

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

**BEFORE DR MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No.35/Ran/2021
Assessment Year: 2012-13**

ACIT, Central Circle-1, Ranchi	vs	Shri Vijay Prasad Flat No. 202, Madhusudan Sir Krishanapuri, Dimna Road Mango, Jamshedpur-831012. PAN: AILPP 0228 L
(Appellant)		(Respondent)

**C.O. No.19/Ran/2021
(Arising out of ITA No. 35/Ran/2021)
Assessment Year: 2012-13**

Shri Vijay Prasad Flat No. 202, Madhusudan Sir Krishanapuri, Dimna Road Mango, Jamshedpur-831012. PAN: AILPP 0228 L	vs	ACIT, Central Circle-1, Ranchi
(Appellant)		(Respondent)

Present for:

Assessee by : None

Revenue by : Shri Pranob Kumar Koley, Sr. DR

Date of Hearing : 29.11.2023

Date of Pronouncement : 11.12.2023

ORDER

PER SONJOY SARMA: JM

This appeal is preferred by the Revenue against the order of Id. CIT(A)-3, Patna dated 09.03.2021 against same impugned order a cross-objection also filed by the assessee being C.O. No. 19/Ran/2021.

2. Brief facts of the case are the assessee filed its return of income for the A.Y. 2012-13 on 11.09.2012 showing total income of Rs. 14,32,834/-. The case of the assessee was selected for scrutiny under CASS and the assessment in the case of assessee was completed u/s 143(3) of the Act on 28.03.2014 determining total income of Rs.

15,43,400/- . Subsequently, the case of the assessee by virtue of the order from Commissioner of Income Tax (Central), Patna has set aside the assessment order with the direction to pass fresh assessment order. In consequent to that notice u/s 142(1) of the Act was issued to the assessee and during the assessment proceeding, the assessee had made payment of Rs. 10,34,644/- to the different transporters and the amount paid to transporter was more than Rs. 75,000/-and the assessee has not furnished the PAN of the transporters and it was in violation of section 40(a)(ia) u/s 194C r.w.s. 206AA of the income-tax Act, 1961. Therefore, the ld. AO disallowed such amount in the hands of assessee by assessing the income of the assessee at Rs. 1,18,89,846/-.

3. Aggrieved by the above order assessee went in appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed.

4. Dissatisfied with the above order revenue is in appeal before this Tribunal. Although revenue has raised 6 grounds of appeal in present appeal. However, main grievance of revenue is relating to delete the disallowance of Rs. 1,03,46,443/- by ld. CIT(A) while passing the impugned order under challenged before this Tribunal. Therefore, all the grounds are connected and clubbed together for adjudication. The ld. DR submitted before the bench that the impugned findings given by the ld. CIT(A) is not correct by allowing the claim of the assessee in respect of transportation charges without examining the details of payee and on the issue where the assessee has not furnished the details before the prescribed authority in prescribed form and within the prescribed time limit as stated in section 194(7) of the Act. Assessee has failed to deduct tax at source when such payment was made exceeded the limit as prescribed under the law. Therefore, the impugned finding

given by Id. CIT(A) needs to be quashed by sustaining the order of Id. AO.

5. We after going through the facts of the case and after perusing the order passed by the Id. CIT(A) note that he has elaborately discussed the case at length and noted that all the transporters have duly recorded the total receipts from assessee while filing the return of income by showing such amount as their turnover. There was no revenue loss to the revenue authority. The Id. CIT(A) has quoted the details of ITR along with computation of income showing their turnover which are either equal to or higher than the total expenses paid by the assessee against their name. The Id. CIT(A) while passing the impugned order has placed reliance on the decision of jurisdictional ITAT in the case of Manoj Kumar Singh vs ITO, Bokaro dated 05.3.2020 wherein the Hon'ble Tribunal following the decision of Hon'ble Calcutta High Court in the case of CIT vs Stumm India ITA 127/2009 dated 16.08.2010 deleted the addition made u/s 40(a)(ia) holding that the onus is upon the revenue to establish that the payments made were in pursuance to a contract whether oral or written. Even on merit also the Id. CIT(A) has stated that assessee has duly obtained the PAN Card copy and the declaration letter from truck owners. However, the assessee could not furnish the same before the PCIT in prescribed form would not make the assessee liable for addition u/s 40(a)(ia) of the Act. On this issue also, the Id. CIT(A) relied on the decision of Hon'ble ITAT, Jaipur bench in the case of ACIT vs M/s. Arihant Trading Co. dated 19.03.2019 where tribunal has held as under:

"In the instant case, once the assessee is in receipt of PAN and has not deducted TDS, it has complied with the first statutory obligation cast upon him and the assessee cannot be penalized for non-deduction of TDS. To our mind, the statutory obligation to furnish the information regarding receipt of PAN and non-deduction of TDS is a fat mat of and consequent of the first statutory obligation to not deduct TDS on receipt of PAN. However,

merely because there is non-compliance on part of the assessee to furnish the prescribed information to the Revenue authorities, the same cannot lead to a conclusion that the assessee has not complied with the first statutory obligation. There are separate penal provisions for non-compliance thereof. In CIT v. ValibhaiKhambhai Mankad [2013] 216 Taxman 18/[2012] 28 taxmann.com119 (Guj.), it is held by the Hon'ble Gujarat High Court at Ahmedabad that :— In our view, therefore, once the conditions of further proviso of section 194C(3) are satisfied, the liability of the payee to deduct tax at source would cease. The requirement of such payee to furnish details to the income tax authority in the prescribed form within prescribed time would arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable under sub-section (2) of section 194C of the Act. In our view, therefore, the Tribunal was perfectly justified in taking the view in the impugned judgment. It may be that failure to comply such requirement by the payee may result into some other adverse consequences if so provided under the Act. However, fulfilment of such requirement cannot be linked to the declaration of tax at source. Any such failure therefore cannot be visualized by adverse consequences provided under section 40(a)(ia) of the Act.”

6. We after considering the above findings given by the ld. CIT(A) as well as examining the facts of the case do not find any infirmity in the order passed by the ld. CIT(A) which is challenged before us. Accordingly, we are inclined to sustain the order passed by ld. CIT(A) by dismissing all the grounds taken by the revenue before this Tribunal. In consequent to the above, Cross-objection filed by the assessee is also hereby dismissed.

7. In the result, the appeal of the revenue as well as cross-objection filed by the assessee is dismissed.

Order pronounced in the open court on 11.12.2023

Sd/-

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata: 11.12.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR .

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata