6. D.R. ITAT Hyderabad
7. Guard File