

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 4001/Del/2019 : Asstt. Year : 2015-16

Shesh Dhar Chaube, Flat No. 17, E-2 Block, Pocket-1, Rohini, New Delhi-110085	Vs	Income Tax Officer, Ward-39(4), New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. AACPC0843P		

**Assessee by : Ms. Rano Jain, Adv. &
Ms. Mansi Jain, CA**

Revenue by : Sh. Lalit Kishore, Sr. DR

Date of Hearing: 26.05.2022

Date of Pronouncement: 30.06.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-13, New Delhi dated 26.03.2019.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the Id. CIT(A) is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.3,37,10,410/- made by the AO being 30% of the total freight payments made by invoking the provisions of section 40(a)(ia) of the Act.

(ii) That the addition has been confirmed despite the fact that the payments were not exigible to the

provisions of tax deduction at source and hence the provisions of section 40(a)(ia) are not applicable to the same.

3. (i) On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.41,803/- made by the Assessing Officer. Being 1/5th of the car expenses.

(ii) That the disallowance has been confirmed despite the expenses having been incurred wholly and exclusively for the purposes of business."

3. The assessee is an individual running a Proprietary business in the name and style of Gayatri Logistics. During the year under consideration, he has paid an amount of Rs.11,23,68,033/- on account of freight payment. The assessee did not deduct TDS on the payment as the payees have provided their PAN numbers. The Ld. AO, after considering the submissions made by the assessee, did not accept the contentions raised by the assessee and disallowed an amount of Rs.3,37,10,410/- being 30% of the total freight payment, under Section 40(a)(ia) of the Act, giving his findings at Page 3, Para 5.1 which read as under:

"5.1 Regarding non-deduction of TDS for making payment to transporters, the assessee has not furnished a list for whom Section 194C is applicable nor filed the declaration from lorry owner to the effect that the lorry owner had owned only 10 or less carriages at any time during the previous year."

4. From the reading of the above it is clear that the AO disallowed the freight payment on account of two reasons, firstly he states that the assessee has not filed the list of

freight payments made and secondly no declaration from the lorry owners to the effect that they own only 10 or less goods carriages at any time were filed.

5. The Id. CIT(A) after considering the provisions of Section 194C, specifically sub-section (6) and sub-section (7) dismissed the appeal of the assessee on this ground. It appears that the Id. CIT(A) could not understand the facts of the case and the reasons for disallowance in correct perspective.

6. The findings of the Id. CIT(A) are at page 13 of her order, 2nd paragraph which read as under:

"4.5 The fact that the above section refers to persons referred to in sub-section (6) specifically, which in any case gives benefit of non deduction of TDS with certain conditions (furnishing of Permanent Account Number), it becomes impossible for the person responsible (appellant) to discharge his duty as a deduction as prescribed by the statute and honour the condition of furnishing the PAN to seek exemption from deducting TDS. Otherwise there would be no rationale for inclusion of this provision and violation of it would have no consequences. It would further be useful to state another very well settled principle of interpretation that whenever the particular provision is required to be interpreted, it should be interpreted after reading the whole provision and not the parts of a particular section. However, a provision has to be read in context of overall scheme of the Act. It is also well settled that no provision can be interpreted in such a way which would render parts of the section otiose or meaningless. Hence, respectfully distinguishing the case from that referred to by the

appellant, it is held that the appellant has defaulted on the issue and accordingly, the addition on account of disallowance of Rs.3,37,10,410/- is hereby confirmed."

7. From the reading of the above it is clear that the Id. CIT(A) dismissed the appeal of the assessee on this ground mainly on the issue of non-compliance of sub-section (7) of Section 194C, while the disallowance was made by the AO on different reasons, as explained hereinabove.

8. The provisions of Section 194C to the extent relevant for the present controversy read as under:

"Payments to contractors.

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to-

- (i) one per cent, where the payment is being made or credit is being given to an individual or a Hindu undivided family;*
- (ii) two per cent, where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,*

of such sum as income-tax on income comprised therein.

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within such time as may be prescribed."

9. The first allegation made by the AO was that the assessee had not provided the details of freight payment. This is an incorrect fact as can be seen from the reply filed by the assessee at PB Pg. 9 whereby the assessee, after giving the reason for non-deduction of TDS, has stated that the details of freight paid alongwith PAN are enclosed as Annexure-1. The said Annexure-1 is enclosed in the Paper Book at Pg. 11. The assessee has provided the details of freight payments made by him to the AO running into around 40 pages, still he preferred to state in the assessment order and no such detail was filed by the assessee.

10. The second allegation made by the AO was that the assessee has not filed any declaration from the lorry owner with

regard to the number of vehicles owned by them. In this regard sub-section (6) of Section 194C is relevant which provide for the condition as to providing such declaration from the lorry owners. It is also to be appreciated that this condition was inserted in sub-section (6) to Section 194C by the Finance Act, 2015.with effect from 1st June 2015. The assessment year under consideration is 2015- 16 which pertains to F.Y. 2014-15 and the amendment having been brought from the next financial year it was impossible for the assessee to comply the condition as to the filing of declaration.

11. In this regard attention is also invited to Circular No. 19/2015 dated 27.11.2015 brought out by the CBDT in the form of an explanatory note to the provisions of the Finance Act, 2015. The intention of the Legislature to bring this amendment has been explained in Para 43.1 to Para 43.4. Further Para 43.5 and 43.6 are reproduced hereunder:-

"43.5 The condition of not owning more than ten goods carriages by the transporter is required to be fulfilled on the date on which the amount is credited or paid, whichever is earlier. In case a transporter does not own ten goods carriages on the date on which the amount is credited or paid but becomes owner of ten goods carnages later in the previous year, the payer shall not be required to deduct tax from the payment made to the transporter during the period of the previous year when he was not owning more than ten goods carriages. However, the tax shall be required to be deducted from the payment made during that part of the previous year during which the transporter owned more than ten goods carriages.

43.6 Further, for determining the aggregate amounts of sum credited or paid for the purposes of proviso to sub-section (5) of section 194C all the payment made during the financial year shall be taken into account including the amount credited or paid during the period of the financial

year during which the transporter was not owning more than ten goods carriages. However, as the provisions of section 194C(6) were amended with effect from 1st June, 2015, for determining the aggregate payments for the financial year 2015-16, the payments made on or after 1st June, 2015 shall only be taken into account. This is explained by way of following illustration:

"T, an individual owns five goods carriages from 1st April, 2015 to 31st October, 2015. On 1st November, 2015, he purchased 6 more goods carriages. On 1st January, 2016, he sold 8 goods carriages. 'P' makes following payment of transport charges to T during the financial year 2015-16:

<i>15th April, 2015</i>	<i>- Rs.35,000</i>
<i>15th July, 2015</i>	<i>- Rs.40,000</i>
<i>15th November, 2015</i>	<i>- Rs.20,000</i>
<i>15th December, 2015</i>	<i>- Rs.20,000</i>
<i>15th February, 2016</i>	<i>- Rs.50,000</i>

No tax is deductible on payment made on 15th April, 2015 if T furnishes his PAN as per the pre-amended provisions of section 194C (6) of the Income-tax Act. No tax is deductible from payment made on 15th July, 2015 if T furnishes a declaration that he does not own more than 10 goods carriages during the relevant financial year along with his PAN as per the requirement of the amended provision of section 194C(6) of the Income-tax Act. The tax is also not deductible from payment made on 15th November, 2015 as the payment does not exceed Rs.30,000 and the aggregate of payments during the period from 1st June, 2015 [i.e. the date of effectivity of the amended provision of section 194C(6)] to 15th November, 2015 does not exceed Rs.75,000 as specified in proviso to section 194C(5) of the Income-tax Act. Tax at the rate of 1% i.e. Rs.200/- is deductible from payment made on 15th December, 2015 as T owns more than 10 goods carriages on that date and the aggregate of the payments made during the period from 1st June, 2015 to 15th December, 2015 exceeded the threshold of Rs.75,000/-. Tax is also deductible from the payment made on 15th February, 2016 even though T did not own more

than 10 goods carriages on 15th February, 2016. This is because T owned more than 10 goods carriages during the financial year 2015-16 and the payment exceeded both the specified threshold for individual and aggregate payments. In view of this, T is not eligible to claim the exemption under section 194C(6) of the Income-tax Act by furnishing declaration along with the PAN in accordance with the provisions of section 194C(6) in respect of payments made on 15th December, 2015 and 15th February, 2016."

12. From the reading of the above it becomes very clear that the condition as to the declaration of the payee to be filed is to be complied only on payments made from 1st June 2015 onwards. Even the example given in the explanatory note makes it too clear that the provision is applicable only on payments with effect from 1st June 2015. The relevant financial year under consideration is 2014-15, therefore, the provisions of this amendment are not applicable to the present case.

13. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 30/06/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 30/06/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR