

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.73 to 76/NAG/2017  
निर्धारण वर्ष / Assessment Years : 2011-12 to 2014-15

ITO (TDS), Ward-2(3), Chandrapur- 442401.	Vs.	ACC Ltd., Chanda Cement Works, P.O. Cement Nagar, Chandrapur, Dist.- Chandrapur, Chandrapur - 442502. PAN : AA ACT1507C
Appellant		Respondent

Revenue by : Shri Maurya Pratap  
Assessee by : Shri Chaitanya D. Joshi

Date of hearing : 20.07.2023  
Date of pronouncement : 31.07.2023

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

These are the appeals filed by the Revenue directed against the common order of Id. Commissioner of Income Tax (Appeals)-2, Nagpur [‘the CIT(A)’] dated 26.12.2016 quashing the order passed by the Income Tax Officer (TDS), Ward-2(3), Chandrapur u/s 201(1) of the Income Tax Act, 1961 (‘the Act’) for the assessment years 2011-12 to 2014-15 respectively.

2. Since the identical facts and common issues are involved in the above captioned four appeals of the Revenue, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal of the Revenue in ITA No.73/NAG/2017 for the assessment year 2011-12 are stated herein.

**ITA No.73/NAG/2017, A.Y. 2011-12 :**

4. Briefly, the facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing and sale of cement. The assessee had established a manufacturing Unit at Village Cement Nagar, Tal. Ghugus, Distt. Chandrapur. The assessee had filed e-TDS returns statement in Form 26Q relevant to the assessment year under consideration. The survey operations u/s 133A of the Act were conducted in the business premises of the assessee on 17.10.2014 in order to verify the compliance of TDS provisions of the Act and various payments made by the assessee. During the course of such survey operations, the TDS Officer had found that no tax at source was deducted on transport charges paid to transport contractors. The details of payment made by the assessee to the transport contractors were extracted by the TDS Officer vide para 4

of the order passed u/s 201(1) of the Act. In response to the show-cause notice, the assessee company had filed an explanation saying that no tax deduction at source is required to be made on the payments made to the transport contractors as engaged in the business of plying, hiring or leasing goods carriages and such transport contractors had duly furnished their Permanent Account Numbers (PAN) details to the assessee and the assessee in turn had intimated the said PAN details of the transport contractors to the Department in the prescribed form. It is the case of the assessee that it had reported the PAN details of the transport contractors in the prescribed form in relevant quarterly returns. Rejecting the above contentions of the assessee, the TDS Officer had held that the assessee as “assessee in default” for non-deduction of tax at source and demanded TDS amount u/s 201(1) of the Act vide order dated 26.03.2015.

5. Being aggrieved, an appeal was filed before the Id. CIT(A), who vide impugned order considering the submissions of the assessee held that under the provisions of sub-section (6) of section 194C, the assessee is not required to deduct tax at source on the payments made to the transport contractors, if the assessee furnishes the PAN details in the prescribed form of such transport contractors

to the Department. Accordingly, the ld. CIT(A) directed the TDS Officer not to treat the assessee as “assessee in default” and also directed to delete the demand raised u/s 201(1) of the Act.

6. Being aggrieved, the Revenue is in appeal before us in the present appeal.

7. The ld. CIT-DR submits that the ld. CIT(A) was not justified in granting relief without satisfying himself as to compliance with the provisions of sub-section (6) of section 194C of the Act.

8. On the other hand, ld. AR submits that the assessee is not required to deduct tax at source on the payments made to the transport contractors in view of the provisions of sub-section (6) of section 194C of the Act. He further submitted that in terms of Rule 31A of the Income Tax Rules, 1962 (‘the Rules’), the assessee had furnished the PAN details of the transport contractors to whom the payments were made without tax being deducted thereon in terms of sub-section (6) of section 194C of the Act. He submitted that the assessee company had duly complied with the provisions of Rule 31A of the Rules and furnished the quarterly e-TDS returns for the financial years 2010-11 to 2013-14.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the liability of the

assessee to deduct tax on payments made to the transport contractors in terms of the provisions of section 194C of the Act. The provisions of section 194C provides that a person responsible for making the payment to any contractor is required to deduct tax at source at applicable rates. The provisions of sub-section (6) of section 194C carves out an exception by providing that an assessee is not required to deduct tax at source in respect of transport contractors engaged in plying, hiring or leasing goods carriages, where such transport contractors on furnishing of PAN details to the persons from whom such sum is credited. The provisions of Rule 31A of the Rules provides that the person responsible for paying any sum to the contractor shall intimate the PAN details of such contractor to the Department in prescribed form. It is the case of the TDS Officer that the assessee was not engaged in the business of plying, hiring or leasing goods carriages, therefore, the provisions of sub-section (6) of section 194C of the Act have no application to the facts of the present case and, accordingly, held that the assessee as “assessee in default” and demanded the tax u/s 201(1) of the Act. On appeal before the ld. CIT(A), the ld. CIT(A) held that the TDS Officer misconstrued the provisions of sub-section (6) of section 194C, which is not the requirements of law that the assessee should

be engaged in the business of plying, hiring or leasing goods carriages. However, the Id. CIT(A) merely made a reference to the submissions of the assessee that it had complied with the provisions of sub-section (6) of section 194C of the Act read with Rule 31A of the Rules but, the order of the Id. CIT(A) is bereft of our factual discussion as to whether the assessee had complied with the provisions of Rule 31A of the Rules or not. In the circumstances, we are of the considered opinion that the matter requires remission to the file of the Id. CIT(A) for *de novo* adjudication of the issue in appeal by referring to the evidence of compliance of Rule 31A of the Rules. Thus, the grounds of appeal filed by the Revenue stand partly allowed.

10. In the result, the appeal filed by the Revenue in ITA No.73/NAG/2017 for A.Y. 2011-12 stands partly allowed.

**ITA Nos.74 to 76/NAG/2017, A.Ys. 2012-13 to 2014-15 :**

11. Since the facts and issues involved in remaining three appeals of the Revenue are identical, therefore, our decision in ITA No.73/NAG/2017 for A.Y. 2011-12 shall apply *mutatis mutandis* to the remaining three appeals of the Revenue in ITA Nos.74 to 76/NAG/2017 for A.Ys. 2012-13 to 2014-15 respectively. Accordingly, the remaining three appeals of the Revenue in ITA

Nos.74 to 76/NAG/2017 for A.Ys. 2012-13 to 2014-15 stands partly allowed.

12. To sum up, all the above captioned four appeals of the Revenue stands partly allowed.

Order pronounced on this 31<sup>st</sup> day of July, 2023.

**Sd/-**  
**(S. S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> July, 2023.

*Sujeet*

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Nagpur.
4. The CIT (TDS), Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /  
DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.