IN THE INCOME TAX APPELLATE TRIBUNAL,
JABALPUR BENCH, JABALPUR
(through web-based video conferencing platform)

BEFORE SH. SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SH. MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

ITA Nos. 05/JAB/2019
Assessment Year: 2010-11

Saurabh Singhai, Sagar (M.P.) [PAN : ABZPJ 8688D]	vs.	Income Tax Officer-3, Sagar (M.P.)
(Appellant)		(Respondent)

Appellant by	Sh. Dhiraj Ghai, FCA
Respondent by	Sh. U.B. Mishra, CIT-DR
Date of hearing	29/07/2022
Date of pronouncement	30/09/2022

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed the revision of his assessment under section 147 read with sec. 143(3) of the Income Tax Act, 1961 ('the Act', hereinafter) dated 17/02/2016 for the Assessment Year (AY) 2010-11 of his late father Shri Mahendra Kumar Jain by the Principal Commissioner of Income Tax (Pr. CIT) vide order u/s. 263 dated 26/03/2018. The appeal raising several grounds, we shall take them in the order in which they were argued by Shri Ghai, the ld. counsel for the assessee.

2. It was firstly pleaded that the assessment made in the name of his father, Shri Mahendra Kumar Jain (MKJ), who expired on 15/09/2015, during the course of the assessment proceedings, i.e., in the name of a non-living person, is a nullity in law. This is particularly considering that the fact of his father's death (on 15/09/2015, death certificate at PB-1, pg. 1) was duly informed to the

Assessing Officer (AO) in September, 2015 itself by the present assessee, the only son of his father, also participating in the proceedings, and for which Shri Ghai would refer to para 4 of the assessment order. An assessment which is null and void has no existence in law and, thus, cannot be revised.

3. We have heard the parties, and perused the material on record.

3.1 We may, at the outset, express our complete agreement with the principle of law on which the assessee's argument is predicated, i.e., there could be no revision of an assessment which is a nullity in law, and which objection could be validly raised in the collateral (revision) proceedings as well. The principle of law at work is governed by the legal maxim "*sublato fundamento cadit opus*", i.e., when the cause (foundation) is removed, the effect (consequent action) ceases. As explained by the Apex Court in *Karan Singh vs. Chaman Paswan*, AIR 1954 SC 304, the order passed by an authority without jurisdiction is a nullity, and it's invalidity can be challenged whenever and wherever it is sought to be enforced or relied upon. The matter is not *res integra*, and has been applied in several decisions, as in *Keshab Narayan Banerjee v. CIT* [1998] 101 Taxman 512 (Cal).

3.2 We are, however, for the reasons that follow, unable to, in the given facts and circumstances of the case, agree with the assessee's contention. MKJ, who had been earlier assessed u/s. 143(3) on 24/01/2013, was issued a notice u/s. 148(1), which was duly served on him on 02/01/2015. It was responded by him on 02/02/2015, submitting that the return filed u/s. 139 on 25/9/2010 be treated as a return furnished in response to the said notice (para 3 of the assessment order). There was thus a valid assumption of jurisdiction to make an assessment within the time period provided by law (s. 153(2)). There is in fact no, nor could be any, dispute on this aspect of the matter. The assessment proceedings were accordingly commenced, and the subsequent death of the MKJ during the assessment proceedings would not operate to disrupt or impair this jurisdiction,

since validly assumed, in any manner. Assessment was finally framed on 17/02/2016 after hearing his son, the appellant and the only son of MKJ.

The legal representative/s (LR/s) of a deceased assessee is, on his death, by law deemed as the assesse/s, and liable to be proceeded against. All that is required is to follow a procedure and bring on record the assessee's legal representative/s, i.e., on whom his assets have devolved, who then becomes liable to be assessed in respect of the deceased's income as well as to pay the demand (to the extent of the assets devolved), if any, arising in consequence (s. 159). That is, the only issue is of substitution, i.e., bringing the LRs on record and put them to notice, which is admitted in the instant case. The assessment proceedings, which stood joined by and, thus, continued and concluded after hearing the late assessee's son, the appellant, is thus valid. The mention of the name of the assessee's father, instead of him, as his representative assessee, in the title of the assessment order, is surely not correct. It is however apparent that the assessment is on him as the LR of his father, i.e., in representative capacity. The same, therefore, and which is the objection taken before us, would not by itself remove the legal basis and, thus, the legal sanctity of the assessment, which is legally firm and, rather, also saved by sec. 292B of the Act. The assessment in fact as well as in law is on the incumbent assessee as the LR of his father, late MKJ, which would not get lost merely because of omission to correctly record the name of the assessee. The matter is in principle well-settled, and to exhibit which reference is made to the decisions in *CIT v. Kaushalyabai v. CIT* [1995] 238 ITR 1008 (MP) and *Swarn Kanta v. CIT* [1989] 176 ITR 291 (P&H).

The issue/s involved, it may be appreciated, is of a valid assumption of jurisdiction and grant of proper opportunity, neither of which is in dispute here. As explained in *CIT v. Sumantbhai C. Munshaw (Decd)* [1981] 128 ITR 142 (Guj), rendered with reference to a host of judicial precedents, including by the Apex Court, where there is no lack of jurisdiction, as in the instant case, the

proceedings cannot be questioned where the LR is impleaded or otherwise joins the proceedings, and is allowed opportunity of being heard before passing the order under reference; the defects in procedure – except where fundamental, affecting the jurisdiction, being saved by sec. 292B. Reference therein is also made to *Estate of Late Rangalal Jajodia v. CIT* [1971] 79 ITR 505 (SC), which has a bearing on the effect of a defect in the assessment arising out of want of notice to the LR and mis-description or mistake of name in the assessment order. Section 159, it explains, does not bear upon the jurisdiction of the taxing authority, but deals with matters incidental to it. The decision in *Sumantbhai C. Munshaw (Decd.)*, a treatise on the subject, is, thus, consistent with the binding decision in *Kaushalyabai* (supra), i.e., in principle, wherein the issue of notice u/s. 148(1) in the name of the assessee's deceased husband, Vishan Das, was considered by the Hon'ble Court as of no moment in view of she – who responded to the said notice by filing returns in her capacity as the LR and joined the proceedings, having participated in the proceedings, so that there was no case of any prejudice. In *Swaran Kanta* (supra), the mention of the name of the deceased in the heading of the order, in proceedings, validly initiated, and concluded on the LR, whose is deemed by law (s.159) to be an assessee, was held as valid notwithstanding that the title of the order was not happily worded, which though would not make it invalid for that reason and, besides, is saved by s. 292B.

3.3 The assessment dated 17/2/2016, which has since attained finality, is a valid assessment in law, with the only change that the same, as indeed correctly understood by the parties, is of the appellant as the representative assessee of his late father, MKJ. The assessee's challenge is without merit.

4.1 The next, without prejudice argument advanced, placing reliance on the decision in *Pr. CIT v. Maruti Suzuki Ltd*. [2019] 416 ITR 613 (SC), was that the notice u/s. 263 and, indeed, the impugned order u/s. 263, stands framed, again

in the name of the assessee's father, late Shri Mahendra Kumar Jain (MKJ), so that the same is a nullity in law. In our view, the reliance is misconceived.

The whole premise of the proceedings, validly initiated, as would also be apparent from the afore-referred decisions, is the observance of the principles of natural justice, so that no prejudice stands caused, vitiating the proceedings. Reference, in this context, may also be made to the decision in *CIT vs. Premium Capital Markets & Investment Ltd*. [2005] 275 ITR 260 (MP), wherein the participation by the assessee in the assessment proceedings, stretching to over a year, and without raising any issue *qua* the service of notice u/s. 143(2), was construed by the Hon'ble Court as a valid service and, in any case, as disentitling the assessee to raise the issue of service of the said notice – a mixed question of fact and law, for the first time before the Tribunal. The same, it may be noted, is precisely what s.292BB, inserted on the statute w.e.f. 01/04/2008, deems. The function of a notice is to put the assessee to notice, explained per a series of decisions by the Apex Court, toward which we may refer to the decisions in *CST v. Subash & Co*. (CA No. 1374/2003, dated 17/2/2003), as indeed *CIT v. Jai Prakash Singh* [1996] 219 ITR 737 (SC), itself rendered upon considering the law explained per judicial precedents. The same, sure, did not find favour with the Hon'ble Court in *Maruti Suzuki Ltd*. (supra), but that was only for the reason that the notice u/s. 143(2), on the basis of which jurisdiction stood assumed, was issued in the name of the amalgamating company, no longer in existence, *so that there was no valid of assumption of jurisdiction*. Reference in this context, also made during hearing, be made to para 33 (pg. 637) of the Judgment, which reads as under:

"33. In the present case, despite the fact that the Assessing Officer was informed of the amalgamating-company having ceased to exist as a result of the approved scheme of amalgamation, *the jurisdictional notice was issued only in its name*. The basis on which jurisdiction was invoked was fundamentally at odds *with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation*. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of

the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Enfotainment on November 2, 2017. The decision in Spice Enfotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for Assessment Year 2011-2012. In doing so, this Court has relied on the decision in Spice Enfotainment." (emphasis, ours)

The decision in *Maruti Suzuki Ltd*. (supra) thus turned on the aspect of absence of jurisdiction, which is without doubt fundamental to the validity of the proceedings. Though this decision stands since turned, i.e., on the aspect of ceasure to exist of an amalgamating company (*Pr. CIT vs. Mahagun Realtors (P.) Ltd*. [2022] 443 ITR 194 (SC)), the same would continue to hold *qua* a valid assumption of jurisdiction. There is, thus, no divergence *qua* the basic postulate of law, but an absence of the jurisdictional fact, a condition precedent, for framing an assessment and, thus, an absence of a legal basis, which led the Apex Court to decide differently.

The same would though have no bearing in the instant case inasmuch as the notice u/s. 263 is not a jurisdictional notice, even as explained by the Apex Court per its' decisions, as in *Gita Devi Aggarwal v. CIT* [1970] 76 ITR 496 (SC); *CIT v. Electro House* [1971] 82 ITR 824 (SC); and again recently in *CIT v. Amitabh Bachchan* [2016] 384 ITR 200 (SC), wherein, reiterating the law as explained earlier, it, drawing a distinction between a notice u/s. 148(1) and u/s. 263, held as under:

'Unlike the power of reopening an assessment under section 147 of the Act, the power of revision under section 263 is not contingent on the giving of a notice to show cause. In fact, section 263 has been understood not to require any specific show-cause notice to be served on the assessee. Rather, what is required under the provision is an opportunity of hearing to the assessee. The two requirements are different: the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. There is nothing in the section to raise the notice to the status of a mandatory show-cause notice affecting the initiation of the exercise in the absence thereof or to require the Commissioner to confine himself to the terms of the notice and foreclosing consideration of any other issue or question of fact. This is not the purport of section 263.

What is contemplated by section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. While the Commissioner is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert them and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to him by the Commissioner prior to the finalisation of the decision.'

Reference in this context may also be made to the decision in *CIT v. Prem Syndicate* [1983] 141 ITR 290 (MP), clarifying the same position of law. The only purport of the notice u/s. 263 is thus to put the assessee to notice, providing him an opportunity of being heard. The same, as per the impugned order, stands granted to the assessee through service of notice u/s. 263. The same, as noted, being not a jurisdictional notice, duly served, the decisions in *Kaushalyabai* (supra); *Swarn Kanta* (supra), et. al. would save the ensuing order, which, again, would though stand to be read as on the present assessee in the capacity as LR of his late father, MKJ, as indeed understood by him.

4.2 At this stage, Sh. Ghai claimed non-receipt of the notice u/s. 263, which as per the impugned order (para 4) stands issued on 27/02/2018 and duly received by the assessee, implying by Sh. Sauarbh Singhai. Inasmuch as he could not possibly prove a negative, though ought to have, strictly speaking, pressed his claim through a sworn affidavit to that effect, the file folder of s.263 proceedings was called for by the Bench to confirm this assertion, and duly produced by the ld. CIT-DR on the next day of hearing. The track report of the delivery (obtained from the cite of the Indian Posts and Telegrams) is placed in the file. The same shows the notice to be, booked on 03/3/2018 (Consignment Code: EI 027733455 IN), delivered on 05/3/2018, through Sagar City SO, which establishes the service thereof. Copy of the same is taken on record.

Shri Ghai would, upon this, next submit that there was a change of residence of the family after the death of MKJ on 15/09/2015. There is, however, nothing on record to exhibit this, or if the change of address was

communicated to the AO, as it is only in that case that the ld. Pr. CIT would, upon an examination of the assessment record, come to know of the said change in address, to then communicate at the new (changed) address. Rather, and on contrary, the assessee has received the notice u/s. 142(1) dated 06/1/2016, as indeed the assessment order dated 17/2/2016 (for the current year), made out at the same address (PB-1, pgs. 2-3). Sh. Ghai would clarify that the communication to the AO was on 19/03/2016, i.e., while filing the return of his late father for AY 2015-16. The same is, thus, admittedly after the impugned assessment and, further, would not form part of the assessment record for the relevant year. Further, the same is not a communication of the change in address *per se*, but filing the return for a later year with a changed address. There is also no claim, or nothing on record to show, that the change of address was, as required by law to, intimated u/s. 139A. (refer: *Pr. CIT v. I-Ven Interactive Ltd*. [2019] 418 ITR 662 (SC)). There is, thus, no positive material on record as to the assessee communicating the AO the change in his address; rather no claim in its respect. On the contrary, there is positive material on record of the assessee having been served the notice u/s. 263, and which cannot be countered by a bald, much less inconsistent claim by the assessee. In our view, there has been service of notice inasmuch as the same, where unserved, would have come back unserved if, as stated by Shri Ghai, the change of residence followed soon after the death of MKJ, and the premises was locked. Rather, there could in that case be no service of the assessment order at that address, months after the death, service of which is admitted, nor indeed participation in the assessment proceedings. The assessee's claim is accordingly rejected. It may though be clarified that even a finding of the assessee having not been served the said notice would not; the assessee having not communicated the change in his address, fail the impugned order, but only necessitate the assessee being served the said notice and heard in the matter, i.e., restored to the stage where the irregularity occurred, inasmuch as the notice u/s. 263 remains uncompiled with,

as indeed to satisfy the mandate of *audi alterm partem* (see: *Guduthur Brother vs. ITO* [1960] 40 ITR 298 (SC); *Estate of Late Rangalal Jajodia* (supra); *Sptd. Of Excise v. Pratap Rai* [1978] 114 ITR 231 (SC)), case law on which is again legion. Two, we may clarify that even as we regard the notice u/s. 263 as served, the same finding is not, in the absence of any positive material in the file folder of the revision proceedings in its respect, extended to the impugned order, claimed per the memo of appeal (Form 36) as received by the assessee-appellant only on 31/12/2018. We clarify this as a similar finding *qua* the impugned order would oust the instant appeal as barred by time.

5.1 We, next, consider the assessee's case on merits. While doing so we are conscious that the assessee's case has been unpresented before the ld. Pr. CIT. We have, however, found as a fact of the assessee having received the notice u/s. 263. A claim for restoring the matter back to his file for consideration, not made before us, could not be, even if made, therefore entertained. Further still, the assessee's case before us is principally the same as before the AO. Accordingly, not restoring it back for being considered by the revisionary authority, who has considered the assessee's case as presented before the assessing authority, would not prejudice the cause of either side before us.

5.2 The only issue raised in revision is the failure on the part of the AO to examine the assessee's claim *qua* freight, allowed in full, i.e., at Rs.233.74 lacs, despite the fact that he had deducted tax at source only on payments for Rs. 126.60 lacs, resulting in short deduction of tax at source on Rs. 1,07,14,626. This, it stands explained, was precisely the reason for reopening of the assessment. The assessee, in the ensuing proceedings, clarified vide his reply dated nil (PB-4, pgs. 2-4), stated to be filed on 03/02/2006, that the short deduction of tax at source was occasioned by a change in law by Finance (No. 2) Act, 2009, w.e.f. 01/10/2009, whereby a person making payment for carriage of goods may not deduct tax at source on the payee furnishing a certificate

thereto to the effect that the trucks owned by him at any time during the relevant previous year did not exceed ten, as also his PAN (sec. 194C(6)). True, section 194C(7) simultaneously provides for furnishing a statement to the Pr. CIT concerned to that effect. However, the obligation to file the declaration in Form 15J with the Commissioner in terms of r. 29D became redundant consequent to the change in sec. 194C w.e.f. 01/10/2009. Non-compliance of the same would therefore not lead to a default in his obligation to deduct tax at source u/s. 194C and, consequently, to a disallowance u/s. 40(a)(ia). The same, thus, explains the non-deduction of tax at source on freight payment of Rs. 107.15 lacs to Akansha Singhai, Prop. Sagar Roadlines, without though inviting disallowance u/s. 40(a)(ia). Sh. Ghai would before us further add that s. 194C(7) is even otherwise independent of s. 194C(6).

5.3 The same, however, did not find acceptance by the ld. Pr. CIT; the operative part of the impugned order reading as under:

> '5. The assessee has not complied with the provisions of section 194C(7) of the Act where the statute of the Act mandates the requirement of fulfillment of section 194C(7) when the conditions laid down in provisions of section 194C(6) are satisfied. TDS provisions are complimentary in nature. The exemption for non-deduction of tax has been given in clause (6) of section 194C, but subject to fulfillment of clause (7) of section 194C read with rule 31A. The AO should have examined these facts before allowing the expenses claimed under freight charges particularly so, when the case for the relevant year was reopened to examine the very issue of non-deduction of tax. The contention of the assessee for non-fulfillment of provisions of section 194C(7), as there was no prescribed form, is ambiguous for the fact if the statutory provisions of the Act mandates submission of requisite form before the prescribed authority, then non-submission of the same would deprive the benefits/ immunity obtained for non-deduction of tax at source from the freight expense claimed. The AO should have ascertained that the assessee had filed form No. 26Q which has been specifically designed to filing such details.
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> 6. For the reasons stated above, since it is apparent that the AO has not applied his mind for proper examination of the case to give cognizance to

> the mandatory provisions of the Act/Rule. The failure of the Assessing Officer to verify the above mentioned facts and non-application of mind to give cognizance to the conditions specified in the provisions of section 194C(7) of the Act, has made the assessment order erroneous in-so-far as it is prejudicial to the interest of Revenue.'

5.4 The ld. Pr. CIT has found the impugned assessment as erroneous and prejudicial to the interests of the Revenue as there has been non-application of mind by the AO for the following reasons:

a). non-verification of the relevant facts;

b). acceptance of the plea as to non-compliance of the provision of s. 194C(7) in view of the absence of a prescribed form; F/15J having been since discontinued, even as Form 26Q had been specifically designed for the purpose.

We shall take up both the aspects of the assessee's case, i.e., as before the AO and, accordingly, considered by the revisionary authority. True, the AO's order, being *sans* any inquiry and *sub silentio* in the matter, is *per se* erroneous and prejudicial to the interests of the Revenue. That is, there being nothing on record to exhibit a positive consideration of the matter, is itself indicative of non-application of mind. Even as the same stands since statutorily provided vide *Explanation 2(a)* to sec. 263 w.e.f. 01/6/2015, it represents the well-settled law, for which reference may be made to *Gee Vee Enterprises v. CIT (Addl.)* [1975] 99 ITR 375 (Del), rendered on a review of judicial precedents, which are legion, including by the Apex Court and the Hon'ble jurisdictional High Court. It, nevertheless, becomes incumbent on the revisionary authority to, even as he does in the instant case, state the areas on which the AO is to direct his inquiry, and issue finding/s on in the set aside proceedings, even as the same may not be exhaustive or, in a given case, only indicative. Our examination, finding the assessment dated 17/2/2016 as having been thus validly subject to revision by the ld. Pr. CIT, would be from this perspective.

5.5 The AO's order being *sans* any finding in the matter, there cannot be two views *qua* the non-verification of facts. However, there being no dispute as to

the amount of freight claimed and the amount on which tax stood deducted, the non-verification of facts could only imply non-verification *qua* the following:

a). whether declaration/s filed with the AO were in respect of the entire sum of Rs. 107.15 lacs on which there has been no deduction of tax at source, which appears to be in respect of freight allowed to one party, i.e., Akansha Singhai, Prop. Sagar Roadlines; and

b). whether the entire sum of Rs. 107.15 lacs pertained to the period 01/10/2009 to 31/3/2010 inasmuch as it is only the sums on which tax is deductible after 30/9/2009, i.e., credited or paid, whichever is earlier, after the said date, which would be covered by the changed law, effective 01/10/2009, exempting deduction of tax at source on the filing of the declaration by the creditor/payee. The sums credited or paid prior to 01/10/2009 would not, clearly, and admittedly, be covered by the amended law effective 01/10/2009.

The matter, accordingly, would stand to be restored to the file of the AO to verify the foregoing aspects, and decide in terms of the clear law and facts as found, neither clarified by the assessee nor indeed ascertained on verification by the AO.

5.6 *Qua* the second aspect, we begin by reproducing the relevant, extant provisions of law, being ss. 194C(6) & (7), as under:

194C. Payments to contractors.

(1) Any person responsible for paying …….

(2) to (5) x x x x x x

(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, on the furnishing of 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 authorised by it, such particulars, in such form and within such time as may be prescribed.

The assessee before the AO admits to the non-compliance of sec. 194C(7), even as he explains the same as due to the non-availability of the prescribed form; the erstwhile Form 15J u/r. 29D having been discontinued w.e.f. 01/10/2009. The AO accepts it, i.e., inferably, even as he did not, as afore-noted, issued any finding in the matter. The Pr. CIT finds the same unacceptable due to, even so, the failure to furnish Form 26Q, failing which the benefit of the changed law could not be extended, as had been per the impugned assessment.

5.7 In our considered view, the arguments advanced, both for and against, by either side, are untenable. There is nothing in law to contend that Form 15J, or the relevant rule (r. 29D), stands withdrawn w.e.f. 01/10/2009. The same stands withdrawn only by IT(Twenty First Amendment Rules, 2021), w.e.f. 29/7/2021. The question of the assessee filing Form 26Q instead, as the ld. Pr. CIT states, is an equally invalid statement. The assessee stating of having furnished before the AO in the reassessment proceedings the declaration/s received from the contractor, Akansha Singhai, to the effect that she does not own more than ten goods carriages at any time during the relevant previous year (even assuming she to be the person allowed the entire credit for Rs. 107.15 lacs), would not help the assessee's case inasmuch as that could not be in any manner regarded as in satisfaction of the requirement of law, i.e., F/15J, to be furnished to the CIT/CCIT within whose territorial jurisdiction the office of the contractor is situate, by 30th June following the financial year, i.e., 30/6/2010 in the instant case, which admittedly was not. In fact, the restriction in law as to the said declaration being from a contractor owning ten or less goods carriages at any time during the relevant year in sec. 194C(6) stood introduced only later, i.e., by Finance Act, 2015, w.e.f. 01/6/2015, and the requirement prior thereto *qua* the declaration from the contractor was limited only to he furnishing his Permanent Account Number (PAN). To say therefore that the assessee had indeed received the stated declaration *qua* the ownership of ten (or less) goods carriages from the contractor is clearly a false statement, and if even regarded as true despite

there being no reason in law for obtaining it, to no consequence, as indeed its subsequent filing with the AO, who, without stating any reason for the same, found it 'acceptable'. The only obligation on the assessee was to furnish the prescribed particulars to the prescribed income-tax authority within the prescribed time, and which the assessee claims as non-prescribed and the ld. Pr. CIT as F/26Q, both of which we find as incorrect. There is no change in the prescribed form, i.e., F/15-J. Form 26Q, on the other hand, is a statement in respect of tax deducted at source (as against not deducted u/s. 194C), obliged to filed u/s. 200, and which continues to obtain both prior and subsequent to 01/10/2009. There is no interface between the two. Thus, while the assessee is clearly in the wrong to say that no Form stood prescribed for him to have complied therewith, with we having found him to have made a false statement *qua* receipt of declaration/s from the contractor, as required u/s. 194C(6), which assumes significance as it is only on receipt thereof that the obligation u/s. 194C(7) comes into play, and the ld. Pr. CIT rightly finds it as incorrect, yet quotes the prescribed Form, which the assessee ought to have therefore filed, wrongly, which rather is in respect of tax deducted at source as against tax not deducted at source.

We, accordingly, while upholding the finding by the ld. Pr. CIT as to the non-compliance by the assessee of sec. 194C(7), modify his reference to Form 26Q, to Form 15-J. We have considered it relevant to specify the correct Form despite the admission by the assessee of non-compliance of s. 194C(7) as, in the absence of a prescribed Form, containing the prescribed particulars, along with the prescription as to time by which, and authority before whom, it is to furnished, the same could not possibly be complied with.

5.8 Finally, we may consider the assessee's claim before us of s. 194C(7) being independent of s. 194C(6), so that even a non-compliance of the former would not imply the assessee being in default for non-deduction of tax at source. Toward this, we have firstly found the claim of compliance of s.

194C(6), as it stood at the relevant time, to be false. Two, the argument of compliance of s. 194C(7) as not relevant for the purpose, is, before us, misplaced. The ld. Pr. CIT has set aside the assessment for proper consideration and a decision in accordance with law, so that the proper forum for the said argument by the assessee would be before the assessing authority in the set aside proceedings. It would be a different matter, we clarify, if the revisionary authority had, upon issuing a definite finding in the matter, directed the AO to, for that reason, effect a disallowance u/s. 40(a)(ia). Our scope in the instant proceedings is limited to the validity or otherwise of the impugned order *qua* each of the separate reasons on which the assessment is found deficient for want of proper inquiry/verification, to find it as valid *qua* both, also specifying the error therein.

5.9 A perusal of the file of the ld. Pr. CIT reveals an 'Office Note' appended to the assessment order, para (i) of which reads as under:

'(i) The assessee has been asked why TDS on freight of Rs. 1,26,59,566/- was not deducted while paying or crediting the sum to M/s. Sagar Road Lines. It has been submitted that as per the provisions section 194C(6) of the Income tax Act, 1961 the assessee was not required to deduct TDS on furnishing PAN to the assessee w.e.f. 01/10/2009. The assessee has paid total amount of Rs. 2,33,74,192/- out of which of amount of Rs. 1,26,59,566/-, on which TDS was deducted, was paid during the period 01/04/2009 to 30/09/2009 and the rest of the amount of Rs. 1,07,14,626/- has been paid during the period from 01/10/2009 to 31/03/2010 and according the provision of section 194(C)(6) the TDS on the same was not deducted. On verification the contention of the assessee was found correct.'

The same unequivocally confirms that no inquiry on the aspect raised by the ld. Pr. CIT, i.e., the cumulative satisfaction of the conditions of ss. 194C(6) & 194C(7), as against s. 194C(6) alone, *qua* which only the AO has limited his inquiry and issued his finding, had been made in assessment. The same simultaneously confirms that the sum of Rs. 107.15 lacs on which TDS stands deducted by the assessee pertained to the period 01/10/2009 to 31/3/2010, directed for verification per para 5.5 of this order. The same is unwarranted under the circumstances, and the AO shall in the set aside proceedings limit his

adjudication to that stated at para 5.8 of this order, and which, in effect, is the legal consequence of the non-furnishing of Form 15-J, as required u/s. 194C(7).

6. For the detailed reasons stated hereinbefore, we, find no reason to interfere with the impugned order and, accordingly, decline to. We decide accordingly.

7. In the result, the assessee's appeal is dismissed.

Order pronounced in the Open Court on September 30, 2022

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Dated: 30/09/2022

Copy of the Order forwarded to:

1. The Appellant: Shri Saurabh Singhai, Batasa Wali Gali, Sabulal Market, Rampura Ward, Sagar- 470001(M.P.)
2. The Respondent: Income Tax Officer -3, Sagar (M.P.)
3. Principal CIT -1, Jabalpur (M.P.)
4. CIT (Appeals)-1, Jabalpur
5. The CIT- DR, ITAT, Jabalpur (M.P)
6. Guard File

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Jabalpur.