

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'SMC' BENCH, KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)**

**I.T.A. No. 916/KOL/2024  
Assessment Year: 2010-2011**

***Bikash Kumar Mondal,.....Appellant  
Mirga Chatra, Arambagh,  
West Bengal, PIN Code 712602  
[PAN:AJOPM7905P]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-1(4), Hooghly,  
Aayakar Bhawan, G.T. Road,  
Khadina More, P.O. Chinsurah, Hooghly  
West Bengal, PIN Code No. 712102***

**Appearances by:**

*Shri Souvik Guha, Advocate, appeared on behalf of the  
assessee*

*Ms. Madhumita Das, Addl. CIT, D.R., appeared on  
behalf of the Revenue*

**Date of concluding the hearing: January 09, 2025**

**Date of pronouncing the order: February 05, 2025**

**O R D E R**

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), Kolkata-27 dated 18<sup>th</sup> January, 2024 passed for Assessment Year 2010-11.

2. The appeal is time barred by 35 days in filing the appeal by the assessee. However, the assessee filed an affidavit dated 03.10.2024 saying that the assessee is not aware of the order passed by the ld. CIT(Appeals) and he has not received the physical copy of the order in time. When the assessee came to know about the order passed by the ld. CIT(Appeals), the assessee approached the ld. A.R. to prefer an appeal, due to that there was a delay of 35 days in filing the appeal before the Tribunal. Therefore, he pleaded to condone the delay.

3. Considering the facts and circumstances of the case, I am inclined to condone the delay since the delay is not due to negligence on the part of assessee and the assessee has established sufficient cause to condone the delay. Hence the delay is condoned.

4. Brief facts of the case are that the assessee is a proprietary concern and running his business of marble and granite under the name and style of M/s. Shivam Marble. During the assessment year, the assessee filed his return of income under section 139(1) of the Act declaring total income of Rs.8,61,310/- and the accounts was duly audited under section 44AB of the Act. The case of the assessee was selected for scrutiny and notices were issued under sections 143(2) and 142(1) of the Act. During the scrutiny proceedings, the appellant appeared before the ld. Assessing Officer and placed all the relevant documents to substantiate his claims.

5. After considering the arguments filed by the assessee, the ld. Assessing Officer passed the assessment order under section 143(3) of the Act on 28.03.2013 assessing the total income of Rs.43,97,370/- as against the returned income of Rs.8,61,310/-. The ld. Assessing Officer made the addition on two grounds, firstly disallowance of expenses under section 40(a)(ia) for non-deduction of TDS on transport charges under section 194C of the Act; and secondly, undisclosed income of capital gains for Rs.6,25,000/- on sale of agricultural land as well as undisclosed interest.

6. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals). The assessee had made his submissions before the ld. Commissioner (Appeals).

7. After considering the submissions of the assessee, the ld. CIT(Appeals) partly allowed the appeal by allowing the entire claim of exemption on capital gains tax amounting to Rs.6,25,000/- on sale of agricultural land and also allowed only Rs.18,200/- out of total disallowances of Rs.29,19,058/- for non-deduction of TDS inspite of submitting all relevant documents.

8. On being aggrieved, the assessee preferred an appeal before the Tribunal.

9. I have heard both the sides. It was the submission of the assessee that he purchased marble and granites from different parts of the country. During the assessment year, the assessee has

shown total purchases of Rs.1,65,15,375/- and incurred carriage inward expenses of Rs.29,19,508/-. It was the further submission of the assessee that the transportation was arranged and organized by the sellers and the payments were made on consignment basis. Since there was no direct contract between the transporter and the assessee, therefore, the provision of section 194C is not applicable to this case. He further submitted that according to Section 194C(5) of the Act, the assessee is entitled to make payment to the transporters and he is eligible if the payments are below Rs.50,000/-, but the ld. CIT(Appeals) did not consider the amounts, which were paid below 50,000 rupees.

10. On the other hand, ld. Departmental Representative submitted that the assessee made the payment to the transporter without deduction of TDS, therefore, the ld. Assessing Officer as well as ld. CIT(Appeals) rightly applied the provisions of section 194C. He pleaded to confirm the order passed by the ld. CIT(Appeals).

11. I have perused the material available on record. One of the grievances of the assessee is that the revenue authorities has not followed the proviso of section 194C. On this aspect, I have gone through the section 194C(5) of the Act, where it has been stated that *“where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income tax under this section”*.

12 Considering the above observation, I am of the view that the assessee made payments below fifty thousand rupees to the following transporters:-

(i)	M/s/. Khandelwal Transport Co.	Rs.47,596/-
(ii)	M/s. Suman Agency Pvt. Ltd.	Rs.27,280/-
(iii)	M/s. Alwar Assam Road Lines	Rs.25,648/-

Considering the provisions of section 194C(5), I am of the view that the assessee is entitled for an amount of Rs.1,00,524/-. Hence, this ground raised by the assessee is allowed.

13. So far as the remaining amount of Rs.28,18,534/- is concerned, the main contention of the assessee is that there is no direct contract between the assessee and the transport companies and the seller has made the arrangements. On this aspect, it is an admitted fact that the entire amount of transport charges was paid by the assessee. Even as per the contention of the assessee that the seller has arranged the lorries on behalf of the assessee, but the assessee has not produced any evidence to establish that the lorries were engaged by the seller. Moreover, there is no mention under section 194C that there should be a direct contract between the assessee and the transporters to deduct TDS under section 194C of the Act. It is an admitted fact that the entire transportation amount was paid by the assessee to the transporters. Therefore, there is a contract between the assessee and the transporters. Hence, whatever the amount paid by the assessee is liable to deduct TDS. Therefore, I have no hesitation to come to a

conclusion that the TDS provision under section 194C is applicable to the present case on hand. Alternatively, the plea of the assessee is that the ld. Assessing Officer is not justified in disallowing the entire amount of Rs.29,00,858/- for non-deduction of tax at source. According to the amendment of the 1<sup>st</sup> proviso to section 40(a)(ia) of the Act, wherein it has provided to restrict the disallowance to the tune of 30% of the amount of expenditure claimed as retrospectively applicable from 1<sup>st</sup> April, 2015. However, the assessee has not pleaded before the ld. Assessing Officer as well as ld. CIT(Appeals) about the amendment. Therefore, I remit the matter back to the file of ld. Assessing Officer to examine this issue afresh and pass a speaking order regarding the amendment vide Finance Act, 2014 to the first proviso to section 40(a)(ia) of the Act. The ld. Counsel for the assessee also relied on the decision of ITAT, Rajkot Bench dated 8<sup>th</sup> June, 2022 in ITA No. 219/RJT/2018 in the case of Punabhai G. Pardava -vs.- ITO.

14. I have gone through the decision of the ITAT, Rajkot Bench dated 08.06.2022 but they have not discussed anything about the agreement between the assessee and the transport companies. Therefore, the facts are distinguishable and not applicable to the facts of the present case. Hence, I remit this issue back to the file of ld. Assessing Officer with a direction to examine this issue afresh and pass an order on merits after providing an opportunity of being heard to the assessee. The alternative ground raised by the assessee is allowed for statistical purposes.

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

Order pronounced in the open Court on 05/02/2025.

Sd/-  
**(Duvvuru RL Reddy)**  
**Vice-President (KZ)**

**Kolkata, the 5<sup>th</sup> day of February, 2025**

*Copies to :(1) Bikash Kumar Mondal,  
Mirga Chatra, Arambagh,  
West Bengal, PIN Code 712602*

*(2) Income Tax Officer,  
Ward-1(4), Hooghly,  
Aayakar Bhawan, G.T. Road,  
Khadina More, P.O. Chinsurah, Hooghly,  
West Bengal, PIN Code No. 712102*

*(3) Commissioner of Income Tax (Appeals),  
Kolkata-27;*

*(4) CIT- , Kolkata;*

*(5) The Departmental Representative;*

*(6) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**