IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri B.Ramakotaiah, Accountant Member

ITA No.1044/Hyd/2016
(Assessment Year: 2013-14) *AND*
S.A.No.41/Hyd/2016
(Arising out of ITA No.1044/Hyd/2016)

M/s. Diwakar Logistics Tadipatri, Anantapur PAN: AAHFD0549 E	Vs	Asstt. Commissioner of Income Tax, Circle 1 Anantapur
For Assessee :		Shri K.C. Devdas
For Revenue :		Shri K.J. Rao, DR

Date of Hearing: 23.08.2016
Date of Pronouncement: 18.11.2016

O R D E R

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2013-14. In this appeal, the assessee is aggrieved by the order of the CIT (A) in confirming the disallowances of payments made without making TDS and the consequential additions of (i) Rs.34,91,410/-, (ii) Rs.5,05,61,850/- u/s 40(a)(ia) of the Act.

2. Brief facts of the case are that the assessee firm, engaged in transport business, filed its return of income for the A.Y 2013-14 on 1.10.2013 admitting a total income of Rs.33,19,710. This return was revised on 29.10.2013 admitting the same income. During the assessment proceedings u/s 143(3) of the Act, the assessee was directed to produce its books of account and also necessary information relating to the entries in

the books of account. The assessee filed the requisite information. On perusal of the information filed by the assessee, the AO observed that the assessee has debited finance charges of Rs.34,91,410 and transportation charges of Rs.5,05,61,850 to its P&L a/c. AO therefore, asked the assessee to furnish the details of the payments made and also indicate the compliance of TDS thereon. The assessee produced the details which are reproduced in page 2 of the assessment order. On perusal of the details of finance charges paid by the assessee, the AO observed that the assessee has made payments to various non-banking financial institutions and therefore, according to him, the provisions of section 194A are attracted and therefore, assessee's explanation as to why the disallowance u/s 40(a)(ia) should not be made was called for. The assessee submitted that the provisions of section 40(a)(ia) are applicable only if the deductee has not offered the income and paid the taxes thereon. The AO, however, observed that the copy of the return of income filed by the deductee and certificate from the C.A. in the prescribed form are necessary to be filed under the proviso to section 40(a)(ia) and since the assessee has not filed these documents and further since the return of income for the A.Y 2013-14 would be filed during financial year 2014-15, the AO disallowed the finance charges of Rs.34,91,410 u/s 40(a)(ia) of the Act and brought it to tax.

3. As regards the transportation charges, the AO observed that the assessee has hired vehicles for the purpose of transportation and before making payments for such hiring of vehicles, it was required to deduct tax at source, provided the permanent account numbers (PAN) of these persons have been

obtained before the credit or payment whichever is earlier. The AO noticed that in the statutory e-TDS statement to be filed quarterly, the assessee has not given the PAN No. of the payees. The assessee, thereafter, sought time to establish that this aspect has been complied with. Subsequently, the assessee furnished the list of PAN Nos. & names in respect of transporters to the extent of Rs.4,36,55,230. With regard to the balance of Rs.69,06,620/- there were no PAN Nos. at all. The AO observed that the assessee has to obtain the PAN Nos. of the payees before the credit or payment but since the assessee has failed to obtain the same, even after a lapse of 2 years, the same is not allowable. He therefore, disallowed the entire sum of Rs.5,01,61,850 u/s 40(a)(ia) and brought it to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who dismissed the same and the assessee is in second appeal before us.

4. As far as the first issue of disallowance of finance charges is concerned, the learned Counsel for the assessee submitted that the assessee has purchased the vehicles by obtaining the finance from the non banking financial institutions and the monthly payments made to such institutions include both the principal as well as the interest. He submitted that the TDS is to be made only from the interest component of the installment, whereas the AO has disallowed the entire amount u/s 40(a)(ia) of the Act. Since the bifurcation is not available and further since the amount has already been paid and nothing remained payable at the end of the relevant previous year, the disallowance is not sustainable. In support of this contention, the assessee has relied upon the following decisions wherein the

decision of the Visakhapatnam Special Bench in the case of Merilyn Shipping & Transport (146 TTJ (1) has been followed and it was held that the provisions of section 40(a)(ia) are not applicable to the amounts already paid by the end of the relevant financial year:

a) KLR Industries Ltd vs. DCIT in ITA No.1480/Hyd/2014, dated 15.07.2015
b) CIT vs. M/s. PEC Electricals P Ltd (ITTA No.263 of 2013) (Andhra Pradesh High Court)
c) CBDT Circular No.19/2015 dated 27.11.2015

5. He also placed reliance upon the judgment of the Hon'ble Allahabad High Court in the case of CIT vs. Vector Shipping Services Ltd reported in 357 ITR 647 which has approved the above decision of the Special Bench and submitted that the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue against the said decision as reported in (2013) 262 CTR (All) 545.

6. The learned DR however, supported the orders of the authorities below.

7. Having regard to the rival contentions and the material on record, we find that the Coordinate Bench of this Tribunal in the case of KLR Industries Ltd (Supra) was also considering similar issue of payments of EMI of hire purchase agreements and by following the decision of the Special Bench of this Tribunal in the case of Merilyn Shipping & Transport (Supra) held that no disallowance u/s 40(a)(ia) can be made if the entire amount is paid during the relevant previous year and nothing remained

payable. The Tribunal also relied upon the judgment of the Hon'ble Allahabad High Court in the case of CIT vs. Vector Shipping Services Ltd (Supra) for coming to these conclusions. Coming to the facts of the case before us, it is seen that the amount paid by the assessee towards the finance charges include both interest and principle amount and the entire amount has been paid during the relevant previous year. In view of the same, the decision of the Coordinate Bench of this Tribunal is very much applicable to the facts of the case and respectfully following the same, we allow the Ground of Appeal No.2.

8. As regards the disallowance of transportation charges, we find that the assessee has made these payments to various vehicle owners engaged by the assessee for transportation of goods. It is the case of the assessee that it has hired the vehicles from the owners of the vehicles for transportation of the material and the owners bear no risk in transportation of such material. According to him, there was no contract between the assessee and the vehicle owners and therefore, TDS provisions are not at all applicable. Further, he also submitted that none of the vehicle owners owned more than 10 vehicles at the time when the assessee has hired the vehicles and therefore the provision of sub-section 6 of section 194C of the Act is applicable and therefore, the TDS is not to be made. Further, he submitted that the assessee has given PAN Nos. of the owners of the vehicles for a total payment of Rs.4,36,55,230 and at least in respect of these payments, the TDS provisions cannot be invoked. He further submitted that under the proviso to sub section 5 of section 194C, the TDS provisions are applicable only if the aggregate

payment to any person exceeds Rs.75,000/-. He submitted that none of the authorities below have examined the applicability of the exceptions to section 194C of the Act. In support of this contention that aggregate of most of the payments do not exceed Rs.75000/- during the relevant financial year, the assessee has filed the list of the parties to whom the assessee has made payments. As per the said list, 67 parties are paid less than Rs.75,000 in aggregate during the relevant previous year. Further, he also relied upon the decision of Merilyn Shipping & Transport Ltd (cited Supra) in support of this contention that all the payments have been made by the end of the relevant previous year and therefore, the provisions of section 40(a)(ia) are not applicable.

9. The learned DR, on the other hand, supported the orders of the authorities below.

10. Having regard to the rival contentions and the material on record, we find that there are exceptions to section 194C which requires that if the conditions specified therein are satisfied, an assessee need not deduct tax at source. The exceptions are (i) where the recipient is not owning more than 10 vehicles at the time of payment and (ii) the aggregate of the payment during the year does not exceed Rs.75,000/-; and also (iii) where the vehicle owners have given their PAN numbers before the credit or payment to such parties. In the case before us, it is not disputed that the assessee has not collected the PAN Nos. of the parties to whom assessee had made payment without making the TDS. It is the case of the AO that the assessee has filed such details such as

PAN Nos. etc. only after notices have been issued. The assessee has relied upon the decision of the Coordinate Bench of this Tribunal in the case of Shri Pawan Kumar Gupta vs. Add. CIT in ITA No.718/Hyd/2013 dated 3.5.2014 wherein after following the Hon'ble Madras High Court in the case of CIT vs. Pompuhar Shipping Corporation Ltd reported in (2006) 282 ITR 0003 (Mad), the Tribunal has held that if the assessee provides the details in Form No.15J even during the assessment proceedings, they can be considered as it is only a procedural requirement and no disallowances can be made. However, in the said judgment, we find that the assessee therein had collected Form No.15J from the truck owners but did not produce the same before the AO but has produced them only before the CIT (A). It was in these circumstances that the Tribunal has held that it is a procedural lapse and therefore, should have been considered. In the case before us, we find that the assessee has furnished PAN nos. etc before the AO during the assessment proceedings but not Form No.15J as required under the section. Therefore, there is no compliance on the part of the assessee for non deduction of tax at source. As per the provisions, the assessee is required to obtain PAN No. from the Truck owners for non deduction of tax at source before making the payment or before crediting their account. The assessee has therefore, not complied with the said provision and mere filing of the PAN Nos. subsequently during the assessment proceedings cannot be considered as compliance of the required provisions. However, we find that the sub section 6 of 194C provides that the TDS need not be made if the aggregate value of the amounts paid does not exceed Rs.75000. It is seen that

neither the AO nor the CIT (A) has examined the applicability of this provision.

11. Further, it is also the case of the assessee that the assessee has not entered into any contract for hiring of vehicles and therefore, provisions of section 194C are not applicable. In support of this contention, he placed reliance upon the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Valibhai Khanbhai Mankar reported in (2013) 211 Taxman 18(Guj.) wherein it was held that if the conditions prescribed u/s 194C of the Act are not satisfied, the liability of the payer to deduct the tax at source would cease and therefore, application of section 40(a)(ia) r.w. section 194C would not arise. Further, assessee also placed reliance upon the decision of the Coordinate Bench of this Tribunal in the case of Associate Roadways P Ltd vs. Dy.CIT in ITA No.63/Hyd/2013 for the proposition that non furnishing of form No.15I during the course of the assessment proceedings is only a procedural lapse and does not attract the liability created in section 194C of the Act. Further, he also placed reliance upon the decision of the Coordinate Bench of the Tribunal in the case of ACIT vs. Sri Sai Road Ways in ITA Nos 819 & 820/Hyd/2010 wherein by order dated 30.11.2010 it has been held that the reasoning of the AO to hold that the payment made for hire charges is a sub contract payment is not correct and is not based on relevant evidence and hence cannot be said that the payments made for hiring of vehicle would fall in the category of payment contractors and consequentially the assessee is not liable to deduct tax at source u/s 194 and the provisions of section 40(a)(ia) shall not apply to such applications. We find that this

issue is covered by the decision of the Coordinate Bench of this Tribunal in the case of Sri Sai Road Ways (cited Supra) wherein at Para 6 of the order, it was held as under:-

> *"6. We have considered the rival submissions and perused the material available on record. We find that in a sub contract, a prudent contractor would include all the liability clauses in the agreement entered into by him with the sub contractor. The assessee has also claimed before the tax authorities that the responsibility in the whole process lies with it only. Though the passing of liability is not the only criteria to decide about the existence of sub contract, yet this contention of the assessee read with the liability clauses of the work supports its submission that the individual vehicle owners are simple hirers of the vehicles. We find that the CIT(A) is correct in holding that in the instant case, there is no material to suggest that the other lorry owners involved themselves in carrying out any part of the work undertaken by the assessee by spending their time, energy and by taking the risks associated with the main contract work and the payment made to the lorry owners stands at par with the payments made towards salaries, rent, etc. We find that the reasoning of the assessing officer to hold that the payment made for hired vehicles is a sub contract payment is not correct and not based on relevant consideration and hence it cannot be said that the payments made for hired vehicles would fall in the category of payment towards sub contract with the lorry owners. In that case the assessee is not liable to deduct tax at source as per the provisions of section 194C (2) of the Act and consequently the provisions of section 40(a)(ia) shall not apply to such payments. After considering the facts and the circumstances of the case, we are of the opinion that the first appellate authority is perfectly justified in deleting the addition of Rs.10,42,038 made under section 40(a)(ia) of the Act by the assessing officer. Therefore, we are not inclined to accept the contentions of the learned Departmental Representative on this issue and uphold his finding. In view of the above, the ground raised by the revenue is dismissed."*

In view of the same, we agree with the contention of the assessee that the payment made by the assessee to the truck owners is not pursuant to any contract and therefore, provisions of section 194C are not applicable and consequently no disallowance u/s

40(a)(ia) can be made. Therefore, grounds of appeal Nos. 3 to 7 are allowed.

12. In the result, assessee's appeal is allowed.

13. Since the appeal of the assessee is disposed of, the stay application has become infructuous and is accordingly rejected.

Order pronounced in the Open Court on 18th November, 2016.

Sd/-	**Sd/-**
(B.Ramakotaiah)	**(P. Madhavi Devi)**
Accountant Member	**Judicial Member**

Hyderabad, dated 18th November, 2016.

Vinodan/sps

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2 Asstt. Commissioner of Income Tax, Circle 1 Anantapur
3 CIT (A)-Kurnool
4 Pr.CIT - Kurnool
5 The DR, ITAT Hyderabad
6 Guard File

By Order