

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.5379/Mum/2024
(Assessment Year :2006-07)**

Shri Partho Das Marine Center Marine Street, Sector-11 Vashi, Mumbai-400 703	Vs.	Income Tax Officer- 28(2)(4), Mumbai
PAN/GIR No.AAMPD7473J		
(Appellant)	..	(Respondent)

Assessee by	Shri Rakesh Joshi
Revenue by	Shri Krishna Kumar
Date of Hearing	26/11/2024
Date of Pronouncement	18/12/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 16/08/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 254 for the A.Y.2006-07.

2. The only ground which has been placed before us is that the ld. CIT(A) has erred in confirming the action of the ld. AO in disallowing 'Crew Wages Expenses' amounting to Rs.58,76,717/- made u/s.40(a)(ia) of the Act and holding that

assessee was liable to deduct TDS on entire amount of Rs.58,76,717/- u/s.194C(1)(K).

3. The brief facts that emerge from the assessment order passed u/s 143(3) r.w.s 147 of the Act dated 29.11.2013, is that assessee in his individual capacity is stated to be in the business of providing manpower to shipping companies through his proprietary concerns. About this issue, the AO has found that the assessee has claimed "*crew wages expenses*" of Rs. 58,76,717/-. It was also noted by the AO that, on that payment no tax was deducted at source. As per AO, the assessee was required to deduct the TDS as applicable u/s. 194C of the IT Act. According to AO, the assessee himself being a contractor, therefore, got the work done by those parties under an implied contract. Held, the payment was made in contravention of section 194C hence invoked provisions of section 40(a)(ia) of the Act, therefore, the amount claimed was disallowed by the AO. The matter was carried before the first appellate authority.

4. Before the first round of appellate proceedings, the CIT (A) deleted the addition made by the AO by holding that the provisions of section 194C(1)(k) is applicable from 1st June 2007 and thus the assessee is out of the clutches of provisions of section 194C of the Act. Aggrieved by the same, the revenue filed an appeal before the ITAT. The ITAT set-aside the order of the CIT (A) and restored the filed to the AO with a direction to verify the details /explanation filed by the assessee and decide the case de-novo on merits. Thereafter,

the order passed by the AO wherein the AO after considering the details filed by the assessee, sustained the addition amounting to Rs 58,76,717/- u/s 40(a)(ia). Aggrieved by the same, the assessee filed an appeal before the first appellate authority, who passed an ex-parte order without providing reasonable opportunity to the assessee was passed. Finally, the appeal has been filed by the assessee before the Tribunal.

5. Before us, from the side of the assessee, ld. Counsel primarily argued that the assessee hires various crew members and depute them with various shipping companies. He makes individual payments to these persons, list of which was duly submitted to the AO. Therefore, the payments are in the nature of wages to employees and not contractual payments. Even otherwise provisions of section 194C(1) are applicable only in respect of a contractor and the provisions of section 194C(2) are applicable in respect of sub-contractor. Further he has mentioned that the provisions of section 194C(1), as stood for the year under consideration, did not apply on "individual". The assessee being an individual was not responsible for deduction of tax at source U/s 194C(1). Ld. AR has also placed on record the amended provisions of section 194C of the IT Act, which were applicable from 1st June, 2007. He has pleaded that earlier, as per the law applicable for the year consideration, under section 194C, there was no liability of an individual to deduct the tax. Later on, by an amendment an individual has also been responsible for TDS if his total sales has exceeded the monetary limits prescribed u/s. 44AB of the I.T. Act. He has referred the

details submitted at the time of assessment proceedings wherein the list of names and amounts of the persons whom payment were made. On the basis of above details, he has argued that the assessee had not entered into a 'contract' with any worker. The payment of crew wages charges to various parties did not fall under the head of "sub-contract expenses". He has argued that section 194C(2) of the Act are therefore not applicable. In support, he has cited *Mythri Transport Corporation v. Asstt. CIT* [2009] 124 ITD 40 (Visakha), *Kavita Chug v. ITO* [2011] 44 SOT 95 (Kol.) (URO), *ChandrakantThackar v. Asstt. CIT* [2010] 129 TTJ 1 (Ctk)(URO), *CIT v. United Rice Land Ltd.* [2010] 322 ITR 594/[2008] 174 Taxman 286 (Punj. &Har.) and of *R.R. Carrying Corporation v. Asstt. CIT* [2009] 126 TTJ 240 (Ctk).

6. From the side of the Revenue, Ld DR placed reliance on the orders of the authorities below. He has argued that as per the provisions of section 194C(2) any person being a contractor responsible for paying any sum to a sub-contractor in pursuance of a contract with the sub-contractor for carrying out any part of the work undertaking by the contractor is required to deduct an amount equal to 1% as TDS. The assessee has not deducted the tax, therefore, the AO has rightly disallowed the claim. Due to this reason, the question of non-deduction of tax, therefore, fall within the ambits of section 194C(2) of the IT Act, ld. DR has pleaded.

7. We have heard both the parties and perused the relevant finding given in the impugned orders and material referred to

before us. Before we proceed further, we may like to point out that the provisions of section 194C of the Act had undergone certain vital changes in the recent past. The main purpose of introduction of this section in the Act is to make provisions for deduction of tax at source from payments made to contractors and sub-contractors in certain cases. Income tax is deductible at source from income comprised in payments made by the persons specified in this section. As per the original section 194C(1) any person responsible for paying any sum to any contractor for carrying out any work in pursuance of a contract is required to deduct 2% TDS. However, as per section 194C(2), any person being a contractor responsible for paying any sum to any sub-contractor in pursuance of a contract with the sub-contractor for carrying out any work is required to deduct tax @ 1% at the time of payment. Sub-section (2) has later on made a provision according to which an individual or HUF, whose total sales exceeds the monetary limit prescribes u/s.44AB shall be liable to deduct income tax at the time of payment to a sub-contractor. It is further important to mention that vide an amendment with effect from 1-6-2007 an individual or HUF have also been inducted vide sub-clause (k) in section 194C(1) of the IT Act. At this juncture, it is worth to hold that as far as the AY in hand is concerned, i.e. AY 2006-07, this latest amendment of section 194C(1)(k) of the Act being introduced with effect from 1-6-2007 has no applicability.

8. We therefore hold that if the Revenue Department had made an endeavour to invoke the provisions of section

40(a)(ia) for the infringement of the provisions of section 194C of the Act by holding that the assessee being an individual got covered by sub-section (1), then according to us, it was an incorrect application of law. We therefore hold that for the Asstt. Year under consideration 2006-07 the provisions of sub-clause (k) of 194C (1) are not applicable being introduced w.e.f. 1-6-2007 and the assessee being an individual is consequently out of the clutches of this clause.

9. On account of the above discussion, the issue confines to the residual sub-section i.e. the applicability of provisions of sub-section (2) of section 194C of the Act. The assessee entered into an agreement with M/s Western Oversea Inc Ohia who are in the business of buying ships for scrapping and needed specialised marine personnel to conduct the delivery of ship from foreign shores to breaking yard in India and Bangladesh for which the assessee claimed to be working as contractor to conduct ship delivery and for this reason the assessee employed the said individuals to provide such services. The details of the payments made by the assessee as crew wages payment is mentioned as under:

DETAILS OF CHEQUE ISSUED FOR CREW WAGES FOR THE
F.Y. YEAR 2005-06

DATE	CHEQUE	NAME	AMOUNT
16.08.05	112904	S.MOHHMAD	105800
16.08.05	112905	AJAY K.DUTTA	76800
16.08.05	112906	SUSHANT K.SHAU	57500
16.08.05	112907	J.M.DAS	13800
16.08.05	112908	ALI SHAIKH	13800
16.08.05	112909	RAKESH RANJAN	13800
16.08.05	112910	DEEVAKAR RAY	9450
16.08.05	112911	SINDU MAJHEE	16100
16.08.05	112912	SATYADEV	18400
16.08.05	112913	AMIN ISLAM	13800
16.08.05	112914	KAJAL KANTI	18400
16.08.05	112915	SANJAY BHOWMIK	85000
16.08.05	112916	SANJAY BHOWMIK	18800
16.08.05	112918	DESNIBD SEQYEBABA	154000
16.08.05	112919	SONIA MITRA	25200
16.08.05	112920	ABDUL	24200
16.08.05	112921	GAUAM	24200
16.08.05	112922	LOKINDER SINGH	11000
16.08.05	112923	NARAYAN CHANDRA	32600
16.08.05	112924	VIJAYA CHANDRA	24200
16.08.05	112925	MONI MOHAN	32600
16.08.05	112926	BINITA SINGH	35540
16.08.05	112928	MURLI	130000
17.08.05	112929	IMRAN HAQ	46800
17.08.05	112930	MOHHAMD SAFI	15600
20.08.05	112939	AJIT KUMAR	66200
24.08.05	112942	IRIS JOSEPH	16897
24.08.05	112943	PATRICK JOSEPH	16000
24.08.05	112944	IRIS JOSEPH	17000
24.08.05	112945	PATRICK JOSEPH	18000
27.08.05	112947	P.S.SASAM	34000
27.08.05	112948	RAVINDRA VADWA	15000
05.09.05	112950	JOHN A	82246
17.09.05	112853	PATRICK JOSEPH	10000
17.09.05	112854	PATRICK JOSEPH	10000
17.09.05	112855	AMIT MUKHERJEE	15000
17.09.05	112856	AMIT MUKHERJEE	10000
19.10.05	112863	BINITA SINGH	19780
29.10.05	112866	JACH ATHAIDE	50000
29.10.05	112868	AUQUHTINE VERGHARE	75000

28.11.05	112877	JOSHEF JADHIDE	100000
29.11.05	112878	DESMONDE	5000
06.12.05	112881	HARISH B.BHATT	10000
12.12.05	112893	HARISH B.BHATT	12000
28.12.05	112895	JOSHEF JADHIDE	25000
29.12.05	112896	JOSHEF JACK ATHAIADE	75000
02.01.06	112899	HARISH B.BHATT	23075
09.01.06	211554	IMRAN	20000
12.01.06	211559	SYED ZAHEER	82200
12.01.06	211560	KAZI SHAMSUDDIN	38000
12.01.06	211561	JOSEPH FRANCES	10300
12.01.06	211562	PRAWEEEN K.TYAGI	38000
12.01.06	211563	GABRIYAL A .CARDOZO	34600
12.01.06	211566	MAJOR ABDUL	10800
12.01.06	211567	SHIVRAJ USUF	10800
11.01.06	211557	GORAKH LALA	4500
12.01.06	211568	GORAKH LALA	9900
12.01.06	211569	RIAZ AHMAD	67200
12.01.06	211570	DESMONDE	73500
12.01.06	211572	ASIYA	30000
13.01.06	211579	ARIF	70000
14.01.06	211580	RIAZ AHMAD	10400
14.01.06	211581	DESMONDE	4100
14.01.06	211582	GABRIYAL A .CARDOZO	3400
17.01.06	211583	LIYAKAT KHAN	5000
17.01.06	211584	LIYAKAT KHAN	32015
17.01.06	211585	IMRAN	84370
18.01.06	211590	MAHINDER	50000
18.01.06	211591	KAMAL DEEP	50000
18.01.06	211592	KOKHAN CHANDRA NATH	18000
18.01.06	211593	DATTA RAM	27000
18.01.06	211595	MURLIDHAR SAHU	9000
18.01.06	211597	DR.ANDREW	18000
18.01.06	211596	L.RAMANE DD	18000
18.01.06	211600	JAGJIT SINGH WALIA	50000
18.01.06	211601	PUSPA RANI DD	18000
18.01.06	211603	RESHMA S KHALPE DD	18000
18.01.06	211604	UMA S. SINGH	20000
18.01.06	211605	ANITA HALDER DD	15200
21.01.06	211602	USHA DEVASHRI	30000
21.01.06	211606	ASIYA ARIF	4906
28.01.06	211609	USHA DEVASHRI DD	282500
07.02.06	211613	MAHENDRA SINGH	30000
09.02.06	211614	LAXMI CHANDRA	30000
16.02.06	211617	PATRICK JOSEPH	7500
16.02.06	211618	PATRICK JOSEPH	7500
16.02.06	211619	SUBH ARDHYA	8500

17.02.06	211621	TRABAI L PATEL	19200
17.02.06	211622	PUSPA RANI DD	31120
17.02.06	211623	RESHMA S KHALPE DD	25935
17.02.06	211624	UMA SHAVKAR SINGH	45600
17.02.06	211626	HUSSIAN B ABBAI	105000
17.02.06	211627	A.R.SHARMA DD	12550
17.02.06	211625	ANITA HALDER DD	35110
17.02.06	211628	TEJENDRA WALIA	147545
17.02.06	211629	AMBATI ASIF	19750
17.02.06	211630	KAMAL DEEP SINGH	55860
17.02.06	211631	DATA RAM	24400
17.02.06	211632	L.A.RAMANA DD	13750
17.02.06	211634	MANBAR SINGH	23000
17.02.06	211635	SANTOSH KUMAR	14500
17.02.06	211636	ARIYA ARIF KHOTE	47675
17.02.06	211637	MOHINDER N WADHWA	14000
17.02.06	211638	M.D.SHAU	13800
28.02.06	211646	JOSEPH J ATHAIDE	175000
06.03.06	211647	ARIYA ARIF KHOTE	52325
06.03.06	211648	K.C.NATH	13800
06.03.06	211649	SHAILESH KUMAR	13800
06.03.06	211650	Dr.ANDREW GEOGRGE	13800
14.03.06	211654	IRIS JOSEPH	7500
14.03.06	211655	PATRICK JOSEPH	7500
14.03.06	211657	MOHINDER N WADHWA	261233
14.03.06	211659	JOSEPH J ATHAIDE	127637
14.03.06	211660	MOHINDER N WADHWA	5000
16.03.06	211661	LAXMI CHANDRA	18600
16.03.06	211662	PUSPA RANI DD	18550
16.03.06	211663	RESHMA S KHALPE DD	18550
16.03.06	211664	TEJENDRA WALIA	124000
16.03.06	211665	UMA SHANKAR SINGH	24800
16.03.06	211666	AMBATI ASIF	18550
16.03.06	211668	A.R.SHARMA DD	18550
16.03.06	211669	ANITA HALDER DD	24730
16.03.06	211670	ASIYA ARIF KHOT	19285
16.03.06	211672	KAMALDEEP SINGH	60400
16.03.06	211673	KHOKAN CHANDRA NATH	18600
16.03.06	211674	MURALI D SAHU	15540
16.03.06	211675	SAILESH KUMAR	16755
16.03.06	211676	DATA RAM	24800
16.03.06	211677	A. RAMANA DD	17155
16.03.06	211678	DR.ANDREW GEOGRGE	17340
16.03.06	211679	MANBER SINGH	29740
16.03.06	211680	SANTOSH KUMAR	14240
		TOTAL	4900354

DETAILS OF CREW WAGES EXPENSES PAID IN USD

DATE	Paid thru EEFC A/c IN USD	NAME	AMOUNT
26.12.05	5830	PERELYGIN VIKTOR	260,391.12
18.01.06	2700	VORONOV IVAN	120,592.80
05.01.06	1540	PERELYGIN VIKTOR	68,782.56
17.02.06	4860	VORONOV IVAN	217,067.04
29.03.06	4000	VORONOV IVAN	178,656.00
29.03.06	2930	VORONOV IVAN	130,865.52
	21860	TOTAL	976355.04
		IN INDIAN RUPEES	4900354
		IN USD [21860 USD]	976355.04
		TOTAL CREW WAGES	5876709.04
		ACTUAL AS PER P & L	5876717
		Difference	7.96

10. The view of the AO was that on payment of “crew wages expense”, the assessee being a sub-contractor was required to deduct the tax at source as prescribed under sub-section (2) of section 194C of the Act. On the other hand, the assessee’s contention is that the assessee has not acted as a sub-contractor but only as a contractor. As per assessee’s contention it was a principal to principal arrangement for providing crew to carry out scrapping activity, so not covered by any of the said contracts. In support of this submission, the assessee has placed reliance on a Board’s Circular No. 715 dated 8-8-1995 [215 ITR (Statute 12)]

11. In the context of above clarification issued by the CBDT, if we examine the issue in hand, then in terms of the provisions of section 194C(2) of the Act conditions to be satisfied are (i) that the assessee should be a contractor, (ii) that the assessee should enter into a contract with a sub-contractor, (iii) that the sub-contractor should carry out any part of the work undertaken by the contractor and (iv) that

the payment should be made for the work done. In a case, when a “contract” is assigned, generally the clauses are stringent that the contractor is to be responsible for all the acts and defaults committed.

12. In the present case as well, when M/s. Western Oversea Ohio INChad granted sub-contract to assessee then the assessee was to deploy his own resources in terms of manpower. Further the assessee was responsible of any legal or financial liability. Assessee was made solely responsible for the execution of the job. These terms, therefore, suggested that the assessee was wholly and exclusively responsible for the acts as also for the defaults, if committed.

13. In other words, peculiarity of this case is that the contract which was assigned to this assessee was not further sub-contracted to any third party. In a sub-contract, a prudent contractor generally includes the clauses of liability which were undertaken by him while accepting the execution of the work from the main contractor. We may like to clarify that a condition of passing of the liability cannot exhaustive and cannot be said to be the only criteria to decide whether there was an existence of contract or sub-contract. The catalogue of criterion must include certain other clauses as well, yet in this case this criterion can be determinative considering the nature of work assigned by the assessee to workers. It is not the case of the A.O. that he happened to be in possession of some material to allege that there existed a specific contract between the assessee and the crew wage

workers. Whether the manpower were supplied in pursuance of any sub-contract so as to apply the provisions of section 194C(2)? Nothing has been brought on record.

14. We, therefore, conclude that in the absence of transfer or pass-over of any contractual responsibility to crew wage worker as a sub-contractor, the assessee being an individual was not responsible for the deduction of tax at source as prescribed u/s. 194C of the IT Act. Consequence thereupon the provisions of section 40(a)(ia) of the Act were incorrectly invoked, hence the view taken by the authorities below are hereby reversed. Reliance has also been placed before us on the decision of Prashant H. Shah Vs Assistant Commissioner of Income-tax (ITA No:17/Ahd/2011) wherein on similar fact, the tribunal held that section 40(a)(ia) has been incorrectly imposed. Thus, the Ground raised by the assessee is allowed.

15. In the result, appeal of the assessee is allowed.

Order pronounced on 18th December,2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 18/12/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai