

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH 'DB', JODHPUR**

Before Sh. Saktijit Dey, Vice President

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

ITA No. 98/Jodh/2023 : Asstt. Year : 2017-18

ITA No. 99/Jodh/2023 : Asstt. Year : 2018-19

Deputy Conservator of Forest, Forest Bhilwara, Bhilwara, Rajasthan-311001	Vs	CIT(Appeal), NFAC, Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAGD0386F		

Assessee by : Sh. Sunil Porwal, CA

Revenue by : Ms. Meenakshi Vohra, CIT-DR

Date of Hearing: 21.09.2023

Date of Pronouncement: 02.11.2023

ORDER

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

The present appeals have been filed by the assessee against the orders of National Faceless Appeal Centre (NFAC), Delhi dated 23.01.2023

2. Since, the issue involved in both the appeals are similar, they were heard together and being adjudicated by a common order.

3. In ITA No. 98/Jodh/2023, following grounds have been raised by the assessee:

"1. That Id. CIT(A) has not considered/appreciated the facts that provision of section 194C are not applicable to payments of VFPMC.

2. That Id. CIT(A) has not considered/appreciated the facts that the AO has not considered the provisions of

applicability of Section 201(1)/201(1A) of the Income Tax Act, 1961 for "assessee not in default".

4. Brief facts of the case involve, that the appellant was covered by a survey u/s 133A(2A) of I.T. Act on 17.10.2019 so as to verify whether the appellant as a deductor is deducting tax at source (TDS) on all the payments which require such deduction of tax at source as per the provisions of I.T. Act. Consequent to the survey, the AO initiated proceedings u/s 201(1) and 201(1A) of I.T. Act for A.Y. 2017-18 and A.Y. 2018-19 and same has resulted in passing of order u/s 201(1) and 201(1A) of I.T. Act for these two assessment year i.e. A.Y. 2017-18 and A.Y. 2018-19 on 31.12.2019. The true extract of the relevant assessment order as applicable to A.Y. 2017 and A.Y. 2018-19, is as under and apparently, both these orders are more or less covering similar facts of case and contentions of appellant on the TDS provisions as relatable to provisions u/s 194C of I.T. Act. Accordingly, relevant assessment order as applicable to the A.Y. 2017-18 is as under:

"5. The above reply filed by the Deductor assessee has been considered. The Deductor assessee has not denied or questioned that he is not paying to VFPMCs. Section 194C of the Income-tax Act, 1961 defines 'Payments to Contractors' and the relevant portion of the same is reproduced below:

"(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 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 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)
- (ii) *two percent 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”

5.1 *So as per the provisions of the Income-tax Act, 1961, the following parts integral or essential parts of a contract-*

- (i) *Existence of two parties*
- (ii) *One of them is carrying out any work or supply of labour for carrying out any work for the other party and the other party is paying sum to this party in any mode whether the same is cash, cheque, draft or any other mode.*
- (iii) *The work is done in pursuance of a contract.*

5.2 *Here in the instant case there is no doubt on any fact which establishes anything contrary to the provisions of section 194C of the Income-tax Act, 1961. There are two parties i.e. State of Rajasthan and VFPMC and VFPMCs are carrying out the work which is assigned to them through GO F7(39)Van/90/ dated 17.10.2000 issued by Rajasthan State Government and subsequent Instructions and the work done by VFPMCs is in pursuance of a Contract only as scanned supra. So all the conditions given in section 194C of the Income-tax Act, 1961 have been fulfilled in all such cases where a single payment is of more than Rs. 30,000/- or aggregate payments in Financial Year is made of Rs. 75,000/- (upto 31.05.2016) & Rs. 1,00,000/- (from 01.06.2016) to any single VFPMC for carrying out any work and thus, tax is required to be deducted at source @ 2% on the total amount paid to the said VFPMC.*

5.3 *The VFPMCs are Association of Persons which is formed through all the adult individuals residing in a single revenue village and they are not registered as Society under the Societies Registration Act nor are they treated or registered as Co-operative Society. The law which governs their formation is Rajasthan Forest Act, 1953. Under*

this law, State of Rajasthan had issued GO's which deals with the formation and functioning of these VFPMCs as well as their powers, duties etc. It is found that neither VFPMCs fall into category of State Government or Local Authority as per section 10 (20) or section 10 (46) of the Income-tax Act, 1961 nor any sub section of section 10 comes to their relief. Further, even they are not registered as Trust as per provisions of sections 11 and 12 of the Income-tax Act, 1961. Since these VFPMCs are not registered as Co-operative Society, provisions of section 80P of the Income-tax Act, 1961 are also not applicable on them. Hence by virtue of their creation they are not falling in any of the category whose income is subject to exempt from payment of Income tax or they are likely to receive 100% deduction on the same.

