

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

**Before Shri P.M. Jagtap, Accountant Member and  
Shri N.V. Vasudevan, Judicial Member**

**I.T.A. No. 28/KOL/ 2014  
Assessment Year: 2006-2007**

**Assistant Commissioner of Income Tax,.....Appellant**  
**Circle-51, Kolkata,**  
**Block-DS-2 & 3, Maniktala Civic Centre,**  
**Uttarapan,**  
**Kolkata-700 054**

**-Vs.-**

**Sri Tapas Paul,.....Respondent**  
**21, Kumarpara Road,**  
**Bhatpara, Barrackpore,**  
**24-Parganas (North)-743 123**  
**[PAN: AJIPP 3882 G]**

**Appearances by:**

*Shri S.S. Alam, Addl. CIT, D.R., for the Department*  
*Shri A.K. Tibrewal, F.C.A., for the assessee*

Date of concluding the hearing : November 23, 2016

Date of pronouncing the order : December 02, 2016

**O R D E R**

**Per Shri P.M. Jagtap, A.M.:**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-XXXII, Kolkata dated 09.10.2013 and the solitary issue involved therein relates to the deletion by the Id. CIT(Appeals) of the addition of Rs.90,12,960/- made by the Assessing Officer under section 40(a)(ia) of the Income Tax Act, 1961.

2. The assessee in the present case is an individual, who is engaged in the business of Civil Contractor. In the assessment originally completed by the Assessing Officer under section 143(3) vide an order dated 18.09.2008, the total income of the assessee was determined at Rs.10,05,520/-. The record of the said assessment came to be examined by the Id. CIT and on such examination, he found that the issue relating to the disallowance under section 40(a)(ia) on account of failure of the

assessee to deduct tax at source from the payment of Rs.90,12,960/- made on account of labour charges was not examined by the Assessing Officer. He, therefore, set aside the order passed by the Assessing Officer under section 143(3) with a direction to the Assessing Officer to complete the same afresh after examining the issue relating to disallowance under section 40(a)(ia). As per the direction of the Id. CIT given under section 263, assessment proceedings were initiated by the Assessing Officer. During the course of the said proceedings, no satisfactory explanation could be offered by the assessee as regard his failure to deduct tax at source from the payments made on account of labour charges. The Assessing Officer, therefore, invoked the provision of section 40(a)(ia) and made a disallowance of Rs.90,12,960/- on account of labour charges in the assessment completed under section 263/144 of the Act vide order dated 30.12.2011.

3. Against the order passed by the Assessing Officer under section 263/144, an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) deleted the disallowance made by the Assessing Officer under section 40(a)(ia) for the following reasons given in his impugned order:-

*"In this Ground the assessee has assailed the action of the A.O. in invoking section 194C in his case while examining the payments to labour at Rs.90,12,960/- and ultimately disallowing the entire sum u/s. 40(a)(ia) of the Act. The assessment order was passed u/s.144 of the Act. In the Remand proceedings the assessee filed details of payment made to labour and enclosed sample labour payment sheets. In the Remand Proceedings the A.O. examined the register of wages and examined two workers. The objections of the A.D. were that the wage register could be an afterthought and the register does not contain address of the labour and the details of the work location. In the rejoinder the assessee has claimed that there is no requirement by law of mentioning addresses in the wage register. The submissions of the assessee are correct in the sense that the law in practice does not require addresses to be mentioned in the wage register. The assessee claims that the muster roll was produced before the AO during the*

*initial assessment proceedings also. The A.R. has orally claimed that even though dozens of labour were produced before the AO during the remand proceedings, the AO has not acknowledged this fact for reasons best known to him.*

*After considering the above, it is seen that at no stage the A.O. has made a case that the assessee has paid any sum under labour payment to a sub-contractor. All the payments are declared to be made to individual labour force only. The law is clear that the payments to daily wage labour cannot be equated to payments made to contractors. Daily wage labours are like employees only and there is no privity of a contract as held by the Delhi High Court in the case of CIT v Dewan Chand 178 Taxman 173 and others.*

*Also, the assessee is an individual and the assessment year under consideration in A. Y. 2006-07 i.e. Previous Year 2005-06. The Section 194C as applicable for A.Y. 2006-07 was different than what it is now and till 01.06.2007 the payments made by individuals or HUF did not come under the ambit of Section 194C. Though Section 194C(2) was applicable for A. Y. 2006-07, this Subsection applies only when payments are made to sub-cont actors by a contractor. Therefore, in the case of individuals, Section 194C(1) of the Act was not applicable for A.Y. 2006-07. This has been held by the following case laws:-*

- 1. Smt. Rinku Mallick v. ITO in ITA No.70/Kol/2010; which has been affirmed by Hon'ble High Court of Calcutta in ITA No.96/2012 dated 12.06.2012.*
- 2. ACIT v. Smt. Keya Sheth (2011) 48 SOT 1 (Kol),*
- 3. CIT v Prashant H. Shah (2013) 216 Taxman 287 (Guj.),*
- 4. Mythri Transport Corporation v ACIT (2010) 1 ITR (Trib) 290 (Vishk.),*
- 5. Chetan M. Vira v Deptt. Of Income Tax (2012) in ITA No. 6300/Mum/2010 dated 27.03.2012 (Mum),*
- 6. Debashis Bhadra v DCIT (2012) in ITA No.1562 & 1563/Kol/2011 dt.12.03.2012 (Kol),*
- 7. CIT v Vishnudutt Sharma (2013) 216 Taxman 41 (Guj) (Mag).*

*As per the details submitted by the assessee and verified by the AO, the payment for labour charges were made to*

*individual labourers. Thus it is held that the AO has not brought any material on record to hold that these payments are covered u/s 194C of the Act. Therefore, the disallowances of Rs.90,12,960/- made by the AO u/s.40(a)(ia) for default of section 194C of the Act has no legal sanction as held by the jurisdictional High Court also in the case of CIT, Kolkata-XVII v. Shri Rinku Mallick in ITAT No.96 of 2012, GA 1368 of 2012 dated 15.06.2012. Respectfully following the jurisdictional High Court decision, the Revised Ground of Appeal No. 1 of the assessee is allowed and the disallowance of Rs.90,12,960/- is deleted”.*

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. D.R. has contended that the matter should be sent back to the Assessing Officer for verification of the Wage Register/Master Roll, which was produced by the assessee for the first time before the Id. CIT(Appeals), it is observed that the disallowance made by the Assessing Officer under section 40(a)(ia) on account of labour charges for the alleged non-compliance by the assessee of the provisions of section 194C has been deleted by the Id. CIT(Appeals) also on the ground that the provisions of section 194C were not applicable in the case of the assessee being individual for the year under consideration, i.e. A.Y. 2006-07 as the same were made applicable in the case of individual or HUF only with effect from 1<sup>st</sup> June, 2007 and this position duly supported by the various judicial pronouncements referred to and relied upon by the Id. CIT(Appeals) in his impugned order including the decision of the Hon'ble Jurisdictional High Court in the case of Smt. Rinku Mallick (supra) has not been disputed by the Id. D.R. It is thus clear that the assessee was not required to deduct tax at source from the payment of labour charges under section 194C during the year under consideration and consequently the question of disallowance under section 40(a)(ia) on account of labour charges would not arise. We, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals)

deleting the disallowance made by the Assessing Officer under section 40(a)(ia) on account of labour charges and upholding the same, dismiss this appeal of the Revenue.

**5. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on December 02, 2016.

**Sd/-  
(N.V. Vasudevan)  
Judicial Member**

**Sd/-  
(P.M. Jagtap)  
Accountant Member**

**Kolkata, the 2<sup>nd</sup> day of December, 2016**

- Copies to :
- (1) **Assistant Commissioner of Income Tax,  
Circle-51, Kolkata,  
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  - (2) **Sri Tapas Paul,  
21, Kumarpara Road,  
Bhatpara, Barrackpore,  
24-Parganas (North)-743 123**
  - (3) **Commissioner of Income Tax(Appeals)-XXXII, Kolkata;**
  - (4) **Commissioner of Income Tax- , Kolkata,**
  - (5) **The Departmental Representative**
  - (6) **Guard File**

*By order*

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

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