



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.14/LKW/2024
Assessment Year: 2018-19

Pushendra Singh 680, Amar Nagar, Raebareli (U.P)-229001.	v.	DCIT Circle, Faizabad/National e- Assessment Centre Delhi
PAN:AXBPS1905L		
(Appellant)		(Respondent)

Appellant by:	Shri P. K. Kapoor, C.A.
Respondent by:	Shri R. R. N. Shukla, Addl. CIT(DR)

ORDER

PER ANADEE NATH MISSHRA, A.M.:

(A). This appeal vide I.T.A. No.14/LKW/2024 has been filed by the assessee for assessment year 2018-19 against impugned appellate order dated 23.09.2025 (DIN & Order No.ITBA/NFAC/S/250/2023-24/1058589666(1) of Ld. Commissioner of Income Tax (Appeals) ["CIT(A)", for short]. The grounds of appeal are as under:

"1. BECAUSE the "CIT(A)" has erred in law and on facts in confirming the action of the assessing officer in examining the TDS details without obtaining necessary approval from the competent authority for converting the limited purpose scrutiny to complete scrutiny.

2.1. BECAUSE the "CIT(A)" has erred in law and on facts in confirming the addition of Rs. 19,18,769/- made by the Assessing Officer, by way of disallowance of 30% out of wages of Rs. 63,95,897/- u/s 40(a)(ia) of the "Act" for the alleged failure of the "appellant" to deduct tax at source u/s 194C of the "Act".

2.2 BECAUSE looking to the material and information placed on record of the authorities and the facts of the case, the payment of wages was made by the appellant directly to the labours engaged by him owing to which no obligation upon the "appellant" to deduct tax at source from hire wage payments for the reason that individual payment was below the threshold limit specified u/s 194C of the "Act" and consequently, the "CIT(A)" is not correct in confirming the disallowance of Rs. 19,18,769/- made by the assessing officer by invoking provisions of section 40(a)(ia) of the "Act".

2.3 BECAUSE the disallowance of Rs. 19,18,769/- has been made/sustained merely the presumption, without any evidence brought on record by the below, that the payment of wages amounting to Rs. 63,65,897/- was appellant through contractor and consequently the addition of Rs. by CIT(A) deserves to be deleted.

3.1 Because "CIT(A)" has erred in law and on facts in up-holding the disallowance of Rs.17,97,173/- claimed under the head "fuel & freight" made by the assessing officer u/s 40(a)(ia) of the "Act" by erroneously holding that provisions of section 194C of the "Act" were attracted on the said expenditure.

3.2 BECAUSE looking to the material and information placed on record out of total amount of Rs. 59,90,577/- claimed under the head "fuel & freight", Rs.58,70,577/- represented payment for purchase of diesel on which provisions of section 194C of the "Act" are not attracted and consequently, the expenses to the extent of Rs. 58,70,577/- could not have been subjected to disallowance u/s 40(a)(ia) of the "Act" so as to make an addition of 30% thereof.

3.3 BECAUSE as per the material and information placed on record the sums aggregating Rs. 1,20,000/- (out of total expenses of Rs. 59,90,577/- claimed under the head "fuel and freight") represented payment towards freight on which TDS of section 194C were not appreciated since such payments are below the threshold limit specified in section 194C and on a due consideration of this fact alone, no dis-allowance of 30% of Rs. 1,20,000/- could have been made u/s 40(a)(ia) of the Act.

4.1 BECAUSE the "CIT(A)" has erred in law and on facts in sustaining the con of Rs. 2,31,744/-, being 30% out of "outward job work expenses" of Rs.7,72,431/-, on the alleged ground that the appellant had not produced the name and address of each vendor with details of amount paid to them to prove that the expenses in question per vendor were below the threshold limit.

4.2 BECAUSE as per the material and information on record, the "appellant" had duly placed all the requisite details in respect of payment of outward job work expenses of Rs.7,72,431/- before the authorities below and as such the Id. "CIT(A)" is not correct in holding that the assessee failed to furnish the said details.

5. BECAUSE the Id. "CIT(A)" has passed the order without considering / dating the submissions and evidences placed by the assessee before the lower Authorities and as such the impugned order deserves to be set-aside and the addition confirmed by CIT(A) deserves to be deleted.

6. Because the Id. CIT(A) has passed the impugned order without affording due and effective opportunity of being heard to the appellant.

7. Because the order appealed against is contrary to facts, law and principles of natural justice.

8. The appellant craves leave, to add, delete or modify any of the grounds at the time of or before the hearing of the appeal."

(B) In this case, assessment order dated 21.04.2021 was passed u/s 143(3) read with section 144B of Income Tax Act, 1961 ("Act", for short) whereby the assessee's total income was determined at Rs.1,21,61,260/- as against returned income of

Rs.59,79,980/-. In the aforesaid assessment order, an addition of Rs.39,47,686/- was made u/s 40a(ia) of I. T. Act. The assessee filed appeal in the office of the Ld. CIT(A) vide impugned appellate order dated 08.12.2023. The aforesaid addition was confirmed. The relevant part of the impugned order of the Ld. CIT(A) is reproduced below:

"1 have gone through the assessment order and the submission made by the appellant. The appellant is a Civil Contractor having a turnover of more than Rs.2 crores. The contention of the appellant is that the appellant should have deducted TDS on contractual payments as per the provisions section 194C of the Act. As the reply given by the appellant that he is not required to deduct tax at source was not accepted by the AO, he made a disallowance @ 30% of such expenses on which the appellant failed to deduct tax at source as per the provisions of section 40(a)(ia) of the Act. The AO made the total addition of Rs.39,47,686/- and completed the assessment Aggrieved by the said addition/disallowance, the appellant is in appeal and has raised 17 grounds which are adjudicated as under: -

*2. **Ground no. 1 & 2** are relating to adjustment made by the AO, CPC u/s. 143(1) of the Act and the same was added in computation by the AO in the impugned order. It is submitted by the appellant that the addition made by the AO, CPC was rectified subsequently vide order dated 24.02.2021 by the jurisdictional AO but inspite of the same, the AO made the addition in the computation The AO is directed to examine this aspect and reduce the addition if it is found that the same is already rectified. Ground no.1 & 2 are treated to have been partly allowed.*

1. Ground no.3 & 4 are relating to scope of scrutiny wherein TDS aspects could not have been examined by the AD. In these grounds, the appellant had challenged that the TDS details could not have been examined by the AO as it was Limited Scrutiny to examine income from real estate business. However. as seen from the assessment order, it is specifically mentioned that a is a complete scrutiny as per assessment scheme 2019 and hence, there is no requirement of any approval of the competent authority. The approval is necessary only to convert the Limited Scrutiny into complete scrutiny Accordingly, the appellant's submission on issue Ground no. 3 & 4 are dismissed.

Ground no. 8 to 15 are relating to disallowance made by the AO u/s 40(a)(ia) of the Act for failure to deduct tax at source u/s 194C of the Act. The total addition made by the AD as part of all these grounds in Rs.30,47,006 consisting of 03 disallowances namely labour charges Rs.10,18,789, freight and machine expenses Rs.17,97,173 & outward job work expenses Rs 2,31,744 All the disallowances are 30% of the total expenses claimed by the appellant. These three heads of expenses are being examined each head wise as below:

1. The first head is relating to daily wages claimed by the appellant of Rs 63,95,807, The contention of the appellant in making this addition is that the appellant had failed to produce

any documentary evidence of hiring the labour and paying wages to them. The appellant only submitted that he paid fixed wages 200 per day to the labours and hence provisions of section 1940 of the Act are not attracted. During appellants proceedings as well, the appellant has made the same submissions. The appellant has referred to the decision of Hon'ble ITAT, Kolkata in the case *Tapes Paid vs ACET/237/2014* wherein it was held that if the labours are directly working under the supervision of the assessee, the provisions of section 104C of the Act would not apply. However, the ratio of the said decision is not applicable to the facts of the appellant unless it is proved with documentary evidence that such labours really worked under the supervision of the appellant. The workers in question have to be registered under PF and ESI Acts and their wage sheets have to be properly maintained and necessary PF and ESI also needs to be remitted as per the provisions of the respective Acts. The appellant has not produced any such any such evidences either before the AD or during the appellate proceedings. Further, for a big contractor the appellant it is humanly not possible to hire individual labours and hence the labours are engaged through contractors for which provisions of TDS are attracted. Merely producing a ledger account of labour payments will not serve any purpose as the same can be prepared even without paying the actual wages. Such ledger has no evidence and cannot be accepted as a valid document. Therefore, the addition made by the AD treating the labour payments as contractual payments which attracts provisions of section 104C of the Act is upheld. Addition of Rs. 19,18,780 is confirmed.

The next addition is being disallowance of 30% on fuel and freight expenses amounting to Rs.50,90,577/. The contention of the appellant is that more than 90% of this expenditure is for payment of diesel for tractors and freight payment is only Rs. 1,20,000/- and balance Rs.50,70,577 is the payment of diesel and hence provisions of Sec 1940 of the Act for the payment of diesel which is a purchase are not attracted. Here, the appellant has not stated that the tractors or machinery is owned by him (appellant). That being the case, the appellant paying only for diesel can be held to be for purchase of diesel when the tractors/machinery is owned by the appellant. If tractors/machinery are hired and the payment of diesel is made to hired vehicles, the provisions of section 1940 of the Act are attracted. The appellant has tried to project as if he is object as if he is paying only Rs.1,20,000/- for freight and balance is for diesel. No diesel bills also were produced nor details of tractors/machineries used were produced. Hence, the payment made for hired tractors including the cost of diesel are subject to provisions of section 1940 of the Act and hence the action of the AO in disallowing 30% of such expenditure u/s 40(a)(ia) of the Act of Rs.17,97,173 is upheld.

1. The third head of expenditure is outward job work expenses of Rs.7,72,431/- which are relating to fabrication, shuttering work, earth filling, filling and maintenance etc. The appellant merely states that on this expenditure the provisions of section 1940 of the Act are not applicable but has not explained as to how they are not applicable. The appellant has to prove that the expenses in question per vendor were below the limit for which he has to give the names and address of each vendor with details of amounts paid. If these details are not given, the AO does not have any other option than to make the disallowance as done by him. The appellant has not produced any such details during the appellate proceedings as well. Hence, the addition made by the AO of Rs.

2,31,744-also sustained. Overall, the addition of Rs.39.47,686/-is sustained Ground no. 5 to 15 are dismissed.”

(B.1) The present appeal has been filed by the assessee against the impugned appellate order of the Ld. CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal (ITAT), a paper book containing the following particular was filed from the assessee’s side: -

SI. No	PARTICULARS
1	Copy of acknowledgement of ITR-3 filed on 31.10.2018 vide acknowledgement no. 38042011311018 declaring the total income of Rs.59,79,980/-.
Proceedings before the Assessing Officer	
2	Copy of notice u/s 143(2) of the Income Tax Act, 1961 dated 22.09.2019
3	Copy of reply dated 05.10.2019 filed in response to notice dated 22.09.2019; along with-
4	(i) Copy of sale deed for the property purchased.
5	Copy of notice dated 23.01.2021 issued u/s 142(1) of the Act, raising certain queries.
6	Copy of notice dated 18.01.2021 issued u/s 142(1) of the Act, raising certain queries.
7	Copy of show cause notice dated 15.03.2021 along with draft assessment order.
8	Copy of reply dated 20.3.2021 filed in response to show cause notice dated 15.03.2021 raising objection against the draft assessment order; along with copies of following ledger accounts in the books of assessee for the period 01.03.2017 to 31.03.2018:
	(i) Labour & Wages
	(ii) Freight & Machine Expense
	(iii) Outwork Job
	(iv) Royalty
	(v) Professional, Legal and Administrative Expense
Proceedings before the First Appellate Authority	
9	Copy of Written Submission filed before the Ld. CIT(A) on 21.06.2023

(C) At the time of hearing before us, the Ld. Authorized Representative for the assessee drew our attention to the aforesaid paper book referred to in the foregoing paragraph (B.1) of this order. He also drew our attention to the copy of the reply dated 20.03.2021 submitted in response to the show-cause notice issued during the assessment proceedings and placed reliance on the same. The relevant portion of the aforesaid reply dated 20.03.2021 is reproduced below: -

Kindly refer to the captioned notice issued by your goodself, requiring me to show cause initiated by virtue of notice dated 15-03-2021 bearing Notice reference DIN No. ITBA/AST/F/143(3)(SCN)/2020-21/1031496492(1) dated 15.03.2021, as to why an order of assessment should not be completed as per draft assessment order of the I.T. Act, 1961 (in short 'Act') for failure to make compliances of e- assessment notices issued and served on various dates as mentioned in draft assessment order, under section 142(1) of the act' through e-delivery system.

2. At the outset, I beg to submit that due to severe health issues and misunderstanding the date of compliances as per notice dated 24-11-2020, 30-12-2020, 18-01-2021 and 16-02-2021, the necessary compliance could not be made by the assessee's on the date fixed therefore.

3. It is most humbly submitted for your kind consideration that since in the present case, the noncompliance to the notices i.e. 24-11-2020, 30-12-2020, 18-01-2021 and 16-02-2021, was not intentional with no malafide on the part of the assessee, therefore, passing draft assessment order on the assessee will not be justified.

4. In view of the submission made hereinfere, it is most humbly prayed that the draft assessment proceedings initiated under section 143(3) read with sections 143(3A) & 143(3B) of the Income-tax Act may kindly be stopped and should not be processed.

5. **Notwithstanding the aforesaid**, the assessee assures of extending full cooperation in completing the assessment. For the said purpose, the assessee will furnish and complete all of your requisitions seeking through notices issued under section 142(1) of the act' correlated with draft assessment order proposed to be passed.

6. whereas as per draft assessment order your goodself made an proposed addition on the ground that various expenditures made by assessee were without deducting TDS since the firm is sole proprietorship concern and turnover of the unit was exceeding Rupees 2 crores, therefore provision of section 40(ia) applied on the assessee case and the addition have been made on the following expenses.

Submission of Reply to para 6 as above

it is most humbly furnished that the following expenditures were made by assessee for the purpose of its construction business on which provisions for TDS of Chapter XVII-B or Chapter XVII-BB were not applicable, As per ledger attached for your perusal, labour payment was made to casual and un-contracted labours in cash, since the nature of assessee's business is civil construction and so many small different working sites being run, whereby unskilled labours rotated regularly on short intervals on every sites without any control upon him by assessee, hence employer employees relationship could not exist. Further, It is also submitted that each labour payment nothing exceed the limits specified for particular transaction Rs. 30000/- also did not exceed the amount specified for whole year i.e. Rs. 1,00,000/-, hence section 194C of the act' not attracted and not applied upon assessee. [copy of ledger accounts are attached herefor.]

Hence section 194 C does not applicable hence provision of section 40(ia) shall not be applied. therefore the provision of Sec. 194C r.w.s. 40(a)(ia) of the Act are not attracted.

Even on merit, it is submitted that since the assessee was not liable to deduct TDS, so we are submitting the clarification on each expenditures as mentioned herefor in Tabular form and also attaching copy of accounting ledgers which reveals the nature of expenses and amount expended, to substantiate the issue for non applicability of TDS provisions.

Sr No	Nature of exps	Amount	Our submissions																		
1.	Labor Charges	Rs.63,95,897/-	As per ledger attached for your perusal, labour payment was made to casual, uncontracted and unidentified persons paid in cash, you may see as per attached ledger that daily wages was paid to each one Rs. 260/-per day and large number of workers being worked on rotational basis in short intervals without any control upon him by assessee. Hence section 194 C does not applicable hence provision of section 40(a) shall not be applied.																		
2.	freight and Machine Exp	Rs.59,90,577/-	<p>Details of payments made to persons and purpose for which it was made are classified as under.</p> <table border="1"> <thead> <tr> <th>Amount</th> <th>Parties</th> <th>Purpose</th> </tr> </thead> <tbody> <tr> <td>120000</td> <td>Kushal transport</td> <td>Freight, particular payments made within specified limit.</td> </tr> <tr> <td>2017019</td> <td>Shakto autocare</td> <td>Diesel for tractors, which does not attract TDS</td> </tr> <tr> <td>3620000</td> <td>Arkha fuels</td> <td>Diesel for tractors, which does not attract TDS</td> </tr> <tr> <td>230710</td> <td>Anurag roadlines</td> <td>Diesel for tractors, which does not attract TDS</td> </tr> <tr> <td>2848</td> <td>Misc</td> <td>TDS not apply</td> </tr> </tbody> </table> <p>section 194 C does not applicable hence provision of section 40(a) shall not be</p>	Amount	Parties	Purpose	120000	Kushal transport	Freight, particular payments made within specified limit.	2017019	Shakto autocare	Diesel for tractors, which does not attract TDS	3620000	Arkha fuels	Diesel for tractors, which does not attract TDS	230710	Anurag roadlines	Diesel for tractors, which does not attract TDS	2848	Misc	TDS not apply
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			applied. Copy of ledgers showing each day transactions being attached for your reference.
03	Outwork Job	Rs.7,72,481/-	Payments made for Fabrication work, shuttering works, earth filling, maintt etc, all these expenditures not attached provision for tds, hence provision of section 40(a) shall not be applied. Copy of ledgers showing each day transactions being attached for your reference.
04	Royalty	Rs.1,36,090/-	Being amount deducted by RES and nagar palika parishad on account of deductions are not likely to attract provision of TDS. Copy of ledgers showing each day transactions being attached for your reference.
05	Profession, legal and admin	Rs.54,633/-	Amount paid to each councillor for advocacy was within specified limit Rs. 30000/- on each professional, hence proviso to section 194J not applicable. Copy of ledgers showing each day transactions being attached for your reference.
06	Business Promotion	Rs.5,21,075/-	Amount paid for business promotions paid for sweets, gifts etc are also not likely to deduct TDS.

the captioned addition proposed to made as per draft assessment order is not valid in the eyes of law, since the assessee was engaged in the business of construction and above said payments was made during the course of business, each expenditures has been enumerated for the purpose for which it was incurred, None of the expenditures attracted the proviso of TDS either section 194C , 194J or any other sections of chapter Chapter XVII-B.

BECAUSE we have not been failure to make the compliance of TDS since the provision to Chapter XVII-B was not apply on us during the year under scrutiny, However no such adverse report given by statutory tax auditors' in its audited

statements of accounts for the year ending on even date as there was no failure of compliances of TDS was made by assessee during the financial year.

accordingly on account of non compliance of TDS an aggregate proposed addition in totality from Sr 1 to 6 as made herefor of Rs. 1,38,70,753/- is not sustainable from a perusal of draft assessment order since it is unjustified and not as per law, so it is requested that the draft assessment order may kindly be with-drawn and the proceedings be dropped.

7. Even on merits, it is further submitted that the addition of Rs. 1,38,70,753/- proposed to be made is not sustainable from a perusal of draft assessment order, it will be seen that the addition of Rs. 1,38,70,753/- has been made on account of Non deduction of TDS on daily basis uncontracted, unidentified Labours which does not exceeds its receipts the amount as per section 194C of the act' either in particular transaction or aggregate as whole, payment made for diesels for filling in tractor trolley's also not attracted the TDS provisions, Outwork job and other expenses as mentioned herefor could not applied due to the reasons explained herefor.

8. Whereas Our case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-

S. No.	Issues
1	Income from Real Estate Business

"as per draft assessment order Assessment proceedings were initiated and notice under section 143(2) was issued on 22/09/2019, in compliance to notice, Assessee in question have humbly submitted that "he have purchased the property for Rs.22 lacs by virtue of sale deed, property has been sold by Yashmeen saleem w/o Mohd saleem dated 31st august 2017, the circle rate of the property was Rs.22.05 lacs however purchased was Rs.22lacs, entire payment was made through Bank as explained in the attached sale deed. So I am enclosing the following copy of documents as under".

List of attachment:- Copy of Sale deed for property purchased.

So, the contention of the assessee is correct on this point and no adverse has been found on this issue".

(submission ; it is humbly submitted that Our contention was admitted by your goodself without any adverse remarks and submission does find in our favour, henceforth specific Issue of CASS for which scrutiny was selected has been resolved)

9. In any case, the draft assessment order dated 12.03.2021, which has given rise to initiation of disallowance of business expenditures on account of non deduction of TDS, is not bonafide, since the incurrence of expenditures was not liable to deduct TDS as per Chapter XVII-B of the act and also the same views adopted by statutory tax auditors' and not reported any adverse remarks with respect to compliance of TDS in its auditors' report issued under section 44AB of the act in the form 3CB and 3CD.

10. further in support of my contention as per sr 6 and 7 as mentioned herefor, appending copy of ledgers kept and maintained as books of accounts by us in the tally accounting software, the same will clear the issue as the expenditures incurred during the business did not attract TDS provisions hence section section 40(ia) shall not apply.

11. Therefore, in case the clarifications and justifications as made as per act' as made in para 6 and 7 above, does find in our favour by your goodself, the draft assessment proceedings may kindly be withdrawn and proceedings may be dropped.

(C.1) In particular, the Ld. AR for the assessee drew our attention to the ledger accounts relating to various expenses. In the ledger

account of Labour & Wages, numerous cash payments ranging from Rs. 7,020/- to Rs. 27,300/- are reflected. It was submitted that these payments pertain to labour charges; involving, for each of these payments, payments made to workers numbering between 27 and 204. Moreover, under the head fuel and freight; the ledger account shows total payments of Rs.59,90,577/-. Also, in the ledger for Outward Job Expenses, a total amount of Rs.7,72,481/- has been made to various parties. In the ledger account of Outwork Job Expenses, payments ranging from Rs. 3,000/- to Rs. 3,12,538/- have been shown to two different parties. The Ld. AR for the assessee contended that these payments were not contractual payments and the assessee was not required to deduct tax at source. Therefore, he contended, the assessee was not hit by Section 40(a)(ia) of I.T. Act. The Ld. Departmental Representative for Revenue placed reliance on the assessment order on these issues, and on the impugned appellate order dated 08.12.2023 of the Ld. CIT(A).

(D) We have heard both sides. We have perused the record and examined the materials available on record. The dispute in the present appeal is in respect of disallowances u/s 40(a)(ia) of I.T. Act, out of expenses under the heads Labour & Wages; Fuel & Freight and Outward Job Expenses. The assessee claimed expenses amounting to Rs.63,95,897/- and Rs.59,90,577/- and Rs.7,72,431/- respectively under the aforesaid expenses, out of which the Assessing Officer made disallowances u/s 40(a)(ia) of I.T. Act; amounting to Rs.19,18,769/- and Rs.17,97,173 and Rs.2,31,744/- respectively. It is observed that during the course of assessment proceedings, notices were issued from time to time by the Assessing Officer; but the same remained unattended from the assessee's side. The non-compliance continued till the fag end of the limitation period prescribed for completion of the

assessment. It is recorded in the assessment order records that notices dated 24.11.2020, 30.12.2020, 18.01.2021 and 16.02.2021; each issued u/s 142(1) of the Income-tax Act, 1961; remained unattended from the assessee's side. Subsequently, after the aforesaid notices were not complied with, the Assessing Officer issued a draft assessment order along with a show-cause notice dated 15.03.2021, requiring the assessee to explain why the assessment should not be completed as per the draft order for failure to comply with the statutory notices. It is at this stage that the assessee, vide letter dated 20.03.2021, furnished written submissions [*as referred to in the foregoing paragraphs (C) of this order*] along with certain ledger accounts. At such a late stage, when the limitation date for passing the assessment order was approaching, the Assessing Officer had no alternative but to take a *prima facie* view of the submissions and details so filed from the side of the assessee. The Assessing Officer found the explanation of the assessee in respect of royalty, professional, legal and administrative expenses, and business promotion expenses to be satisfactory and accordingly made no addition on those issues. Understandably, the assessee has no grievance against the acts of the Assessing Officer in accepting these explanations, based on *prima facie* view. However, the assessee has appealed against the acts of the Assessing Officer in not accepting the explanation with regard to expenses under the heads Labour & Wages, Fuel & Freight, and Outward Job Work, because the Assessing Officer proceeded to make disallowances u/s 40(a)(ia) of I.T. Act from out of the expenditure claimed under these heads.

(D.1) It is observed that apart from the ledger extracts furnished vide letter dated 20.03.2021, no other supporting material was filed from the assessee's side, either during the assessment proceedings, or during appellate proceedings before the Ld.

CIT(A). Likewise, no further materials have been submitted by the assessee during the appellate proceedings in ITAT. The ledger accounts of expenses in the assessee's books of account are not. The Assessing Officer proceeded on the premise based on *prima facie* view, that the impugned expenses were in the nature of contractual payments, on which the assessee was required to deduct tax at source. According to the Assessing Officer, failure to deduct tax at source warranted disallowance u/s 40(a)(ia) of the Act. As mentioned earlier; the views taken by the Assessing Officer were *prima facie* views; given that the Assessing Officer was left with little time for making any further inquiries or investigation's, as the limitation period for passing assessment order was coming to an end soon. Moreover, as noted earlier in foregoing paragraph (C.1) of this order; payments towards Labour & Wages expenses involved engagement of workers numbering between 36 to 204. It is quite reasonable on the part of the Assessing Officer to form a *prima facie* view that the workers were made available to the assessee through a labour contractor, thereby attracting disallowance u/s 40(a)(ia) of I.T. Act for failure to deduct tax at source as per the provisions relating to deduction of tax at source. Similarly, in respect of Fuel & Freight expenses, part of the expenditure was claimed towards diesel and part of it towards freight/hire charges. It was understandable for the Assessing Officer to form a *prima facie* view that such payments included amounts in the nature of contractual payments for hire or transportation services. Lastly, with regard to job work expenses, the *prima facie* view taken by the Assessing Officer that partly, the payments were contractual in nature and were liable for deduction of tax at source cannot be said to be unreasonable. In this context, the relevant portions of orders passed by the Assessing Officer and by the Ld. CIT(A), the relevant portions of which have been reproduced in the foregoing

paragraphs (B) of this order, are found to be reasonable, being based on prima facie appreciation of the material then available on record.

(D.2) In a case in which, due to repeated non-compliance on the part of the assessee, to the notices issued by the Assessing Officer; a situation arises when due to approaching expiry of limitation period, the Assessing Officer has no option but to take a prima facie view and to proceed further in making an addition; such action of the Assessing Officer is understandable. In such situations, the Assessing Officer cannot be expected to allow the assessment proceedings to get barred by limitation; and he must save the proceedings from getting time barred, even if he has to forego further inquiry into facts had adequate time been available for such further inquiry. Owing to the proximity of the limitation date and the non-compliance by the assessee in respect of statutory notices earlier issued by the Assessing Officer, the Assessing Officer is forced by the circumstances to take a prima facie view which can legitimately include leading to addition. However, ideally the Assessing Officer should, as far as reasonably possible, make the addition by appreciation of all relevant facts. Materials on record before us are inadequate for us to take a final view on this, as all relevant facts are not available on record. Further examination and factual verification at the end of the Assessing Officer is required, to determine whether (and if so, then to what extent) disallowance is attracted u/s 40a(ia) of I.T. Act; having regard to the relevant facts and circumstances of the case and the true nature of the payments made by the assessee.

(D.2.1) In view of the foregoing, the impugned appellate order of the Ld. CIT(A) is set aside and the issues in dispute in the present appeal are restored back to the file of the Assessing

Officer with the direction to pass *de novo* order in accordance with law, after carrying out the necessary inquiries and investigations; and after providing reasonable opportunity to the assessee. All grounds of appeal are treated as disposed of in accordance with the aforesaid order.

In the result, the appeal of the assessee stands partly allowed for statistical purposes.

Order pronounced in the open Court on 10/03/2026.

Sd/-
[KUL BHARAT]
VICE PRESIDENT

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

DATED: 10/03/2026

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

By order

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