5.4 Hence, VFPMCs are not such body or authority to receive payment without deduction of tax at source as these VFPMCs are not exempted by any specific provisions of the income-tax Act, 1961.

5.5 Now question arise the legality of the stand taken by Deductor assessee that due to GO F7(39)Van/90 dated 17.10.2000 and subsequent instructions issued by the State of Rajasthan it need not to treat payments made to VFPMCs as Contract Payments even though they signed a Contract with him for carrying out work as per its instruction or Supplying Labour to the Deductor assessee. The stand taken by Deductor assessee and State of Rajasthan is legally not correct, bad in law & ultra-virus because the provisions of the Income-tax Act, 1961 are not subject to control of any State Government, only Union or Central Government can issue any such direction which in this instant case had not been issued so far. There was absolute no scope of non .compliance of the provisions of section 194C of the Income-tax Act, 1961 by not deducting tax at source on the payments made to VFPMCs. A mere Order or Instruction issued by Executive shall not over- ride the provisions of Union Act passed by the Parliament (Income-tax Act, 1961).

6. The total payment made during Financial Year 2016-17 to 79 VFPMCs was Rs. 5,47,49,211/- and out of this an amount to Rs. 5,43,75,987/- was liable for TDS as per the prevailing conditions for F.Y. 2016-17 under the provisions of section 194C of the Income-tax Act, 1961. It is pertinent to mention here that now the assessee Deductor itself is regularly deducting tax at source on the payments made to VFPMCs from F.Y. 2018-19 onwards. This clearly construed that the Deductor assessee is in agreement of the view taken by the Department for conducting Survey u/s 133A(2A) of the Income-tax Act, 1961 and the provisions of section 194C of the Income-tax Act, 1961 are squarely applicable on them while making payments to various VFPMCs.

6.1 Further, Permanent Account Number (PAN) of these VFPMCs were not in possession of the Deductor assessee at the time of making the payment to VFPMC, thus, as per the provisions of section 206AA of the Income-tax Act, 1961, the applicable rate for deduction of tax at source is 20%.

6.2 In view of the above discussion, the Deductor assessee is deemed to be an 'assessee in default' as per the provisions of section 201(1) of the Income-tax Act, 1961 for not deducting tax at source on the payments of Rs. 5,43,75,987/- made to various VFPMCs. Thus, the amount of tax u/s 201(1) r.w.s. 206AA of the Income-tax Act, 1961 works out at Rs. 1,08,75,197/- (Rs. 5,43,75,987/- @ 20%) and the calculation of the same is annexed herewith as per Annexure-A.

7. Now, as far as provisions of section 201(1 A) of the Income-tax Act, 1961 is concerned, the Deductor assessee is also liable to pay simple Interest u/s 201(1 A) of the Income-tax Act, 1961 as it is failed to deduct tax at source as per the provisions of section 194C of the Income-tax Act, 1961 on the payments made to VFPMCs.

7.1 In view of above, the Interest liability of the Deductor assessee u/s 201(1A) of the Income-tax Act, 1961 comes to Rs. 41,05,579/- and the calculation of the same is annexed herewith as per Annexure-A.

8. Accordingly, the Deductor assessee is hereby directed to pay tax amount of Rs. 1,08,75,197/- u/s 201(1) of the Income-tax Act, 1961 and simple Interest u/s 201(1A) of the Income-tax Act, 1961 amounting to Rs. 41,05,579/-, totaling to Rs. 1,49,80,780/- as detailed below:

Section	Amount
u/s 201(1)	Rs.
u/s 201(1 A)	Rs. 41,05,579/-
Total	Rs.
Rounded off u/s 288B	Rs.

5. Aggrieved, against the above order of A.O. appellant has preferred appeals against A.O's orders for these A.Ys. i.e. A.Y. 2017-2018 and A.Y. 2018-2019. The Id. CIT(A) affirmed the action of the Assessing Officer. The relevant part of the order of the Id. CIT(A) is as under:

"The appellant has contended that the provisions u/s 194C is not applicable to appellant having involved in carrying out various forest related works of construction activities, of labour works etc. under the control and payment of appellant as per the related GOs of Govt. of Rajasthan through Van Suraksha Prabandh Samiti (VFPMC) as Association of Persons (AoPs). Further, appellant also contended that VFPMC/Association of Persons which are formed by all the adult individuals residing in the village and accordingly, do not carry any profit element or income element which attracts TDS provisions u/s 194C of I.T. Act etc. On this analogy, appellant has requested to treat the same as not akin to qualified contract with AoPs for necessary attraction of provisions u/s 194C of I.T. Act and also placed reliance on certain citations to adduce the appellant's contentions. However, on perusal of overall facts of case as brought out in the assessment order and also keeping in the view the appellant's contentions it is understood that appellant is squarely

involved in carrying out/affecting payments to these AoPs to carry out works of forest area involving hiring of manpower/labour etc. as needed to carry out such works as assigned to these AoPs by the deductor/appellant by virtue of entering into a contract as per the orders of A.O.

In the light of these facts, it is clear that these groups of adult individuals formed as VFPMCs are indeed involved in contractual obligations with appellant deductor for carrying out various forest related construction/maintenance works and for which they have received payments by virtue of contractual obligations u/s 194C of I.T. Act. In view of these facts, as reasoned and discussed in detail in assessment order, these payments are to be routed through TDS provisions by affecting TDS deductions as per law, failing which provisions u/s 201(1) and 201(1A) of I.T. Act are squarely attracted.

On these bare facts of case as discussed in the assessment order, apparently appellants submissions could not make any contradictory claims on the fact of large payment made to these AoPs by virtue of contractual obligation involving regular works of labour and maintenance works of forest areas falling under the purview of deductor/appellant. Hence, A.O's findings on applicability of provisions under section 194C could not be denied by any verifiable/justifiable evidence as made available by the appellant. Appellant merely holds to the view that the same are not applicable, appellant being a state government having carried out forest related schemes as per law with such AOPs. However, it is a fact on record that these AOPs involved in carrying out contractual works with the appellant and for which regular bills are raised by the AOPs and are being paid by deductor for such fulfillment of contractual obligation. In view of these facts, it is clear that appellant is squarely covered by the TDS provisions as a deductor and failing which the provisions u/s 201(1) and 201(1 A) of I.T Act are squarely applicable. Further, it would be improper to arrive at any premise/assumption that these payments involved as receipts of these AOPs, as not having any income component is far from truth and verifiability when it involves a composite agreement to carry out various complex works of labour/hiring and maintenance works of forest as discussed in the assessment order.

Further, appellant also contended and compared that the programmes/works as given to AoP are as did by the State Govt., with people's voluntary participation under Panchayat Raj Scheme etc, involving employment generation schemes of NREP/RLEGP etc. and accordingly, adduced that these works as did by AoP is not attracted by TDS provisions u/s 194C of I.T Act. However, appellant could not place on record how these works as carried out by forest department for its regular works of plantation of trees on wasteland, nursery related works of forestation/construction activities involving labour hiring by these groups of peoples/associations etc. are relatable to such works of govt., activities involving employment generation schemes. Hence, appellant's contentions on this analogy are neither justified nor comparable to the works of AoP as assigned by the deductor by issue of work orders for affecting payments to these AoPs, which in turn pay to final workforce/labour as hired or materials as purchased. In this analogy, AoPs are akin to taxable entities, having receipts and payments which are indeed audited as claimed by the appellant having no taxable income. Considering these facts, appellant claims that appellant as deductor is not covered by TDS provisions u/s 194C of I.T. Act for its payment to these AoPs is neither justifiable or acceptable as per the strict provisions of I.T. Act involving contractual obligations/payments from appellant to its recipients (AoPs) as reasoned by A.O. Accordingly, appellant's claim on this analogy is not maintainable and acceptable.

Considering all these facts on records as brought out by the A.O, appellant's submission to consider that the AO has wrongly applied TDS provisions consequent to survey is neither justifiable nor acceptable and in fact, appellant is duly following such TDS compliance, as applicable for subsequent assessment years, and which clearly proves that the facts of appellant for these A.Ys. i.e. A.Y. 2017-18 and A.Y. 2018-19 also are squarely covered by provisions u/s 194C of I.T. Act as discussed by AO for the A.Y. 2017-18 and also A.Y. 2018-19, as at para 6 of assessment order as produced hereunder for clarity:

"8. The total payment made during Financial Year 2016-17 to 76 VFPMCs was Rs. 6,47,46,211/- and out of this an amount to Rs.5,43,75,987/- was liable for TDS as per the prevailing conditions for F.Y. 2010-17 under the provisions of section 194C of the

Income-tax Act, 1961, It Is pertinent to mention here that now the assesses Deductor itself is regularly deducting tax at source on the payments made to VFPMCs from F.Y. 2618-19 onwards. This clearly construed that the Deductor assessee Is in agreement of die view taken by the Department for conducting Survey u/s 133A(2A) of the Income-tax Act, 1861 and the provisions of section 194C of the Income-tax Act, 1961 are squarely applicable on them while making payments to various VFPMCs."

6. Heard the arguments of both the parties and perused the material available on record.

7. The issue to be decided by this Tribunal narrows down as to "*whether provisions of Section 194C are applicable to the payments made VFPMC carrying out the work or not?*"

8. The DFO/DCF is a Rajasthan Government Authority making payments for safety, management, development of forest, soil and water conservation and safety of wild life. The deductor, DCF is paying money to association of persons called Village Forest Protection Management Committee who carry out the work of management, development of forest & other works. The AO held that the payments made to VFPMC is liable to the provisions of Section 194C on the grounds that it is labour contract which the Id. CIT(A) concurred with.

9. We find from the facts that the committees consists of adult members of the village who receive the payments from the DFO and pay to the villagers who are involved in the work of maintenance of forest as assigned. The committee is a pass through entity between the DFO and villagers who are the labourers. The works are authorized by the State Government for creation of employment and for the assigned duties and works exactly in the lines of NREP and RLEGP. The programme is executed with the participation of the people under the activities of provisions of State Government and there is no contractor *per se* involved in execution of the work. The Circular of the CBDT pertaining to deduction of TDS u/s 194C is as under:

"VIII. Whether provisions of section 194C are applicable to work executed under National Rural Employment Programme (NREP) and Rural Landless Employment Guarantee Programme (RLEGP)

1. References have been received from certain quarters about the applicability of the provisions of section 194C to the payments made in respect of the works executed under the National Rural Employment Programme (NREP) and Rural Landless Employment Guarantee Programme (RLEGP).

2. According to the provisions of section 194C, any person responsible for paying any sum to any contractor for carrying out any work in pursuance of a contract between the contractor and the agencies specified therein shall, at the time of credit of such sum to the amount of the contractor or payment thereof in cash, etc., deduct an amount equal to 2 per cent of such sum as income-tax on income comprised therein. Similarly, when a contractor makes

payment to a sub-contractor in pursuance of a contract for carrying out the whole or any part of the work undertaken, he is required to deduct an amount equal to 1 per cent of such sum as income-tax on income comprised therein. However, no such deduction is required to be made from any sum credited or paid in pursuance of any contract the consideration of which does not exceed Rs. 10,000.

3. According to the NREP Scheme, at the district level the entire work relating to planning, co-ordination, supervision and monitor-ing of implementation of the programme will be the responsibility of the District Rural Agencies. In the implementation of the programme, the Panchayati Raj institutions are actively involved. Voluntary organisations are also involved in such implementation. The wages under this programme are paid partly in foodgrains and partly in cash. There is a specific ban on employment of contrac-tors for the execution of the work under the programme.

4. According to the RLEGP Scheme while preparing the work project, the State Government will indicate the implementing agencies for each project. There can be different implementing agencies for different work projects in a State. The projects can be entrusted to voluntary organisations/Panchayati Raj institu-tions also for implementation. The State Government will have the overall responsibility for planning, supervision and monitoring of the projects taken up under this programme. The wages under this programme are to be paid partly in foodgrains and partly in cash. This programme also specifically bans the employment of contractors for execution of work. It has been specifically laid down in the guidelines for implementation of RLEGP that the voluntary organisations should ensure that no contractors or middlemen or any such intermediary agencies are engaged in the execution of work.

5. Thus, it is clear that the programmes under the NREP and RLEGP are executed with the participation of the people and the Panchayati Raj institutions under the active supervision of the State

Governments in conformity with the guidelines framed by the Central Government. There is no contract between the village committee/voluntary agencies and the State Governments, which is sine qua non for attracting the provisions of section 194C. Moreover, these schemes specifically ban the employment of con-tractors/middlemen for the execution of the work undertaken under these schemes.

6. In view of the foregoing, the provisions of section 194C are not attracted in the case of payments made in respect of works executed under these programmes."

Circular : No. 502 [F.No. 385/49/86-IT(B)], dated 27-1-1988.

10. Keeping in view, the specific facts peculiar to the instant case and the Circular of the CBDT, the appeal of the assessee is hereby allowed.

11. In the result, the appeals of the assessee are allowed.
Order Pronounced in the Open Court on 02/11/2023.

Sd/-
(Saktijit Dey)
Vice President

Dated: 02/11/2023

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