

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ दीपक पी. रिपोटे, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
Dr. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपीलसं./ITA Nos.: **1143 & 1144/CHNY/2018**

निर्धारण वर्ष/Assessment Years: 2013-14 & 2014-15

M/s. P.R. Gold and Silver Craft,
No.79 & 81, Ambalathadayar
Madam Street,
Pondicherry – 605 001.

The DCIT,
vs. Pondicherry Circle,
Pondicherry.

PAN: AAFFP 5606M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri N. Arjun Raj, CA for
Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 17.08.2022

घोषणा की तारीख/Date of Pronouncement

: 24.08.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These two appeals by the assessee are arising out of the common order of Commissioner of Income Tax (Appeals), Puducherry in ITA No.108 & 198/CIT(A)-PDY/2016-17 dated 06.03.2018. The assessment was framed by the DCIT, Pondicherry Circle, Pondicherry for the assessment years 2013-14 & 2014-15

u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 31.03.2016 & 27.12.2016.

2. The only common issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of the AO in making disallowance of wastage claimed in manufacturing of gold ornaments by invoking the provisions of section 40(a)(ia) of the Act for non-deduction of TDS u/s.194C of the Act. For this, assessee has raised various grounds which need not to be reproduced. The facts and circumstances are exactly identical in both the years and hence, we will take the facts from assessment year 2013-14.

3. Brief facts are that the assessee is engaged in the manufacture of gold and silver jewellery. The AO during the course of assessment proceedings noted that the assessee purchased old gold from customers and the same are melted through goldsmiths to get pure gold. During the assessment year 2013-14, the assessee issued 146331.79 gram of gold to the goldsmiths for making new ornaments and received back 141397.61 gram and the balance 1294.66 gram left with the goldsmiths. In the process, the assessee has claimed wastage of 5454.03 gram in total. Similarly, for the assessment year 2014-15, the assessee had issued

84960.48 gram of gold to the goldsmiths for making new ornaments and received back 83673.45 gram. The balance stock left with the goldsmith was nil. In the process, the assessee claimed wastage of 1286.03 gram in total. But, the AO also noted that for all other jewellery, the assessee has shown wastage charges ranging between 4.5% to 6%. According to AO, the wastage would be only in the range of 0.5% to 1% and the excess rate of gold from the assessee as wastage was actually gold retained by the goldsmiths in lieu of making charges. The AO recorded the statement of various goldsmiths wherein many goldsmiths admitted the wastage from 5% to 6% but many goldsmiths admitted contrary estimate i.e., 0.5% to 1%. Accordingly, the AO treated this wastage as payment to goldsmiths without deduction of tax u/s.194C of the Act and accordingly estimated the wastage at 1%, excess wastage was treated as payment and disallowed by observing in para 3.6 as under:-

“3.6 Finally, assessee’s contention that tax need not be deducted at source when consideration is paid otherwise than by cash/cheque is not acceptable because even if prices by way of winnings, game shows, etc are paid partly in cash and kind. TDS needs to be deducted on the aggregate value of the cash and the price received in kind.

Hence, in view of the above findings, the wastage is restricted to 1% of the gold retained by the goldsmith. Wastage in excess of this 1% is treated as gold in lieu of making charges which works out to 4328.08gm. For valuation of the same, closing stock value of the gold adopted by the

assessee is adopted which works out to Rs.1,10,45,260/- (4328.08 x 2552) (34,42,24,851 / 1,34,884 = Rs.2,552 per gram). With this, making charges paid by the assessee in cash of Rs.39,58,959 is added and the aggregate sum of Rs.1,50,04,219/- is disallowed u/s 40(a)(ia) of the I.T. Act since the assessee has not deducted TDS on this.”

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the action of the AO and according to him, the wastage is only 0.5% to 1% and the goldsmiths retained 5 to 6% of gold in the name of wastage in lieu of making charges. The CIT(A) noted that the AO has collected data directly from the goldsmiths and almost all goldsmiths admitted that during manufacturing process they will retain gold around 5% of the input which is claimed by assessee as wastage. According to him, it is clear that for the earlier stages wherever assessee is suffering making charges by providing gold to the goldsmiths and claimed wastage, which was actually in lieu of making charges. Therefore, according to CIT(A), as per section 194C of the Act, the assessee is liable to deduct TDS on this claim of wastage and accordingly, he confirmed the action of the AO making disallowance of wastage claimed for non-deduction of TDS u/s.194C of the Act by invoking the provisions of section 40(a)(ia) of the Act for both the assessment years. Aggrieved, assessee came in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted the fact that the assessee purchases old gold from the customers and the same are melted to get pure gold through goldsmiths. The assessee gets the jewellery made through goldsmiths to whom he pays making charges. The assessee in the process claims that there is wastage suffered to the extent of 4.5% to 6% of gold. The entire process is that the assessee had outsourced its manufacture to certain jewelers outside Pondicherry and pathars in Pondicherry. It could be seen that the jewelers have not claimed any wastage as they have made good the loss and have paid higher job charges which includes the value of wastage suffered. But the pathars have been allowed wastage and have been paid lesser job charges. The making charges incurred during the year is Rs.39,58,951/- and out of which a small amount of Rs.5,40,983/- has been paid to other jewellery manufacturers. The assessee has filed complete party-wise details of making charges paid and TDS deducted there from. The assessee claimed that in the course of manufacturing of jewellery / ornaments due to various processes involved, there is loss of gold which is actual and real. This loss is on account of cutting, mixing of chemicals and alloys, etc. In the process, the loss of pure gold it may be in the form of powder of gold, etc. The assessee claimed that accepted

normal loss is allowed to pathars. It was claimed that the wastage suffered during the manufacture is true and will be within the accepted norms. But the AO accepted the loss to the extent of 0.5% to 1% and the balance which is equivalent to the amount of Rs.1,50,04,219/- was disallowed being deemed wastage paid as job charges liable to TDS u/s.194C of the Act and paid without TDS thereby invoking the provisions of section 40(a)(ia) of the Act, made disallowance.

6. Now the question arises is that the alleged wastage or the claim of Revenue that this making charges paid in the shape of wastage of gold is liable to TDS u/s.194C of the Act or not. Here the question is not of wastage but whether this deemed wastage in the eyes of Revenue is payment to the ornament manufacturers or goldsmiths or in local language called patars. For this, now we have to turn to the provisions of section 194C of the Act. The relevant provision reads as under:-

194C : Any person responsible for paying any sum to any resident (hereinafter 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-

From the above provision, we noted that sub-section (1) of 194C of the Act lays down that any person responsible for paying any sum to any resident for carrying out any work in pursuance of a contract between the contractor and the bodies mentioned therein shall, at the time of credit of such sum to the account of the contractor or payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount mentioned in the provision as income-tax on the income comprised therein. According to us, this clearly lays down the preposition that the TDS u/s.194C of the Act has to be deducted wherever there is credit of such sum to the account of the contractor or payment thereof in cash, by cheque, by draft or by any other mode. But, in the present case before us the AO as well as CIT(A) has categorically noted that there is wastage charges and wastage to the extent of 4.5 to 6% varies in this trade as claimed by assessee. But, Revenue's contention is that the wastage is only 0.5% to 1%. Here only the issue is only claim of wastage and not any payment as envisaged in the provision of section 194C of the Act. Once, there is no payment there is no question of deduction of TDS u/s.194C of the Act

because there is no mandate in the Act for deduction of TDS without payment and that mode is also prescribed. The Tribunal i.e., the Co-ordinate Bench in the case of Siva Valli Vilas Jewellers Pvt. Ltd., in ITA No.3071/Chny/2017, order dated 31.03.2021 has considered an identical issue and held that *"We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of section 194C is applicable, when the assessee has paid or credited any charges covered thereunder. In case, no payment is debited or credited to respective parties account, then such payment cannot be considered within the ambit of section 194C or any other TDS provisions. In this case, the assessee has neither debited making charges into profit and loss account nor credit any amount to the respective parties account. Therefore, when no payment is made or amount is credited to respective parties account, then question of application of provisions of section 194C does not arise at all."*

7. In view of the above, in the present case the issue of wastage whether it is 0.5% to 1% as estimated by Revenue or it is 4.5% to 6% as claimed by assessee, it neither involves any payment or credit of such sum by way of cash, issue of cheque or draft or by any other mode and hence does not liable for TDS u/s.194C of the

Act. Hence, the disallowance made by AO and confirmed by CIT(A) is deleted. Both the appeals of the assessee are allowed.

8. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 24th August, 2022 at Chennai.

Sd/-

(डॉ दीपक पी. रिपोटे)

(Dr. DIPAK P. RIPOTE)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 24th August, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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