IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JM &
MS PADMAVATHY S, AM

I.T.A. No. 707/Mum/2025
(Assessment Year: 2013-14)

I.T.A. No. 708/Mum/2025
(Assessment Year: 2018-19)

DCIT(OSD) (TDS)-2(2), Room No. 311, 3rd Floor, MTNL Building, Cumballa Hill, Mumbai-400026.	Vs.	**Shoppers Stop Limited.,** 5th Floor, Umang Tower, Malad Link Road, Behind Inorbit Mall, Mindspace, Malad (W), Mumbai-400064. **PAN: AABCS4383A**
Appellant)	:	**Respondent**)

Appellant /Assessee by	:	Shri Vijay Mehta, AR
Revenue / Respondent by	:	Shri Hemant Kumar C Leuva, Sr. DR
Date of Hearing	:	13.03.2025
Date of Pronouncement	:	20.03.2025

O R D E R

Per Padmavathy S, AM:

These appeals by the revenue is against the separate orders of the Commissioner of Income Tax (Appeals) – 52, Mumbai (in short "CIT(A)") both dated 05.11.2024 for assessment year (AY) 2013-14 and 2018-19. The various grounds raised by the assessee in both the AYs pertain to the CIT(A) deleting tax

and interest levied by the AO under section 201(1) and under section 201(1A) of the Income Tax Act 1962 (the Act) towards non-deduction of tax on contract manufacturing of goods/products as per terms of agreements.

AY 2018-19

2. The assessee is a company running departmental retain chain stores across India selling various products such as clothing, accessories, hand bags, shoes etc. A survey under section 133A was carried out on 01.08.2018 to examine the TDS compliance by the assessee. The AO after examining the TDS returns filed by the assessee and the relevant documents submitted held the assessee as assessee in default under section 201(1) with respect to tax deducted on the following and the AO also levied interest under section 201(1A) accordingly –

Particular	**Amount – Rs.**
On account of Non deduction of TDS u/s 201(1) on Sokrati Technologies	37,48,172
On account of interest u/s 201(1A) on Sokrati-	2,66,120
On account of Short deduction of TDS u/s 201(1) on payments made to M/s Amazon	2,39,962
On account of interest u/s 201(1A) on short deduction of TDS on payments to Amazon	64,789
On account of Non deduction of TDS on lease rent	6,76,24,435
On account of interest u/s 201(1A) on Non deduction of TDS on payments made towards lease rent	40,57,466
On account of Non deduction u/s 201(1) on contract manufacturing of goods/products as per terms of agreements	39,32,10,123/-
On account of Non deduction u/s 201(1) on contract manufacturing of goods/products as per terms of agreements	2,35,92,607/-
Total	**49,28,03,674/-**

3. Aggrieved the assessee preferred further appeal before the CIT(A). The CIT(A) deleted the tax and interest levied by the AO as under –

- On account of Non deduction of TDS u/s 201(1) & interest under section 201(1A) on Sokrati Technologies – The CIT(A) deleted the addition by placing reliance on the decision of his predecessor in assessee's own case for AY 2017-18
- On account of Short deduction of TDS u/s 201(1) & interest under section 201(1A) on payments made to M/s Amazon – The CIT(A) deleted the addition by holding that the AO failed to consider the break up of the payments made to M/s.Amazon as submitted by the assessee
- On account of Non deduction of TDS on lease rent and interest under section 201(1A) – The CIT(A) held the ground as infructuous since the AO himself has rectified the addition by a rectification order under section 154 of the Act
- On account of Non deduction u/s 201(1) on contract manufacturing of goods/products as per terms of agreements – The CIT(A) deleted the addition by placing reliance on the decision of the coordinate bench in assessee's own case for AY 2017-18 (ITA No.1783/Mum/2021 dated 02.12.2022)

4. The revenue is in appeal contending the deletion of addition made towards non-deduction of tax on contract manufacturing of goods/products as per terms of agreements.

5. We heard the parties and perused the material on record. The ld AR submitted that the coordinate bench in assessee's own case has considered the similar issue and held that the assessee cannot be held as assessee in default under section 201(1). The ld AR further submitted that the facts for the year under consideration is identical and therefore the above decision is applicable for the year under consideration also. In this regard we notice that the coordinate bench in assessee's own case for AY 2017-18 while considering the similar issue held that –

> *"12. We have heard both the parties and also carefully perused the relevant material and documents placed before us. The issue for our consideration is whether, the arrangement between the assessee and the vendors for supply of products was in the*

nature of 'works contract' as defined in Section 194C of the Act or not; and hence, whether the assessee is required to withhold tax on the same. Before we proceed to examine the facts of the present case, it would first be relevant to take note of the relevant provisions of Section 194C of the Act and also the meaning of the term 'works contract'. The relevant provisions contained in Section 194C of the Act reads as follows:

> *"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—*
>
> *(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, of such sum as income-tax on income comprised therein. ... Explanation.—For the purposes of this section,:-*
>
> *...*
>
> *(iii) "contract" shall include sub-contract;*
>
> *(iv) "work" shall include—*
>
> *(a) advertising;*
>
> *(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;*
>
> *(c) carriage of goods or passengers by any mode of transport other than by railways;*
>
> *(d) catering;*
>
> *(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,*

but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer."

(emphasis supplied)

13. From reading of the above provision, it is noted that the term 'work' has been defined in an inclusive manner and only if the 'work contract' undertaken by the payee falls within the above definition of 'work', as specifically defined in the section itself, that the provisions of Section 194C would become applicable. It is noted that, the AO does not contemplate holding that the case of the assessee falls within the ambit of items mentioned at sub-clauses (a), (b), (c) or (d) of clause (iv) of the Explanation. The relevant sub-clause in question is sub-clause (e) of clause (iv) of the Explanation to section 194C of the Act, which relates to manufacturing or supplying a product according to the requirements or specification of a customer by using material purchased from the same customer. It thereafter makes it explicitly clear that, 'work' does not include manufacturing or supplying a product, which even if made in accordance with the specific requirements or specifications of the customer, where the material used for the product is purchased from a person other than the customer.

14. At this juncture, we find it necessary to note that, in the impugned order before us, the AO had incorrectly observed that the relevant section does not define the word 'work' and for which he went to take support of the definition laid down in other Dictionaries. This action of the AO is held to be patently erroneous. As noted above, the term 'work' has been defined in an inclusive manner for the purposes of Section 194C of the Act in particular, and therefore, we hold that it was not correct on the AO's part to refer to the dictionary meaning of the term 'work'. We thus agree with the Ld. CIT(A)'s finding that, the basic premise on which the AO proceeded to analyze the facts of the case, viz., the definition of 'work', was incorrect.

15. It was further brought to our notice by the Ld. AR that, prior to its amendment by Finance (No. 2) Act, 2009, as per Explanation (III) to section 194C of the Act, the term 'work' was defined to include advertising, broadcasting and telecasting including production of programmes for such broadcasting or telecasting, carriage of goods or passengers by any mode of transport other than by railways; catering, and manufacturing or supplying a product according to the requirement or specification of customer by using material purchased from such customer. It was noted by the Legislature that there was an ongoing dispute as to whether TDS is deductible under section 194C on 'outsourcing contracts' and whether 'outsourcing' constitutes 'work' or not. Hence to bring clarity on this issue, the definition of 'work' was consciously amended by the Finance (No.2) Act, 2009 wherein it was specifically provided that

'work' shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material sourced from a person other than such customer, as such a contract is contract for 'sale'. In this context, we may gainfully refer to the Memorandum explaining the Finance (No.2) Bill, 2009, which read as follows:

> *"c. Clarifications regarding 'work' under section 194C.*
>
> *There is ongoing litigation as to whether TDS is deductible under section 194C on outsourcing contracts and whether outsourcing constitutes work or not. To bring clarity on this issue, it is proposed to provide that 'work' shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person other than such customer as such a contract is contract for 'sale. This will however not apply to a contract which does not entail manufacture or supply or an article or thing (e.g, a construction contract). It is also proposed to include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, within the definition of 'work'. It is further proposed to provide that in such a case TDS shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, TDS shall be deducted on the whole of the invoice value.*
>
> *It is further proposed to make the amendments effective from the 1st day of October, 2009. Accordingly, the proposed amendments will apply to credits or payments effected on or after 1st October, 2009."*

16. In view of the above, the legal position which emerges is that, in a case where no raw material is supplied by the assessee to the manufacturer for production of the goods, then irrespective of the fact that, the manufacturer has produced the goods in accordance with the specifications or directions of the assessee, it cannot be considered to be 'work' within the definition provided in the sub-clause (e) to clause (iv) to the Explanation of Section 194C of the Act.

17. In light of the above legal proposition, we now proceed to examine the facts of the case. It is noted that, the assessee is a multi-brand retailer which sources the products from various reputed brand owner-cum-manufacturers viz., Fossil, Arvind Lifestyle, Titan, etc. The assessee purchases goods/products from these vendors either on outright basis or under Sales or Return ('SOR') basis. The transactions in dispute in

the present case relates to the purchases made by the assessee from various vendors under the SOR model. From the details of these suppliers placed before us, it is noted that each of these suppliers are noted to be independent suppliers having their own existence, irrespective of the arrangement with assessee. Most of these vendors are well-known and the goods supplied by them are their standard products which are supplied by them to any or all retailers or even sold through their own exclusive showrooms, located anywhere in the world. The assessee has entered into an SOR arrangement with these vendors, in terms of which the assessee first inspects the samples before placing the purchase orders. Once the products are identified and selected, the assessee places the purchase orders with the vendors who commit to supply to it. The key features of an SOR arrangement (sample agreement dated 15.06.2016 with M/sFossil India Pvt. Ltd is found placed at Page 1 to 18 of paper book) as noted by us are that, if these products remain unsold at the stores of the assessee, then the assessee may choose to return these goods back to the vendors, and against which the latter issues credit notes to the assessee. Hence, some vendors also depute their personnel to assist in the sales at the retail outlets of the assessee to increase the visibility and sale-ability of these products. In case of any defect found in these products, the vendors also provide after sales support. Further these arrangements are noted to have provision for joint inventory taking for better management and the payments are made by the assessee on a monthly basis, in respect of the products which have been sold at its outlets. The agreements also specify the margins which the assessee can retain on the sales made.

18. The case of the Revenue is that, these SOR arrangements are not in the nature of contract for sale but in the nature of ‘works contract’. According to the AO, these SOR arrangements are composite in nature, involving supply of both material & labour, but wherein the predominant supply is labour & efforts by the vendors. The AO is noted to have discussed the features of the SOR arrangements, as understood by him, which led him to infer that these are in the nature of ‘works contract’ amenable to Section 194C of the Act. The Ld. AR showed us that each of these observations made by the AO, which has been relied upon by the Ld. DR, had already been dealt with on facts by the Ld. CIT(A) and that the Revenue was unable to point out any infirmity in the findings of the Ld. CIT(A).

19. It is noted by us that, having regard to the above observations made by the AO and to take the matters to its logical conclusion, the Ld. CIT(A) had remanded the matters back to the AO to make an independent verification from the vendors with regard to the nature of these SOR arrangements. From the remand report and the documents placed before us, it is noted that the AO had made independent enquiries both u/s 133(6) and 131 of the Act from these vendors. The assessee has placed copies of the

relevant letters/ confirmations furnished by these vendors before the Ld. AO, which is found placed at Pages 104 to 130 of paper book. Upon going through the same, for instance, it is noted that vendor, M/s Tommy Hilfiger Arvind Fashion Pvt. Ltd (Page no. 105 of PB) had confirmed that the sourced by them from their /goods supplied by them to the assessee were imported Meaning thereby, this vendor itself was a trader in goods and .nominated suppliers not a manufacturer as alleged by the AO. This vendor also confirmed that they had sold their goods to the assessee for sale through their retail outlets and that similar products were also being sold through other retailers and their own ,Similarly .exclusive showroomsM/s Intercraft Trading Pvt. Ltd (Page no. 106 of the PB) had confirmed that they were distributor (not manufacturer) of the goods supplied to the assessee and that none of the materials were supplied by the assessee. They also confirmed that these goods were sold on sale or return basis. Like the earlier vendor, they also confirmed that they had sold their goods to the assessee for sale through their retail outlets and that similar products were also It is further .being sold through other retailers and their own exclusive showrooms of PB 109.Page No) (Blackberry) Mohan Clothing Co Pvt Ltd/noted that, M) has submitted that the goods manufactured by them were as per their own specifications and based on the inputs of their own designing team and not the The vendor also confirmed that none of the raw materials to manufacture .assessee It further stated that the title and property in the .were provided by the assessee goods was transferred upon sale, raising of invoice and delivery of goods to the Similar .assessee and that such sale was on principal to principal basis .Page No) (VIP) confirmation is noted to have been given by Cravatex Brands Ltd of PB 107) We note that, the AO had also examined the .and others as well s 131 of the Act and each of them /personnel of these vendors on oath u/managers, confirmations /had also affirmed the terms enlisted in the agreements

20. From the above enquiries, it is thus noted that, not all vendors are manufacturers as alleged by the AO, but several of them are suppliers/traders as Each of these vendors have confirmed that they had sold goods to the .well The assessee neither provided .assessee on principal to principal basis specifications or designs nor did the assessee provide raw materials in relation to They have also confirmed that the title, risk and property in goods .these goods passed to the assessee upon sale, issuance of invoice and delivery of goods at their These vendors do not supply their products to the assessee alone but they .outlets or also sell these products /also sell the same products to different retailers and On these facts, we therefore .franchise exclusive showrooms/through their own had rightly held that the SOR arrangements with these (A)CIT .note that the Ld with these vendors were in the nature of supply of goods and not works contract, .as defined in Explanation to Section 194C of the Act

21. It is noted that the foremost observation made by the AO to hold that the SOR arrangements were in the nature of 'works contract' was that, there is a manufacturing agreement in place between the assessee and the vendors and that these vendors first manufacture samples, as per the specifications & designs provided by the assessee, and only if the same is approved that the assessee places orders and these vendors manufacture the same at the instance of the assessee. As already noted above, it is not the case that all the SOR arrangements are with manufacturers but there are several distributors as well who deal with the assessee on principal to principal basis. Before us, the assessee has placed on record a sample SOR agreement with a manufacturer-supplier. Having perused the same, it is noted that there is no such manufacturing arrangement in place between the assessee and this vendor based on which one may infer that this supplier is manufacturing at the instance or behest of the assessee and that too as per the specifications/designs provided by the latter. We thus agree with the Ld. CIT(A) that this observation of the AO is factually erroneous. As noted earlier, these products are procured from internationally reputed brands who are independent manufacturers or vendors themselves. These products purchased by the assessee bear the brand names of these suppliers and not the assessee which further supports the case of the assessee that these products were not being manufactured at their behest. It is noted from the terms of the agreement that, the assessee does not enjoy any right to place orders for manufacture of any new product but instead only exercises the right to choose from various product offerings from the array of products manufactured by these suppliers. Such supply, being independent of raw material sourcing, cannot be categorized as 'works contract' as contemplated in Explanation to Section 194C of the Act.

22. It was brought to our notice by the Ld. AR that, the AO got swayed by the use of the phrase 'produce sample' in the agreement. According to him, 'produce sample' meant to present the sample for approval and not manufacture the same. It is noted that the Ld. CIT(A) had taken specific note of this aspect and after examining the facts in detail, he had agreed with this explanation put forth by the assessee. The relevant findings, as noted by us, is as under:

"5.21 The inference drawn by the Assessing Officer that 'production' of products before SSL for approval means 'manufacturing of the product and then its production before SSL' is clearly not borne out of the facts available. The vendors in this case are vendors owning brands with a very high market value and mostly the products under those brands already available in their inventory. The 'production' of sample of each item before SSL logically means 'making available of such items to SSL for examination' from the inventory available with the vendor. Selection of items out of such samples means selection of some items out

of the total models available with the vendor which would have more likelihood of sale at the SSL outlets. It is noted that such production of items before SSL cannot mean production of such items manufacturing facilities of the vendors. None of the evidences collected / produced before the AO indicate that there is a correlation between the SSL orders and manufacturing of such items at manufacturing facilities of the vendors. In fact, many of these vendors are just brand owners and are not manufacturers at all. In its submission, the assessee has provided evidences where the goods have been shipped by the vendor within a day of issue of purchase order and delivered to the assessee within 3 to 4 days. Clearly, the product, in this case, was not manufactured at the instance of the assessee and had its own identity before being delivered to SSL.

5.22 It is also noted that SSL does not have any division which develops specifications or know how for products sold by them. It is only that based on the experience of retailing in the area, SSL has certain understanding of the products likely to sell in that area and the identification of such saleable products from the total range of the vendor's products is done by them before placing the purchase orders. There is no evidence that specifications have either been developed with respect to any such products nor any specification is given to the vendors. Vendors, being brand owners, have their own way of developing their products based on their research. The orders are placed for identified products and not for products based on SSL specifications. It is also noted that the products are supplied to SSL within a day and supplied within 3 to 4 days of placement of such order. It cannot be the case of the AO that the vendor, within a period of one day, is able to source the material from SSL and produce such goods for appellant's consumption."

23. It was further rightly noted by the Ld. CIT(A) that, even if it be the case that the assessee had provided specifications in relation to supply of these products (although that is not the case), still it could not qualify as 'works contract' in light of the specific exception set out in clause (iv)(e) of Explanation to Section 194C of the Act, as discussed earlier. It is not the case that, the assessee provided or supplied materials to any of these vendors/suppliers. It is noted that, each of these vendors manufactures or procures the products in their own independent capacity and under their respective brand names in as much as that the assessee does not have any say in the same. In fact, the goods manufactured by these vendors, who are noted to have international repute, is not directly dependent on the orders placed by the assessee. These suppliers are noted to manufacture and supply their products to several retailers and that the assessee is only one of them which procures their products. The assessee does not provide any specifications for manufacture of these products but it only selects from

the wide array of the products offered by these vendors which it chooses to sell through its retail outlets. These products sold through the retail outlets are not branded by the assessee but they carry the brand /name of the original suppliers / manufacturers. These material facts remained uncontroverted by the Revenue. We thus agree with the findings of the Ld. CIT(A) that, these SOR arrangements were on principal to principal basis and therefore in the nature of contract for sale of goods and thus, such an arrangement cannot be categorized as 'works contract' as defined in Section 194C of the Act.

24. The AO is further noted to have laid much emphasis on the aspect that, the assessee had long term arrangements with these vendors and therefore it was not in the nature of ordinary purchases as claimed by the assessee. Having regard to the facts as already discussed in the foregoing, and also having perused sample agreements, we note that nothing much turns on this issue as observed by the AO. As rightly noted by the Ld. CIT(A), it is a common feature in any business that, suppliers enter into a written agreement/understanding with their major customers to outline the terms and conditions and the respective responsibilities / liabilities to avoid confusion in future. Further, the placement of purchase orders in any line of business ensures that the suppliers can correspondingly schedule their production in an organized fashion to avoid disruptions or delays in deliveries. The Ld. AR pointed out that, the assessee-retailer primarily deals in clothing/ apparels/ fashion etc. which changes with time and also with each season (summer/rainy/winter), and therefore the assessee-retailer has to ensure that it is stocked up with the clothing/ apparels/ fashion that is relevant and saleable during the material period/ season for which it places appropriate orders in advance with these suppliers from amongst the samples presented by them. Hence, the placement of purchase orders by the assessee prior to the supply of goods by these vendors cannot render the arrangement to be held as a 'works contract'.

25. The AO thereafter is noted to have referred to the ancillary services provided by the suppliers viz., deputation of personnel at the retail stores, provision of after sales support to remove defects, joint inspection of inventories, etc., to allege that the predominant intent of these SOR arrangements was the supply of labour and not material. According to us, each of these averments made by the AO were totally misplaced on the given facts of the case. As we have already noted above, these SOR arrangements are in the nature of contract for supply of goods. One of the key features of such an arrangement is that, the goods purchased by the assessee may be returned if it remains unsold in their outlets. Further, the assessee sells these goods through its retail outlets which houses multiple brands of similar apparels/ cloths/ fashion etc. Moreover, the Ld. AR explained that, with these products getting more complex and expensive and with the changing fashion, they require specialized handlers to explain

the same to the customers to introduce them to the new features or the new fashion in vogue. It is therefore, commonly known that the trained sales staff are placed by these suppliers at the retail outlets to educate or assist the customers who visit the retail outlets of the assessee to increase their sales. Hence, we agree with the Ld. CIT(A) that, the mere deputation of sales staff, subsequent to sale of goods, cannot be viewed adversely so as to allege that these SOR arrangements are in the nature of 'works contract'.

26. Further, if any of the customers of the assessee reports any product defects or size issues at the retail outlets, the assessee, in turn, avails the after sales support from the suppliers/ original manufacturers. This after-sales support subsequent to sale of goods is a common feature in any contract for sale. In any line of business, the distributors / wholesalers / retailers avail the after sales support for their customers from the original manufacturer, but that does not mean that their contracts with the manufacturers are not for supply of goods. The provision of after sales support clearly does not alter or change the nature of the SOR arrangement, which is that of supply of goods by the vendors to the assessee.

27. One of the clauses of the SOR agreement also provides for the joint inspection of stock at the retail outlets of the assessee, which according to the AO, shows that there are other onuses on the vendor as well and therefore it is not a mere purchase-sale of goods. Before the Ld. CIT(A), it was explained by the assessee that, this clause was set out in the agreement because as per the agreed terms of payment, the vendors are paid weekly/monthly based on the goods sold at the retail outlets. Accordingly, in order to ensure that the payments are being made in a timely fashion, the vendors sought the right to inspect the inventory lying at different retail outlets, if so desired by them. Further, having regard to the nature and line of business, i.e. clothing/shoes/bags/fashion/apparels, etc., the vendors want to take stock of the slow moving items at different locations and thereby get a timely feedback in terms of the evolving sense of taste & liking of the customers, to accordingly chart out their next line of clothing/ shoes/ bags/ fashion/ apparels, etc. Hence, as rightly held by Ld. CIT(A), this clause/option vested with the vendors is of no relevance and does not in any manner assist the case of the AO nor does it suggest that the SOR arrangement is in nature of 'works contract'.

28. The last observation of the AO was that, the payments towards the goods supplied by the vendors were being released by the assessee either after the goods were found to be complete without any defect by the assessee, or after the complete goods were found to be to the satisfaction of the assessee, or after the goods were sold at their retail outlets, which according to him, suggested that the vendors were the contractors

of the assessee. It was rightly pointed out by the Ld. AR that, the terms of payments towards purchase of goods cannot be said to indicate that the contract is that of 'works contract' with the vendors. He showed us that, even the Sale of Goods Act 1930, permits contract for payment during delivery of goods or before or after or by installments. In our considered view therefore, this observation of the AO is of no relevance and is not decisive to ascertain the nature of the SOR agreement.

29. Based on our above findings and observations, thesalient features of the SOR agreements with the vendors can be summed up as follows:

a) The assessee first selects the vendors based on its stand in the market and the quality of their products and thereafter enters into SOR agreements with them. These agreements are in the nature of Memorandum of Understanding laying down the terms and conditions of the supply of goods. The vendors present their samples of an array of products for selection. The assessee, after evaluating the samples, places the purchase orders and thereafter the goods are supplied from the vendors from time to time.

b) The vendor supplies the goods either out of vendors' existing stock or goods manufactured or purchased or imported by the vendor. It is noted that there is no correlation between the purchase orders placed by the assessee and the goods manufactured or procured by the vendors. The vendors act in their own independent capacity and the goods supplied by them are manufactured from the raw materials sourced by themselves and nothing is provided by the assessee. Even the designs and specifications are decided by the vendors without the involvement of the assessee. Moreover, even the goods supplied by the vendors only carries the brand/ name of the respective vendors and not of the assessee.

c) The property in the goods passes onto the assessee upon raising of the invoice and the delivery of goods. At no anterior stage does the property in the goods pass to the assessee. The respective vendors are exclusively the owners of the goods at every stage of procurement/manufacturing till the goods are delivered to the assessee.

d) The risk in the goods up to the point of delivery is that of the vendor and after the delivery is that of the assessee. Once the goods are delivered to the assessee, the risk, title and property in these goods vests with the assessee. This is also evident from the insurance policy, copy of which was placed at Pages 55 to 62 of the paper book, that the stocks purchased on sales or return basis are also insured by the assessee.

e) The invoices raised by the vendors are noted to be for the supply of the goods. It is noted that these invoices are subject to the levy of sales tax, etc., which is applicable on sale of goods and no works contract tax/ service tax is levied on the same which would suggest that it is in the nature of 'works contract'.

f) In terms of the SOR agreement, the assessee has a right to return the goods under certain circumstances which is set out in the agreement itself.

g) For mutual interests of promoting the business, certain ancillary functions such as deputation of marketing personnel, after sales support, joint inspection of inventory etc. is provided in the SOR agreements. These functions do not alter or change the primary character of the transaction between the vendors and the assessee, which is that of supply of goods.

h) The vendors have also confirmed the above facts and understanding in the course of enquiries made from them u/s 133(6)/131 of the Act. They have affirmed that they have supplied goods to the assessee on principal to principal basis for sale through the assessee's retail outlets.

30. In view of the above, we note that the Ld. CIT(A) had rightly placed reliance on the decision of the Hon'ble Bombay High Court in the case CIT vs. Glenmark Pharmaceuticals Ltd (supra) which is found to be relevant and applicable in the present case. In this decided case, the assessee is noted to have been engaged in the manufacture and marketing of drugs and pharmaceutical products. In the course of the TDS survey, it was noted by the Department that, or purchasing drugs from other /apart from manufacturing drugs on their own and suppliers on an outright basis, the assessee also had agreements in place with ,certain third partieswho although would source raw materials on their own but they would manufacture the products as per the specifications and standards provided by the assessee and under its trade mark. According to the AO, such an agreement was in the nature of works contract amenable to Section 194C of the Act. Since the assessee had not deducted taxes at source from such payments, it was held to be an assessee-in-default u/s 201 of the Act. Although the Ld. CIT(A) upheld the order of the AO but on further appeal this Tribunal decided the issue in favour of the assessee. It is noted that this Tribunal had held that, though the products were manufactured in accordance with the specifications of the assessee and under its trademarks, but the manufacturer carried out the process of manufacturing at his own establishment, engaged his own labour force, purchased the raw materials on its own and paid excise duty and sales-tax, and the property in the goods passed onto the assessee only upon delivery of the products. Referring to the

decision rendered by the Hon'ble Bombay High Court in the case of BDA Ltd. v. ITO (TDS) (281 ITR 99), this Tribunal, in the instant case, held that the agreements entered into by the assessee with the manufacturers were not works contracts within the meaning of section 194C of the Act and, consequently, the assessee could not be held as an assessee-in-default under section 201(1) of the Act. Aggrieved by this order of the Tribunal, the Revenue preferred appeal before the Hon'ble High Court and the following substantial question of law was raised for adjudication :

> *"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the transactions between the assessee and the manufacturer is a contract for sale of goods and is not in the nature of works contract and therefore, the provisions of section 194C are not attracted?"*

31. ,Answering the above question in the negative and against the Revenuethe Hon'ble Bombay High Court had held as under:

> *"28. Hence, what has weighed in the introduction of clause (e) to the Explanation was ongoing litigation on the question as to whether TDS was deductible on outsourcing contracts. Clause (e) was introduced to bring clarity on this issue' or, in other words, to remove the ambiguity on the question. Clause (e) as introduced contains a positive affirmation that the expression 'work' will cover manufacturing or supplying a product, according to the requirement or specification of a customer by using material purchased from such a customer. Clause (e) has placed the position beyond doubt by incorporating language to the effect that the expression 'work' shall not include manufacture or supply of a product according to the requirement or specification of a customer by using material which is purchased from a person other than such customer. In other words, the circumstances that the requirements or specifications are provided by the purchasers is not regarded by the statute as being dispositive of the question as to whether a contract constitutes a contract of work or sale. What is of significance is whether material has been purchased from the customer, who orders the product. When the material is purchased from the customer who orders the product, it constitutes a contract of work while on the other hand, where the manufacturer has sourced the material from a person other than the customer, it would constitute a sale. What is significant is that in using the words which clause (e) uses in the Explanation, Parliament has taken note of the position that was reflected in the circulars issued by the Central Board of Direct Taxes since May 29, 1972 The judgment of the Supreme Court in Associated Cement gave an expansive definition to the expression work and rejected the attempt of the*

assessee in that case to restrict the expression work to works contracts Both before and after the judgment of the Supreme Court the expansive definition of the expression work co-existed with the Revenue's understanding that a contract for sale would not be within the purview of section 194C. The Revenue always understood. section 194C to mean that though a product or thing is manufactured to the specifications of a customer, the agreement would constitute a contract for sale, if (i) the property in the article or thing passes to the customer upon delivery; and (ii) the material that was required was not sourced from the customer/purchaser, but was independently obtained by the manufacturer from a person other than the customer. The rationale for this was that where a customer provides the material, what the manufacturer does is to convert the material into a product desired by the customer and ownership of the material being of the customer, the contract essentially involves work of labour and not a sale. Parliament recognized the distinction which held the field both administratively in the form of circulars of the Central Board of Direct Taxes and judicially in the judgments of several High Courts to which a reference has been made earlier. Consequently, the principles underlying the applicability of section 194C as construed administratively and judicially in decided cases, find statutory recognition in the Explanation. The Finance Bill of 2000 states, was in the nature of a clarification. Where an explanatory provision is brought to remove an ambiguity or to clear a doubt, it is reflective of the law as it has always stood in the past. Where, as in the present case an Explanation is introduced statutorily to adopt an understanding of the law both in the form of the circulars of the Board of Direct Taxes and in judicial decisions. Parliament must be regarded as having intended to affirm that intent. In the present case, the intent has held the field for over three decades...

33. The reason that a specification or requirement is enunciated by the assessee constitutes a matter of business expediency A purchaser who desires to get the product, which he intends to sell under his brand name, or trademark, manufactured from a third party would be interested in ensuring the quality of the product. The trade-mark has associated with it an assurance of the quality of the goods which are marketed traceable to the origin of the goods. Associated with the trade-mark is the goodwill and reputation which is associated with the at This is particularly so in the case of a pharmaceutical product where the ultimate consumer is legitimately entitled to ensure that her health is not prejudiced by the consumption of a product not meeting prescribed standards. The owner of a mark, therefore, introduces specifications to ensure that the product meets the standards justifiable associated with the reputation in the mark. The specification ensures the observance of standards. Similarly, a clause relating to exclusivity is not

inconsistent with a transaction of a sale. Here again, much depends upon the nature of the product Restrictive covenants of this kind are intended to protect the intellectual and other property rights of a party which markets its goods by requiring a manufacturer to observe norms of specification and exclusivity. The law is, therefore, consistent with the transaction being regarded as a transaction of sale, provided that the requirements of a contract of sale are met. They are in this case. The contract entered into by the assessee is not a contract for carrying on any work within the meaning of section 194C."

32. In the above binding judgment, the Hon'ble Court while examining clause (e) as introduced by the Finance (No.2) Act, 2009, noted that it contains a positive affirmation that the expression 'work' will cover manufacturing or supplying a product, according to the requirement or specification of a customer, by using material purchased from such customer. It has also been noted by the Hon'ble High Court that clause (e) has placed the position beyond doubt by incorporating language to the effect that the expression 'work' shall not include manufacture or supply of a product according to the requirement or specification of a customer by using material which is purchased from a person other than such customer. The Hon'ble Court made it abundantly clear that the fact that specifications were provided by the assessee to the manufacturer / supplier would make no difference to the legal position. It noted that, (i) the agreement in the instant case, was on a principal to principal basis, (ii) the manufacturer had his own establishment where the product was manufactured, (iii) the material required in the manufacture of the article or thing was obtained by the manufacturer from a person other than the assessee, (iv) the property in the articles passed upon the delivery of the product manufactured, and (v) until delivery, the assessee had no title to the goods. On these principles, the Hon'ble High Court accordingly held that the provisions of Section 194C were not applicable, and more particularly the agreement did not fall within the definition of 'works contract' as laid down in Explanation to Section 194C of the Act.

33. The Ld. AR Shri Vijay Mehta has rightly pointed out to us that, the case of the assessee is on much better footing than the facts involved in the above cited judgments. It is noted that all the above features (i) to (v) were present in the SOR agreements in question in the present case. Apart from the foregoing, as already noted by us, in the present case, the assessee is not accustomed to providing specifications or designs to the suppliers. It is also not a case that the suppliers are manufacturing the goods at the instance of the assessee. Further, the goods supplied are not under the brand/name of the assessee and instead bear the brand/mark/name of the respective supplier/original manufacturer. Hence, the ratio laid down in the above

judgment, when coupled with the foregoing facts, is held to be applicable with more force in the present case of the assessee.

34. For the reasons set out above therefore, we do not see any reason to interfere with the order of the Ld. CIT(A) in holding that the payments made under the SOR agreements did not fall within the ambit of Section 194C of the Act and therefore the assessee did not have any liability to deduct tax at source on such payments u/s 194C of the Act. Accordingly, all the grounds raised by the Revenue stands dismissed."

6. On perusal of facts for the year under consideration we notice that the facts are similar as compared to AY 2017-18. During the course of hearing the revenue did not bring anything on record to controvert the above findings of the coordinate bench. Accordingly, respectfully following the decision of the coordinate bench, we hold that there is no infirmity in the decision of the CIT(A) in deleting the tax under section 201(1) and interest under section 201(1A) levied by the AO. The grounds raised by the revenue are thus dismissed.

AY 2013-14

7. For AY 2013-14, the AO treated the assessee as assessee in default towards the non-deduction of tax on service agreement cum contract manufacturing of apparels/goods/items /products which is identical to AY 2018-19. The CIT(A) deleted the tax and interest levied under section 201(1) and 201(1A) by placing reliance on the decision of the coordinate bench in assessee's own case (supra) for AY 2017-18. The facts for the year under consideration being identical and that the revenue did not bring anything on record for us to take a difference view for the year under consideration, we see no reason to interfere with the decision of the CIT(A). The grounds raised by the revenue are dismissed.

8. In result the appeal of the revenue for AY 2013-14 and 2018-19 are dismissed.

Order pronounced in the open court on 20-03-2025.

Sd/-	***Sd/-***
(ANIKESH BANERJEE)	**(PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai