

**IN THE INCOME TAX APPELLATE TRIBUNAL, CUTTACK BENCH,  
CUTTACK**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER AND SHRI ABY T.  
VARKEY, JUDICIAL MEMBER**

**ITA No.216/CTK/2015**

Assessment Year : 2009-2010

C.O.No.22/CTK/2015

(arising out of ITA No.216/CTK/2015)

|                                     |     |   |
|-------------------------------------|-----|---|
| DCIT, Circle -5(1),<br>Bhubaneswar. | Vs. | Sri Rutu Raj Rout, 4706,<br>Shop No.BR-36, RCMC<br>Market Complex, Press<br>Chhak, Mancheswar Railway<br>Colony, Bhubaneswar. |
| PAN/GIR No. AHVPR 6568 G            |     |   |
| <b>(Appellant)</b>                  | ..  | <b>( Respondent)</b>  |

Assessee by : Shri P.R.Mohanty AR

Revenue by : Shri Asit Kumar Mohapatra, CIT DR/Shri D.K.Pradhan,  
JCIT, DR

**Date of Hearing : 16 /02/ 2017**

**Date of Pronouncement : 17 /02/ 2017**

**ORDER**

**Per Bench**

The appeal filed by the revenue and the cross objection filed by the assessee are directed against the order of CIT(A)-2, Bhubaneswar, dated 27.2.2015, for the assessment year 2009-2010.

2. The revenue has raised the following grounds:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as on facts by deleting addition of Rs.80,14,600/- made by the AO u/s 40(a)(ia).

2. On the facts and in the circumstances of the case, the Ld. CIT(A) is not justified in law as well as on facts in holding that the payments of machinery hiring charges were not covered under the definition of rent u/s 1941 of the Act, when the Explanation to that section clearly says that any payment, by whatever name called, for the use of any machinery, whether or not owned by the payee, falls under the definition of rent.

3. After holding that the impugned payments of machinery hiring charges could possibly be considered u/s 194C of the Act, the Ld.CIT(A) was not justified in holding that Section 194C was also not attracted because of absence of contractual element, when the provisions of Section 194C are applicable to oral contracts also.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in not accepting the examination of findings made by the AO on the issues.

3. The brief facts of the case are that the Assessing Officer observed that the assessee has debited in the P&L account an amount of Rs.81,21,300/- under the head "Machine hiring charges". The details of which are as under:

|     |                             |                          |
|-----|-----------------------------|--------------------------|
| 1.  | Brijesh & Prajesh Transport | 15,88,800/-              |
| 2.. | Vilari Devi Transport       | 9,40,700/-               |
| 3.  | Hari bhai Construction      |                          |
| 4.  | Jai Bajrang Transport       | 4,70,900/-<br>6,82,950/- |
| 5.  | Lingaraj Constructin        | 9,86,700/-               |
| 6.  | Ramlal Sharma Construction  | 4,05,200/-               |
| 7.  | Ram Sukh Transport          | 1,06,700/-               |
| 8.  | Jaishree Ram Transport      | 9,54,700/-               |
| 9.  | Sandhu Brother              | 19,84,655/-              |
|     | Total:                      | 81,21,300/-              |

4. The Assessing Officer observed that from the above table, it can be seen that except in case of Ram Lakhan Transport, in all other cases provision contained in section 194-I is attracted and the total sum comes to Rs.80,14,600/-. The Assessing officer further observed that in response to show cause notice as to how the disallowance u/s.40(a)(ia) for Rs.80,14,600/- should not be made for non-deduction of TDS u/s.194-I of the Act, the assessee submitted that this Bench of the Tribunal in the case of ACIT vs. Vinod Transport (2011) has held that the disallowance u/s.40(a)(ia) can be made if the expenses are outstanding and payable at the year end and cannot be invoked where expenses were paid before the year end despite TDS either not deducted or remains payable. Further, relying on the decision of the Hyderabad Bench of the Tribunal in the case of Teja Construction (2010) 5 taxmann.com 61 (Hyd), it was submitted that the provisions of section 194C would not apply in relation to payments made for hiring of renting of equipment's, etc., as per the Circular No.681 dated 8.3.1994. The Assessing Officer observed that as per the provisions of section 194-I of the I.T.Act, 1961, tax is deductible at source from hiring charges. As the assessee has not deducted TDS, therefore, he disallowed deduction for Rs.80,14,600/- by invoking the provisions of section 40(a)(ia) of the Act.

5. On appeal, the CIT(A) observed that the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages Ltd vs CIT (2007) 293 ITR 226

(SC) has held that no demand visualised u/s.201(1) should be enforced after the tax deductor has satisfied the officer-in-charge of TDS that taxes due had been paid by the deductee-assessee. The Hon'ble Supreme Court has further observed that "Be that as it may, the Circular No. 275/201/95-IT(B), dt. 29th Jan., 1997 issued by the CBDT, in our considered opinion, should put an end to the controversy. The circular declares "no demand visualized under s. 201(1) of the IT Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been paid by the deductee-assessee". Therefore, he held that the Assessing Officer is directed to verify from the departmental records or through the assessee or through the issue of notice u/s.133A(6) to the 8 parties being organisers/arrangers of the machineries as to whether the amount of Rs.80,14,600/- has been reported by the said parties as taxable income for the assessment year 2008-09 and whether taxes as above have been paid on the said amount. If yes, the expense debited by the assessee on the said count of Rs.80,14,600/- will be held as allowable.

6. Before us, Id D.R. supported the order of the Assessing Officer and the Id A.R. supported the order of the CIT(A).

7. We find that no specific error in the order of the CIT(A) could be pointed out by the Id D.R. We find that the CIT(A) has directed the Assessing Officer to allow deduction of Rs.80,14,600/- under the head "machinery hiring charges" paid to 8 parties after verifying whether said 8

parties to whom the payments have been made by the assessee has shown the amount receipt in the return of income and paid due tax thereon by following the decision of Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages Ltd(supra) and the CBDT Circular No.275/201/95-IT(B) dated 29.1.1997. We find no good reason to interfere with the order of the CIT(A), which is hereby confirmed and grounds of the revenue are dismissed.

8. The cross objection filed by the assessee is supportive to the order of the CIT(A). Since, we have upheld the order of the CIT(A), the cross objection filed by the assessee is rendered infructuous and hence, dismissed.

9. In the result, appeal filed by the revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 17 /02/2017 in the presence of parties.

Sd/-

( Aby T. Varkey)  
JUDICIAL MEMBER

sd/-

(N.S Saini)  
ACCOUNTANT MEMBER

Cuttack; Dated 17 /02/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : DCIT, Circle -5(1),  
Bhubaneswar.
2. The Respondent. Sri Rutu Raj Rout, 4706,  
Shop No.BR-36, RCMC Market Complex,  
Press Chhak, Mancheswar Railway Colony,  
Bhubaneswar
3. The CIT(A)-2, Bhubaneswar
4. CIT,, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**