

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**Before Shri G.S. Pannu, Hon'ble Vice President
and
Shri Anubhav Sharma, Judicial Member**

ITA No. 6416/Del/2018
(Assessment Year: 2014-15)

ITO, Ward-1(5), Faridabad (Appellant)	Vs. Mehar Chand, B-125, Adarsh Nagar, Ballabgarh, Haryana PAN: AJRPM8412A (Respondent)
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Revenue by : Shri Kanv Bali, Sr. DR

Assessee by: Shri Chetan Saini, AR

Date of Hearing 05/04/2024

Date of pronouncement 04/06/2024

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the revenue against the order dated 31.07.2018 of Id. Commissioner of Income Tax (Appeals), Faridabad (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 11256/2016-17 arising out of an appeal before it against the order dated 29.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the AO, Income Tax Officer, Ward-1(5), Faridabad (hereinafter referred as the Ld. AO).

2. Facts in brief are that the Assessment u/s 143(3) of the I.T Act 1961 was completed at an income of s.5,55,73,510/- on 29.12.2016 against the returned income of Rs.16,81,590/- after making certain additions which includes Addition of Rs.4,91,67,850/- u/s 40(a)(ia) of

the Income Tax Act, 1961 since the assessee failed to deduct tax at source as per provisions of section 194I of the Income Tax Act, 1961. Aggrieved with the assessment order passed by the AO, the assessee filed appeal before Ld.CIT(A), Faridabad. Ld.CIT(A) vide impugned order has allowed relief to the assessee. The case of Revenue is that during assessment proceedings the AO examined P&L A/c and noticed that the assessee has claimed "outside truck hire charges" of Rs.4,91,67,850/-. Since the trucks form part of plant & machinery the assessee was required to deduct TDS on rent for the use of any machinery or plant or equipment. Since the truck form part of plant & machinery, assessee is to deduct TDS on rent paid to truck owner as per provisions of section 194I of the Act. Since the assessee failed to deduct tax at source, rent of Rs.4,91,67,850/- was disallowed and added back to the returned income u/s 40(a)(ia) of the Act. In the impugned order, Ld. CIT(A) has deleted this addition with the observation that hiring of trucks is covered under the provisions of section 194C and not 194I. As per Revenue the Ld. CIT(A) has wrongly relied the decision of ITO(TDS) Vs. Indian Oil Corporation (ITAT Delhi) - wherein the Hon'ble ITAT relying upon the decision of Hon'ble Bombay High Court in their decision dated 29.06.2007 in Indian National Ship Owner's Association and Others Vs. CIT(TDS) in CWP No. 400 of 2007 concluded that the provisions of section 194I of the Act are applicable only in respect of rent for land or building (including factory building), furniture, fittings or any other machinery attached thereto and not for anything else like ships, transport vehicles (including railways) and freight/charter hire payments thereto.

3. The revenue has raised the following grounds of appeal:-

- "1. *Whether on the facts and in the circumstances of the case the Id CIT(A), Faridabad is correct in deleting the addition of Rs. 4,91,67,850/- made by the AO under section 40(a)(ia) of the Income Tax Act, 1961 being non deduction of tax at source as per provisions of section 194I of the Income Tax Act, 1961.*"

4. On behalf of the revenue it was contended that Id AO had correctly disallowed the rent expenses invoking u/s 40(a)(ia) of the Act as the trucks of the transporter form part of plant and machinery.

5. On the other hand the Id AR submitted that there is no error in the finding of the Id CIT(A) and in fact as the contractor was having less than 10 trucks, no TDS was deductible.

6. Giving thoughtful consideration to the matter on record it can be observed that admittedly the Assessee is providing transport services to customers and for that purpose the Assessee uses own trucks as well as services availed of the trucks from outside. Now, Section 194C (1) of the Act lays that 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 a 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 time 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 prescribed TDS. However, Sub Section (6) provides that the TDS is not required to be deducted where the amount paid / credited to the account of the contractor engaged in the business of hiring, plying or leasing goods carriage and the contractor doesn't own more than 10 goods carriage at any time during the previous year. Reference can also be made to explanation (ii) to section 194C of the Act which provides that 'goods carriage' shall have the meaning assigned to it in the explanation to sub-section (7) of section 44AE which deals with the special provision for computing profit and loss of business of the plying, hiring or leasing goods carriages.

7. Now when these provisions are taken into consideration there is no reason to differ with the opinion of Id CIT(A) that provision of section

194I of the Act is not applicable as claimed by the revenue as the same is in regard to rents payable in respect of machinery or plant or equipment while 'goods carriage' involved in business of plying, hiring or leasing provisions of section 44AE are applicable.

8. However, the bench is of considered opinion that neither before the Id AO or before the Id CIT(A) a plea was taken that the case of the Assessee falls in the exception as his contractor was not having more than 10 trucks. That being a question of fact needs examination.

9. Therefore, the matter needs to be restored to the file of the Id AO to take into consideration the aforesaid plea of Assessee and thereafter examine the claim in the light of provisions of section 194C of the Act. Accordingly, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 04/06/2024.

-Sd/-
(G.S. Pannu)
Hon'ble Vice President

-Sd/-
(Anubhav Sharma)
Judicial Member

Dated: 04/06/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi