

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Satbeer Singh Godara, Judicial Member and
Shri Amarjit Singh, Accountant Member

ITA Nos. 563 to 567/Coch/2023
(Assessment Years: 2011-12 to 2016-16)

| | | |
|--|-----|--|
| M. Dasan CIEIT Ulliyeri P.O. Kozhikode 673620 [PAN: CHNMO4816A] | vs. | The Income Tax Officer (TDS) Aayakar Bhavan Mananchira Kozhikode 673001 |
| (Appellant) | | (Respondent) |

| | |
|----------------|-------------------------------|
| Appellant by: | ----- None ----- |
| Respondent by: | Smt. V. Swarnalatha, Sr. D.R. |

| | |
|------------------------|------------|
| Date of Hearing: | 22.08.2024 |
| Date of Pronouncement: | 23.10.2024 |

ORDER

Per Bench

These assessee's five appeals ITA Nos. 563 to 567/Coch/2023 arise against orders of the National Faceless Appeal Centre, Delhi [CIT(A)] proceedings u/s. 250 of the Income Tax Act, 1961 (the Act) as under : -

| Sr. No. | ITA No. | AY | DIN & Order No. | Date |
|---------|---------------|---------|---------------------------------------|------------|
| 1 | 563/Coch/2023 | 2011-12 | ITBA/NFAC/S/250/2023-24/1053309953(1) | 30.05.2023 |
| 2 | 564/Coch/2023 | 2012-13 | ITBA/NFAC/S/250/2023-24/1053309678(1) | 30.05.2023 |
| 3 | 565/Coch/2023 | 2013-14 | ITBA/NFAC/S/250/2023-24/1053310149(1) | 30.05.2023 |
| 4 | 566/Coch/2023 | 2014-15 | ITBA/NFAC/S/250/2023-24/1053309179(1) | 30.05.2023 |
| 5 | 567/Coch/2023 | 2015-16 | ITBA/NFAC/S/250/2023-24/1053309882(1) | 30.05.2023 |

Cases called twice. None appears at assessee's behest. We accordingly proceed exparte against the assessee.

2. We note with the able assistance coming from the Revenue side that both the learned lower authorities have raised sec.201(1) r.w.s. 201(A) TDS recovery and instant demand(s); involving varying sum(s); in all the impugned assessment years, for that it had not deducted TDS on contractual payment made to the concerned single payee namely M/s. Uralungal Labour Contract Co-operative Society ["ULCCS"] for construction of a building. Learned DR takes us to the CIT(A)/NFAC's identical detailed discussion in the assessee's "lead" appeal ITA.No. 563/Coch./2023 for assessment year 2011-12, reading as under :

"Findings & Decision:

4. *Ground Nos. 1 to 6 of the appeal are against the Order u/s 201 & 201(1A) of the Act. The appellant M/s M.Dasan Memmorial CIEIT is a Co-operative Society registered under the Kerala State Co-operative Societies Act. As per the facts narrated by the appellant, during the financial year 2010-11, the appellant had paid Rs. 1,75,00,000/- to M/s Uralungal Labour Contract Co-operative Society (ULCCS) for construction of a building. Thereafter, a spot inspection was conducted at the Office of the appellant on 11.03.2015, wherein, it was found that the appellant has failed to deduct TDS in respect to payment of Rs. 1,75,00,000/- made to M/s Uralungal Labour Contract Co-operative Society (ULCCS). Therefore, The ITO (TDS) passed order u/s 201 & 201(1A) of the Income-tax Act, 1961 vide order dated 31.08.2015 treating the appellant as assessee in default and raising demand u/s 201 and interest u/s 201(1A) for violation of TDS provisions.*

5. *On the other hand, the appellant has contended that the payment made to M/s Uralungal Labour Contract Co-operative Society (ULCCS) is capital in nature and the appellant has not claimed this amount as revenue expenditure. Furthermore, it has been stated that M/s Uralungal Labour Contract Co-operative Society (ULCCS) has shown the payment made by the appellant in its total income for the year under consideration as contract income.*

6. *The Order passed by the Assessing Officer and the submission made by the appellant have considered thoroughly. It is observed that the appellant has failed to deduct TDS on the payments made to contractor, which is in contravention to the section 194C of the Act, therefore, the AO invoked the provisions of sec 201 & 201(1A) of the Act and raised the demand. The appellant in its submission has contended that as the payments made to the contractor are capital in nature, therefore, it was not liable to deduct TDS on such contract payment. It is pertinent here to have a glance at Sec 194 of the Income-tax Act, the provisions of Sec 194C are reproduced hereunder :*

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor⁸⁵) for carrying out any work⁸⁵ (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 -

- (i) *one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;*
- (ii) *two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,*

6.1. *It is clear from the plain reading of the above provisions that section 1940 dictates obligation to any person making payment to any other person to deduct TDS on such payments which are in consequence of a contract. There is no mention of such payments being Revenue/Capital in nature for invoking the provisions of the section 194C. Hence, the contention of the appellant is not sustainable in law.*

7. *In view of the above facts and the discussion, it is clear the appellant failed to adhere to the provisions of law by not deducting TDS on the payments made to contractor, which it was liable to deduct as per the provisions of Section 194C of the Act. Further, there is no merit in the submission made by the appellant. Therefore, the AO was right in invoking the provisions of section 201 & 201(1A) of the Act. hence, the demand raised by the AO is confirmed. Therefore, Grounds No. 1 to 6 are dismissed.”*

3. Suffice to say, it is very much clear that both the learned lower authorities have held TDS sum(s) in question changed to assessee's capital account, as also attracting sec.194C of the Act. Learned DR could hardly dispute in light of PCIT vs. Linde India Ltd., [2022] 448 ITR 682 (Cal.), while deciding similar issue of sec.40(a)(i)

applicable to overseas payees which is pari materia u/s. 40(a)(ia) for domestic recipients, a capital expenditure item does not get covered under section TDS deduction(s). That being the clinching factual and legal position, we accept the assessee's instant sole substantive ground in all these five cases in very terms. Ordered accordingly.

4. These assessee's appeals ITA.Nos.563 to 567/Coch./2023 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 23rd October, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Cochin, Dated: 23rd October, 2024

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin