IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
[Before Shri N. V. Vasudevan, JM & Shri M. Balaganesh, AM]

I.T.A No.2613/Kol/2013
Assessment Year: 2006-07

Income-tax Officer, Wd-44(2), Kolkata.	Vs.	Manoj Kumar Kesarwani (PAN: AFCPK4635G)
(Appellant)		(Respondent)

&

C. O. No.147/Kol/2013
In **I.T.A No.2613/Kol/2013**
Assessment Year: 2006-07

Manoj Kumar Kesarwani (Cross Objector)	Vs.	Income-tax Officer, Wd-44(2), Kolkata. (Respondent)

Date of hearing: 31.05.2016
Date of pronouncement: 08.06.2016

For the Revenue: Md. Ghayas Uddin, JCIT, Sr. DR
For the Assessee/Cross Objector: Shri Sunil Surana, FCA

ORDER

Per Shri M. Balaganesh, AM:

This appeal by revenue and Cross Objection by assessee are arising out of order of CIT(A)-XXX, Kolkata vide Appeal No. 18/CIT(A)-XXX/Wd.44(2)/13-14 dated 30.08.2013. Assessment was framed by ITO, Ward-44(2), Kolkata u/s. 143(3)/147/144 of the Income tax Act, 1961 (hereinafter referred to as the "Act") for AY 2006-07 vide his order dated 28.03.2013.

2. The only issue to be decided in the appeal of the revenue is as to whether the Learned CITA is justified in deleting the disallowance made u/s 40(a)(ia) of the Act in the sum of Rs. 2,39,85,084/- in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a dealer in pulses and food grains. The original assessment for the Asst Year 2006-07 was completed u/s 143(3) of the Act on 31.12.2008. The Learned AO subsequently noticed that the assessee had debited Rs. 2,39,85,084/- towards lorry freight charges which was contractual in nature and hence attracted the provisions of section 194C r.w.s 40(a)(ia) of the Act. The Learned AO disallowed the said expenditure u/s 40(a)(ia) of the Act as no details were

filed by the assessee during the course of assessment proceedings except questioning the validity of assumption of jurisdiction u/s 147 of the Act on various grounds. The Learned CITA deleted the addition by observing as under:-

> *"The AO has held Section 194C applicable in the case of the Appellant who is an individual according to the Assessment order against which the appeal has been filed. Section 194C requires specified persons (persons responsible for paying any sum) to deduct tax at source from any sum payable to resident contractor. The specified persons has been listed in section 194C(1) which includes any persons being an individual and HUF if such persons is liable to audit of accounts u/s. 44AB. Individual was included in the meaning of specified persons by an amendment w.e.f. 01.06.2007. The Appellant has challenged the Assessment Order for Assessment Year 2006-07 u/s. 147/143(3) dated 28.03.2013. Thus for Assessment Year 2006-07 for which the relevant previous year is 2005-06, there is no requirement for the Appellant to deduct tax u/s, 194C in the Financial Year 2005-06 relevant to Assessment Year 2006-07. The Appellant did not commit any default when he did not deduct tax from payment of freight charges etc. Since there is no liability to deduct tax u/s. 194C on the Appellant, he is not hit by the mischief of sec.40(a)(ia) of the I.T.Act.*
>
> *The Assessment Order u/s. 147/143(3) deals with only one issue concerning non-deduction u/s. 194C of TDS on freight charges and so is based on wrong premise that the appellant should have deducted tax u/s. 194C. The AO is thus wrong in holding that Sec.40(a)(ia) of the I.T.Act requires the appellant's income to be enhanced, by the amount of Rs. 2,39,85,084/-.*
>
> *In the facts of the case and on law as effective in the relevant financial year it is apparent that the AO was wrong in assuming the jurisdiction u/s. 147 of the I T Act. As a consequence the Assessment Order is quashed for want of jurisdiction."*

4. Aggrieved, the revenue is in appeal before us on the following effective ground:-

> *"1. That on the facts of the case, the CIT(A)-XXX, Kolkata erred legally and factually in deleting the addition of Rs.23985084/- made by invoking the provision of sec. 40(a)(ia) read with sec. 194C of the I. Tax Act, 1961."*

The assessee has also preferred cross objections on the following grounds:-

> *"1. For that the Ld. C.I.T(A) is arbitrary, illegal and bad and not in accordance with law.*
>
> *2. For that the Ld. CIT(A) was fully justified in quashing the action of the AO assuming jurisdiction u/s. 148 since the original assessment was made u/s. 143(3), complete details of freight were filed and enquiries were conducted and there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment nor any such reasons were recorded that the income has escaped assessment for failure on the part of the assessee to disclose all material facts necessary for assessment and in any case there was no escapement of income since the provisions of section 194C was not applicable to assessee being an individual during the assessment year in question.*
>
> *3. For that the even otherwise the Ld CIT(A) should have held that the AO was wrong in applying the provisions of section 40(a)(ia) since the assessee being an individual the provisions of section 194C were applicable only after 1.6.2007.*

4. For that even otherwise the Ld CIT (A) should have held that there was contract between the assessee and the parties to whom payments were made and further there was no amount outstanding and payable to the parties to whom the freights were paid.

5. For that the order of the AO be modified and the assessee be given relief prayed for."

5. The Learned DR stated that the assessee has deducted tax at source on brokerage payments made by him but had not deducted tax at source on lorry freight charges paid by it. The very fact that the assessee had deducted tax at source on brokerage payments made by him goes to prove that the assessee is duty bound to comply with TDS obligations as he, being an individual, is also liable for tax audit u/s 44AB of the Act. Hence there is clear violation of provisions of section 194C and thereby disallowance u/s 40(a)(ia) of the Act made by the Learned AO deserves to be confirmed. In response to this, the Learned AR argued that at the outset, there was no failure on the part of the assessee to disclose true and material facts for determination of the income of the assessee in the original assessment proceedings. He argued that in fact this very same issue were duly considered by the Learned AO in the original scrutiny assessment proceedings completed u/s 143(3) of the Act and no addition was made as the then AO was convinced that there was no violation of provisions of section 194C of the Act. He also argued that the assessee is only a contractor and not a sub-contractor and the amendment in section 194C was effective only from 1.6.2007 and therefore not applicable for the asst year under appeal. He stated that the Learned CITA appreciated the contentions of the assessee and gave relief on merits of the case and also had quashed the reassessment for want of jurisdiction. He relied on certain case laws of this tribunal and the jurisdictional high court in support of his contentions.

6. We have heard the rival submissions. At the outset, we are in complete agreement with the arguments advanced by the Learned AR that the obligation to deduct tax at source in the facts and circumstances of the case had to be followed by the assessee only from 1.6.2007 due to the amendment to that effect in section 194C of the Act, as assessee in the instant case is only a contractor and not a sub-contractor. Hence we hold that there is no obligation for the assessee in the instant case to deduct tax at source for the lorry freight charges paid in the Asst Year 2006-07 (i.e the year under appeal). The case laws relied upon by the Learned AR need not be adjudicated herein as

the law is very clear on the subject. We find that the Learned CITA had rightly quashed the reassessment for want of jurisdiction u/s 147 of the Act and also on merits that there is no violation of section 194C to invoke the provisions of section 40(a)(ia) of the Act. Hence we find no infirmity in the order passed by the Learned CITA in this regard. Accordingly the grounds raised by the revenue are dismissed. The cross objections of the assessee are only supportive of the order of the Learned CITA and hence the same is dismissed as infructuous.

7. In the result, the appeal of the revenue is dismissed and cross objection of the assessee is dismissed as infructuous.

8. Order is pronounced in the open court on 08.06.2016.

Sd/-	Sd/-
(N. V. Vasudevan)	(M. Balaganesh)
Judicial Member	Accountant Member

Dated : 8th June, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – ITO, Wd-44(2), Kolkata.
2. Respondent –Shri Manoj Kumar Kesarwani, 51/4, Strand Road, Kolkata-700 007.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Asstt. Registrar.