



2. This appeal is barred by limitation by 25 days. The assessee has filed petition requesting the bench to condone the delay. We heard the parties on this preliminary issue. Having regard to the submissions made in the petition, we condone the delay and admit the appeal for hearing.

3. This is the second round of proceedings. The original assessment order passed by the Assessing Officer travelled upto the Tribunal and the Tribunal vide, order its dated 14.09.2012 passed in ITA No. 1321/Mum/2021 restored the matters back to the file of the Assessing Officer for examining them afresh. Accordingly, impugned assessment order came to be passed by the AO.

4. The assessee is engaged in the business of transportation of printer drums and tins. In the original assessment proceedings, the Assessing Officer disallowed freight charges of Rs.12,79,600/- u/s 40(a)(ia) of the Act for non-deduction of tax at source. He also disallowed diesel and fuel expenses of Rs.54,40,044/- u/s 40(a)(ia) of the Act on the reasoning that the same should be considered as part and parcel of freight charges and no TDS has been deducted therefrom also. The Assessing Officer also disallowed truck repair and maintenance expenses of Rs.5,18,791/- on the reasoning that the assessee did not produce the bills and vouchers for verification. The learned CIT(A), in the first round of proceedings, confirmed the disallowance of freight charges, diesel and fuel expenses and granted partial relief in respect of truck repair and maintenance expenses by sustaining 15% of the expenses. As noted earlier, the Tribunal restored all the issues back to the file of the Assessing Officer. In the set aside proceedings, the Assessing Officer sustained the disallowance of freight charges and Fuel & diesel expenses on the reasoning that the assessee has failed to produce further documents. With

regard to the truck repair and maintenance expenses, the Assessing Officer restricted the disallowance to 15% of the expenses as per relief granted by the learned CIT(A) in the first round of proceedings. The learned CIT(A) confirmed all the additions made by the Assessing Officer in the second round of proceedings and hence assessee has filed this appeal before us.

5. We heard rival contentions and perused the record. With regard to the freight charges paid by the assessee, it was submitted that the assessee owned only two trucks and whenever there is requirement of additional trucks, he has hired them from the market at the prevailing market rates. It was submitted that no contract is entered for that purpose and the freight charges are finalised on the basis of prevailing market rates. Accordingly, it was submitted that those payments cannot be said to have been made as per the contract entered by the assessee. Further, it was submitted that the payments made for each of the vehicle at one point of time was less than the threshold limit prescribed for deduction of TDS u/s 194C of the Act and on that count also, the assessee was not liable to deduct tax at source from the freight payments. Accordingly, it was submitted that the AO was not right in holding that the assessee was liable to deduct tax at source. The Ld A.R also relied upon certain case laws.

6. The Ld D.R supported the order passed by Ld CIT(A).

7. We heard rival contentions and perused the record. In respect of freight charges paid by the assessee, the first contention of the assessee is that there existed no contract between the assessee and the truck owners, since the trucks are hired from the market as per the demand at prevailing market rates.

In support of the above said proposition, the Ld A.R placed his reliance on the case of R R Carrying Corporation vs. ACIT (2009)(126 TTJ 240)(Cuttack). In the above said case, the Tribunal held that, in the absence of any evidence to show that there existed contractor – contractee relationship between the parties, there is no requirement of deducting TDS from the freight charges paid to the lorry hired from the market. We notice that the Cuttack bench of ITAT has taken support of the decision rendered by Hon'ble Punjab & Haryana High Court in the case of COMMISSIONER OF INCOME TAX vs UNITED RICE LAND LTD. (2008) 217 CTR (P&H) 332 in this regard, wherein it was held that with regard to payment to transporters for arranging trucks, a finding of fact has been recorded that there was neither any oral or written agreement between the assessee and the transporters for carriage of goods nor it has been proved that any freight charges were paid to them in pursuance of a contract for a specific period, quantity or price. Further, the Tribunal too has clearly stated that nothing has been brought on record by the AO to prove that there was written or oral agreement between the parties for carriage of goods. Therefore, assessee was not liable to deduct tax under s.194C from payments made to the transporters. The Ld A.R also placed reliance on the decision rendered by Guwahati bench of Tribunal in the case of Pranjit Saikia vs. ACIT (2015)(59 taxmann.com 330)(Gau., wherein also Identical view has been expressed.

8. In the instant case, we notice that the facts are identical. The AO has not brought on record any material to show that there existed any oral or written contract between the assessee and lorry owners. Hence the provisions of sec.194C, as per the above discussed decisions, will not apply. Even if it is assumed for a moment that there existed an oral contract between the

parties, it is the submission of the assessee that the payment made to each lorry on each occasion did not exceed the threshold limit prescribed for deducting tax at source u/s 194C of the Act. The above said submission has not been disproved. Accordingly, we are of the view that the AO was not justified in invoking the provisions of sec. 40(a)(ia) of the Act for disallowing the freight charges of Rs.12,79,000/-. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the above said addition.

9. We noticed earlier that the AO has disallowed Diesel & Fuel expenses amounting to Rs.54,40,044/- on the reasoning that the said payment shall form part and parcel of contract and since the assessee has not deducted tax at source, the same was disallowed u/s 40(a)(ia) of the Act. The reasoning given by us for deleting the disallowance of freight charges of Rs.12,79,000/- u/s 40(a)(ia) of the Act would equally apply to this expenditure also. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of Diesel & Fuel expenses of Rs.54,40,044/-.

10. The last issue relates to partial disallowance of Truck repairs and maintenance expenses. The AO had initially disallowed entire expenditure. However, the Ld CIT(A) restricted the disallowance to 15% of the expenses in the first round of proceedings. The same has been reiterated by the AO in the second round also. We notice that the above said adhoc disallowance was made for the reason that the assessee did not produce bills and vouchers, which defect remained unrectified in the second round also. Accordingly, we

confirm the disallowance of 15% of the Truck repaid and maintenance expenses.

11. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 1<sup>st</sup> August, 2024.

Sd/-  
(RAJ KUMAR CHAUHAN)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai, Date : 1<sup>st</sup> August, 2024

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Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai