

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 25/Chny/2022  
निर्धारण वर्ष/Assessment Year:2012-13

Shri Gopinathan,  
No. 37/4, L.F. Road, Opp. To  
Government Hospital, Cumbum,  
Theni District 625 516.  
**[PAN:ARDPG2494G]**

The Income Tax Officer,  
Vs. Ward 1,  
Theni.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Gopalan (IRS) Ret. JCIT  
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT  
सुनवाई की तारीख/ Date of hearing : 19.07.2022  
घोषणा की तारीख /Date of Pronouncement : 24.08.2022

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi, dated 12.11.2021 relevant to the assessment year 2012-13. Besides challenging confirmation of addition of ₹. 4,66,455/- on account of alleged infringement of section 194C of the Income Tax Act, 1961 ["Act" in short], the assessee has also challenged the rectification order passed under section 154 of the Act on the pretext

that sub-section 6 and 7 to section 194C of the Act has to be read together for getting claim under section 194C(6) of the Act.

2. Brief facts of the case are that the assessee is an individual and proprietor of M/s. Kambam Tiles. There was AIR information about the assessee that the assessee has done cash transaction with Axis Bank, Cumbum branch to the tune of ₹.73,99,150/-. As it appears that the income embedded in the cash transactions has escaped assessment, the assessment was reopened under section 147 of the Act by issue of notice under section 148 of the Act on 10.11.2014. Notice under section 142(1) of the Act was also issued to the assessee on 25.05.2015. Since the assessee requested the Assessing Officer to treat the return filed on 30.01.2013 as the one filed in response to notice under section 148 of the Act and accepting assessee's request, a notice under section 143(2) of the Act was issued to the assessee on 23.02.2016. On verification of the books of account, bank account copies and sales tax return copies, the Assessing Officer noticed that the assessee has made payments towards lorry freight & cooly amounting to ₹.5,48,759/-. Since the assessee could not produce vouchers for the same, considering the volume of transaction and the nature of trade and estimated disallowance @ 15% of the

expenses claimed, the Assessing Officer disallowed to the extent of ₹.82,315/- and brought to tax.

2.1 Thereafter, the Assessing Officer issued notice under section 154 of the Act, dated 07.03.2019 served pm 08.03.2019. During the course of rectification proceedings, the Assessing Officer observed that against the lorry freight and cooly expenses claimed of ₹.5,48,759/-, the assessee has paid lorry freight & cooly through Shri Abdul Rahman to the extent of ₹.4,68,000/- on dated 16.09.2011 (₹.1,55,000/-), 15.12.2011 & 18.01.2012 (₹.1,56,500/- each), which are liable to be disallowed since the assessee has not deducted TDS as prescribed under section 194C of the Act. Accordingly, the balance amount of ₹.4,66,445/- available after disallowing 15% of the total expenses was also brought to tax under section 40(a)(ia) of the Act and concluded the rectification order under section 154 of the Act dated 31.03.2019. On appeal against the order under section 154 of the Act, the Id. CIT(A) (NFAC) confirmed the rectification order passed under section 154 of the Act.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that while completing the assessment under section 143(3) r.w.s. 147 of the Act dated 11.03.2016,

after verification of books of accounts, bank account copies and sales tax return, the Assessing Officer got satisfied that 194C(7) of the Act is not applicable for the reason that section 194C(6) and section 194C(7) of the Act are independent of each other and cannot be read together, made disallowance of expenses @ 15% of total expenses claimed in the absence of vouchers. It was further submission that by way of order under section 154 of the Act by another Assessing Officer disallowing same balance expenses under section 40(a)(ia) of the Act by holding that sub-section 6 and 7 to section 194C of the Act has to be read together for getting claim under section 194C(6) of the Act is bad in law and relied upon the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Parameswari Spinning Mills P. Ltd. in T.C.A. No. 601 of 2018 dated 01.07.2019.

4. On the other hand, the Id. DR strongly supported the order passed by the Id. CIT(A)(NFAC).

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. It is not the case of the Department that the Assessing Officer has omitted to consider the claim of expenses and thereby passed the rectification order under section 154 of the Act. In this case assessment was reopened under

section 147 of the Act and during the course of reassessment proceedings, after verification of books of accounts, bank account copies and sales tax return and considering the volume of transaction and the nature of trade, the Assessing Officer disallowed 15% of the expenses claimed since the assessee could not produce vouchers for the expenses by satisfying that the section 194C(7) of the Act is not applicable for the reason that section 194C(6) and section 194C(7) of the Act are independent of each other and cannot be read together since the assessee has furnished PAN of the transporter as required under section 194C(6) of the Act. However, by passing order under section 154 of the Act, the Assessing Officer held that sub-sections 6 and 7 to section 194C of the Act has to be read together for getting the claim under sub-section 6 of section 194C of the Act. The above findings of the Assessing Officer in the rectification order under section 154 of the Act is not correct in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Parameswari Spinning Mills P. Ltd. (supra) since the appeal of the Revenue has been dismissed by following decision of the ITAT Jaipur in the case of ACIT Vs. Arihant Trading Co. reported in [176 ITD 397 (Jaipur-Tri)], wherein, it has been held that Section 194C(6) & (7) are independent of each other and cannot read together to attract disallowance under Section 40(a)(ia) read with Section 194C of the Act.

6. Respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of CIT v. Parameswari Spinning Mills P. Ltd. (supra), the rectification order passed under section 154 of the Act by the Assessing Officer is liable to be quashed. Accordingly, we set aside the order of the Id. CIT(A) (NFAC) as well as the rectification order passed under section 154 of the Act is quashed.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 24<sup>th</sup> August, 2022 in Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 24.08.2022  
Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/  
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.  
विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.