आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1113/JP/2018
निर्धारण वर्ष/Assessment Year :2015-16

Assistant Commissioner of Income Tax Circle- Bharatpur	बनाम Vs.	M/s Arihant Trading Co. Pahari, Tehsil-Pahari Distt.- Bharatpur (Raj.)
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABAFA5260D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri K. C. Gupta (JCIT)
निर्धारिती की ओर से/ Assessee by : Shri P. C. Parwal (CA)

सुनवाई की तारीख/ Date of Hearing : 04/02/2019
उदघोषणा की तारीख/Date of Pronouncement: 19/03/2019

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of ld. CIT(A)-22, Alwar dated 24.07.2018 wherein the Revenue has taken the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the additions u/s 40(a)(ia) r.w.s 194C of the IT Act on account of freight expenses.

2. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in allowing expenditure in respect of freight charges as provisions of section 194C(6) and section 194C(7) are interconnected and assessee has not complied with the provisions of section 194C of the IT Act."

2. Briefly stated, the facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that the assessee has incurred an amount of Rs. 14,37,81,491/- under the head "freight expenses" and the assessee was asked to explain whether it has done TDS on such payment. In its reply, the assessee referring to the provision of section 194C stated that it has not deducted TDS as provisions of section 194C(6) provides that no deduction is required to be made on sum paid or credited where the transporters have furnished their respecticve PANs to the assessee. The Assessing Officer referring to the provisions of section 194C(6) and 194C(7) stated that while this provision grants relief to transporters, it puts an onus on the person paying or crediting such sum, to furnish this information in the prescribed form to the prescribed Income Tax authority. The Assessing Officer held that for availing the benefit of section 194C(6) and 194C(7) and inter alia not to attract the disallowance envisaged u/s 40(a)(ia), the assessee firm was bound by law to furnish the information, in respect of the transporters whose services it had availed, to the prescribed Income Tax authority. This condition cannot be constructed to be technical condition, since the very ethos of these provisions of TDS envisages cross-linking of information regarding transporters with their PANs so that no income accruing to sundry transporters escapes assessment. The Assessing Officer further held that the leeway given in section 194C (6) is actually meant to be for the benefit of the small and medium transporters, who had to provide a declaration to the deductor prior to 01.10.2009, i.e., before amendment to the provisions of section 194C. Hence, the onus was upon the assessee firm to furnish the information it was entrusted to collect on behalf of the Income Tax Department from the transporters, to remain free from the clutches of provisions of section 40(a)(ia) of the Act. The Assessing Officer held that the assessee firm could not furnish the requisite information i.e. PAN of the

transporter whose services it had availed along with the other applicable TDS returns within the prescribed time or even till date. It cannot be ascertained as to when the PANs were obtained by it from the transporters, whether it obtained PAN prior to making payments to transporters, or at the time of furnishing the reply to query raised by this office and the latter is circumstantially true. The assessee firm has also not filed TDS return as replied by the AR on 27.12.2017. Hence, it can safely be inferred that the assessee failed to deduct tax at source against payments made/credited by it to the specific transporters aggregating to Rs. 14,37,81,491/- and disallowance u/s 40(a)(ia) of the Act @ 30% of Rs. 14,37,81,491/- amounting to Rs. 4,31,34,447/- was made and added back to the income of the assesseee.

3. Being aggrieved, the assessee carried the matter in appeal before ld. CIT(A). Regarding obtaining PAN details of all such transporters at the time of making payment, the ld. CIT(A) held that the assessee has filed the requisite details about the PAN of the transporters at the time of payment of freights. The AO has mentioned about the probability of such PAN details having been procured later and not at the time of making the payment to such transporters. However, the fact is that the AO has not disputed the veracity of such PAN details. Only question he has raised is whether such PAN details were received at the time payment of freights or not. The ld. CIT(A) has thereafter given a finding that in absence of contrary evidence, the appellant's submission that such PAN details were provided by the transporters at the time of the payment of freights has to be accepted. The ld. CIT(A) further held that in terms of provisions of section 194(C)(6) of the Act, once the transporters have provided the PAN details to the deductor then no deduction is required to be made on freight payment to such transporters as per section 194C(6) of the Act. Regarding non filing of

TDS return and whether it would attract provision of section 40(a)(ia) of the Act, referring to the provision of section 40(a)(ia) of the Act, the ld. CIT(A) held that no tax required to be deductible on payment made to the transporters if the condition prescribed in section 194C(6) is satisfied and the provisions of section 40(a)(ia) are not applicable. Regarding provision of section 194C(6) & 194C(7) and whether they are interdependent or can be applied independently, the ld. CIT(A) referred to the decision of Co-ordinate Bench in case of Soma Rani Ghosh Vs. DCIT, Kolkata *(ITA No. 1420/KOL/2015)* held that the provisions of section 194C(6) and 194C(7) are independent of each other and when conditions as mentioned in section 194C(6) have been satisfied, then no deduction of tax u/s 194C of the Act is required to be made by the payee. The ld. CIT(A) finally held that the AO was not justified in applying the provisions of section 40(a)(ia) for non deduction of tax as the conditions mentioned in section 194C(6) have been satisfied and as far as assessee's non-compliance with the provision of section 194C(7) of the Act are concerned, there are penal provisions as per section 234E of the Act and 271H which will have to be followed as per law by the A.O.

4. Against the aforesaid findings of the ld CIT(A), the Revenue is in appeal before us. During the course of hearing, the ld. DR vehemently argued the matter and submitted that provisions of section 194C(6) and 194C(7) are inter-dependent and given the non-compliance of filing of TDS returns by the assessee, the AO has rightly invoked the provisions of section 40(a)(ia) of the Act. Further, he relied on the finding of the Assessing Officer.

5. Per contra, the ld. AR supported the decision of the ld. CIT(A) and reiterated the submissions made before the ld CIT(A). The ld AR submitted

that provisions of section 194C(6) and 194C(7) are not inter-dependent and given the non-compliance of filing of TDS returns by the assessee, the AO the Assessing Officer has already issued a show cause u/s 234E /271H dated 28.01.2019. The ld AR further submitted that as the assessee complies with the provisions of section 194C(6), the provisions of section 40(a)(ia) are not applicable and the same has rightly been held by the ld CIT(A). The ld. AR further relied on the decision of the Co-ordinate Bench in case of Soma Rani Ghosh Vs. DCIT, Kolkata (supra) which has been followed by the ld. CIT(A) and the decision of the Co-ordinate Bench in case of M/s Manglam Housing & Developers vs. ACIT, Jaipur *(ITA No. 324/JP/2018 dated 04.06.2018).*

6. We have heard the rival contentions and perused the material available on record. The limited dispute under consideration is whether for the purposes of section 40(a)(ia) not getting attracted, the compliance of the TDS provisions have to be read limited to provisions of section 194C(6) or have to be read together in terms of section 194C(6) and section 194C(7) of the Act. The relevant provisions read as under:

*[81] **194C.** [82](1) Any person responsible for paying any sum[83] to any resident (hereafter in this section referred to as the contractor[83]) for carrying out any work[83] (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—*

(i) one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source—

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed [84][thirty] thousand rupees :

***Provided** that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds [85][one lakh] rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.*

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, [86][where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with] his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed."

7. The provisions of sub-section (6) of section 194C has been amended by the Finance Act, 2015 and the un-amended provisions, as relevant for the impunged assessment year reads as under:

"*(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying,*

hiring or leasing goods carriages, and furnishes his Permanent Account Number, to the person paying or crediting such sum."

8. On perusal of the above provisions, it is clear that all that is required for non-deduction of TDS on payment to the transporter is that the latter furnishes his PAN number to the person responsible for paying or crediting the amount to him. The primary onus is thus on the recipient to furnish his PAN to the payer and the payer, on receipt of such PAN number, is under statutory obligation not to deduct TDS on such payments. Further, the payer is also under a statutory obligation to furnish the said information in prescribed forms to the Income tax authority. To our mind, the statutory obligation to furnish the information regarding receipt of PAN and non-deduction of TDS is a fall out of and consequent of the first statutory obligation to not deduct TDS on receipt of PAN. However, merely because there is non-compliance on part of the assessee to furnish the prescribed information to the Revenue authorities, the same cannot lead to a conclusion that the assessee has not complied with the first statutory obligation. There are separate penal provisions for non-compliance thereof and the AO has infact invoked those penal provisions whereby show-cause has been issued to the assessee u/s 234E /271H dated 28.01.2019. In the instant case, once the assessee is in receipt of PAN and has not deducted TDS, it has complied with the first statutory obligation cast upon him and the assessee cannot be penalized for non-deduction of TDS. The provisions of section 40(a)(ia) which are deeming fiction relating to non-deduction of TDS have to be read in the limited context of non-deduction of TDS and the same cannot be extended to ensure that even where the assessee complies with his statutory obligation not to deduct TDS on receipt of PAN, merely because the subsequent obligation in terms of filing of prescribed forms has not been complied with, the assessee should suffer thirty percent of

disallowance of the expenditure. A similar view has been held by the Co-ordinate Bench in case of Soma Rani Ghosh (supra) wherein it was held as under:

*"**25.** Next ground of disallowance stated by the learned CIT is that Sec. 194C(6) and 194C(7) are to be read together, and if after obtaining PAN from the Transporters, the requisite particulars so obtained from the Transporters are not furnished to the prescribed Authority as provided U/S 194C(7), deduction and for that matter disallowance, U/S 194C and 40(a)(ia) would get attracted. On this aspect, as indicated above a reading of provisions of Section 194C (6), prior to the amendment of by Finance Act, 2015 (w.e.f. 1-06-2015), makes it clear that that during the relevant Assessment year, if the sub-contractors have supplied their PAN to the person making payments in respect of hiring/leasing/of vehicles during the course of his business, then such person making such payment shall not deduct any TDS. It is only by way of subsequent amendment by Finance Act, 2015 (w.e.f. 1-06-2015), the expression "where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with" was substituted in the place of "on furnishing of" thereby introducing the requirement of the declaration to the effect indicated by the amendment. Therefore, under Sec. 194C(6), as it stood prior to the amendment in 2015 in order to get immunity from the obligation of TDS, filing of PAN of the Payee-Transporter alone is sufficient and no confirmation letter as required by the learned CIT is required.*

***26.** On the aspect of observation of the learned CIT that Sections 194C(6) and Section 194C(7) have to be read together to extend the immunity from TDS, our attention is drawn to the fact that though the Finance Act, (N0.2) 2009 introduced, inter alia, Sec. 194C(6) and 194C(7), similar and analogous provision had been very much in existence under proviso 2 and 3 to Section 194C(3) of the Act. Placing such provisions in juxtaposition in the following chart makes it clear that they are very much analogous and the difference is that only in respect of requirement of a declaration and furnishing the particulars to the to the prescribed income-tax authorities under the provisos 2 and 3 of pre-amended section 194C(3) is being replaced by the Permanent Account Number under present Sections 194C(6) and (7) respectively.*

194C prior to Amendment by Finance Act, (N0.2) 2009)	*194C as Amended by Finance Act, (N0.2) 2009*
194C(3) No deduction shall be made under sub-section (1) or sub-section (2)	*(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid*

from— *… … …* *… … …* *Provided that …. …* *Provided further that no deduction shall be made under sub-section (2), from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year:* *Provided also that the person responsible for paying any sum as aforesaid to the sub- contractor referred to in the second proviso shall furnish to the prescribed income-tax authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may be prescribed; or]*	*during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, [1]["where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with"], his Permanent Account Number, to the person paying or crediting such sum.* *(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.*

27. *From the above, it could be observed that only slight modification had been introduced as to the procedure by replacing "declaration" with the words "Permanent Account Number" as the thing to be obtained from the Transporter. We are, therefore, inclined to hold that the provisions of Section 194C(6) and 194C(7) are similar to the Proviso (2) and (3) of the pre-amended Section 194C(3), and on this premise we shall proceed to examine whether Section 194C(6) and 194C(7) are to be read together to invoke provisions under section 40(a)(ia) of the Act.*

28. *After drawing an analogy between the pre-amended proviso between Clause (2) and Clause (3) of section 194C(3) and the present amended section 194C(6) and 194C(7), Learned AR submitted that even on earlier occasions when the declaration obtained in Form 15I (requirement similar to the PAN particulars under Sec. 194C(6)) obtained from the Transporter under Second Proviso is not submitted in Form 15J to the Commissioner of Income Tax in Form 15J (requirement similar as is provided under the third proviso and equivalent to the requirement Sec. 194C(7), the Department made attempts to make additions, but such additions have been deleted and rendered invalid. He submitted that the Courts and Tribunals consistently held that on obtaining of either the declaration contemplated under second proviso to the pre-amended section 194C(3) or the PAN*

details under the present section 194C(6), the assessee was not required to make any deduction at source on the payments made to the contractor or sub-contractor, irrespective of the fact whether or not such information was furnished to the authorities as prescribed under third proviso to the amended section 194C(3) or the present section 194C(7).

***29.** In CIT v. Valibhai Khambhai Mankad [2013] 216 Taxman 18/[2012] 28 taxmann.com 119 (Guj.), it is held by the Hon'ble Gujarat High Court at Ahmedabad that :—*

"(6) Section 194C, as already noticed, makes provision where for certain payments, liability of the payee to deduct tax at source arises. Therefore, if there is any breach of such requirement, question of applicability of section 40(a)(ia) would arise. Despite such circumstances existing, sub-section (3) makes exclusion in cases where such liability would not arise. We are concerned with the further proviso to sub- section (3), which provides that no deduction under sub-section (2) shall be made from the amount of any sum credited or paid or likely to be credited or paid to the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum in the prescribed form and verified it in the prescribed manner within the time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.

(7) The exclusion provided in sub-section (3) of section 194C from the liability to deduct tax at source under sub-section (2) would thus be complete the moment the requirements contained therein are satisfied. Such requirements, principally, are that the sub-contractor, recipient of the payment produces a necessary declaration in the prescribed format and further that such sub-contractor does not own more than two goods carriages during the entire previous year. The moment, such requirements are fulfilled, the liability of the assessee to deduct tax on the payments made or to be made to such sub-contractors would cease. In fact he would have no authority to make any such deduction.

(8) The later portion of sub-section (3) which follow the further proviso is a requirement which would arise at a much later point of time. Such requirement is that the person responsible for paying such sum to the sub-contractor has to furnish such particulars as prescribed. We may notice that under Rule 29D of the Rules, such declaration has to be made by the end of June of the next accounting year in question.

(9) In our view, therefore, once the conditions of further proviso of section 194C(3) are satisfied, the liability of the payee to deduct tax at source would cease. The requirement of such payee to furnish details to the income tax authority in the prescribed form within prescribed time would arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable under sub-section (2) of section 194C of the Act. In our view, therefore, the Tribunal was perfectly justified in taking the view in the impugned judgment. It may be that failure to comply such requirement by the payee may

result into some other adverse consequences if so provided under the Act. However, fulfilment of such requirement cannot be linked to the declaration of tax at source. Any such failure therefore cannot be visualized by adverse consequences provided under section 40(a)(ia) of the Act.

(10) When on the basis of the record it is not disputed that the requirements of further proviso were fulfilled, the assessee was not required to make any deduction at source on the payments made to the sub-contractors. If that be our conclusion, application of section 40(a)(ia) would not arise since, as already noticed, section 40(a)(ia) would apply when there is a requirement of deduction of tax at source and such requirement is either not fulfilled or having deducted tax at source is not deposited within prescribed time".

30. *In CIT v. Marikamba Transport Co. [2015] 379 ITR 129/231 Taxman 84/57 taxmann.com 273, Hon'ble Karnataka High Court has formulated a question as to whether non-filing of Form No. 15I/J within the prescribed time is only a technical default or the provisions of section 40(a)(ia) of the Act are attracted? and proceeded to answer the same as under:—*

'Section 40 (a)(ia) and Section 194C(3) of the Act reads thus:

"Section 40(a)(ia) : Any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub- section(i) of Section 139".

Section 194C/3): No deduction shall be made under sub-section (1) or sub- section(2) from -

(i) the amount of any sum credited or paid or likely to be credited or paid to the account of or to the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-s.(l) or as the case may be sub-s.(2) shall be liable to deduct income-tax under this section:

Provided further that no deduction shall be made under subs. (2) from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.

Provided also that the person responsible for paying any sum as aforesaid to the sub-contractor referred to in the second proviso shall furnish to the prescribed IT authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may be prescribed: or

(ii) any sum credited or paid before the 1st day of June, 1972; or

(iii) any sum credited or paid before the 1st day of June, 1973, in pursuance of a contract between the contractor and a co-operative society or in pursuance of a contract between such contractor and the sub-contractor in relation to any work (including supply of labour for carrying out any work) undertaken by the contractor for the co-operative society.

4. The combined reading of these two provisions make it clear that if there is any breach of requirements of Section 194C(3), the question of applicability of Section 40(a)(ia) arises. The exclusion provided in Sub-Section(3) of Section 194C from the liability to deduct tax at source under sub-section(2) would be complete, the moment the requirements contained therein are satisfied. Once, the declaration forms are filed by the subcontractor, the liability of the assessee to deduct tax on the payments made to the sub-contractor would not arise. As we have examined, the sub-contractors have filed Form No. 1Sl before the assessee. Such being the case, the assessee is not required to deduct tax under Section 194C(3) of the Act and to file Form No.15]. It is only a technical defect as pointed out by the Tribunal in not filing Form No.15J by the assessee. This matter was extensively considered by the ITAT, Ahmedabad Bench in Valibhai Khanbhai Mankad's case (supra) and the said Judgment has been upheld by the High Court of Gujarat reported in (2013) 216 Taxman 18 (Guj) wherein it is held that once the conditions of Section 194C(3) were satisfied, the liability of the payee to deduct tax at source would cease and accordingly, application of Section 40(a)(ia) would also not arise. The Tribunal, placing reliance on the judgment of the ITAT, Ahmedabad Bench, has dismissed the appeal filed by the Revenue. We agree with die said propositions and hold that filing of Form No.15I/j is only directory and not mandatory.'

***31.** A Coordinate Bench of this Tribunal in ITA No. 86/VIZ/2013 in the case of ITO v. Kolli Bros, dated 11.12.2013 followed the decision of the Hon'ble High Court of Gujarat in the case of Valibhai Khanbhai Mankad (supra). In the case of Mahalaxmi Cargo Movers v. ITO [IT Appeal No. 6191 (MUM) of 2013, dated 09.12.2015], another Coordinate Bench of this Tribunal reached the same conclusion while following the decision of the Coordinate Bench in the case of Valibhai Khanbhai Mankad (supra) and Sri Marikamba Transport Co. (supra).*

***32.** It is worth noticing that in ACIT v. Mohammed Suhail, Kurnool [IT Appeal No. 1536 (Hyd.) of 2014, dated 13.02.2015], the Coordinate Bench of this Tribunal specifically held that the provisions of section 194C(6) are independent of section 194C(7), and just because there is violation of provisions of section 194C(7), disallowance under section 40(a)(ia) does not arise if the assessee complies with the provisions of section 194C(6).*

***33.** In view of the above and respectfully following the judicial reasoning delineated in the above judgments, we find that if the assessee complies with the provisions of section 194C(6), disallowance under section 40(a)(ia) does not arise just because there is violation of provisions of section 194C(7) of the Act.*

34. *From our above discussion it follows that,—*

(i) in the context of Section 194C(1), person undertaking to do the work is the Contractor and the person so engaging the contractor is the contractee;

(ii) that by virtue of the Amendment introduced by Finance Act (No.2) 2009, the distinction between a contractor and a sub-contractor has been done away with and Cl. (iii) of Explanation under 194C(7) now clarifies that "contract" shall include sub-contract;

(iii) subject to compliance with the provisions of Section 194C(6), immunity from TDS under sec. 194C(1) in relation to payments to transporters, applies transporter and non-transporter contractees alike;

(iv) under Sec. 194C(6), as it stood prior to the amendment in 2015, in order to get immunity from the obligation of TDS, filing of PAN of the Payee-Transporter alone is sufficient and no confirmation letter as required by the learned CIT is required;

(v) Sections 194C(6) and Section 194C(7) are independent of each other, and cannot be read together to attract disallowance u/s 40(a)(ia) read with Section 194C of the Act; and

(vi) If the assessee complies with the provisions of Section 194C(6), no disallowance u/s 40(a)(ia) of the Act is permissible, even there is violation of the provisions of Section 194C(7) of the Act.

35. *Consequent to our findings in the preceding paragraphs, we reach a conclusion that the authorities below are not justified in treating the expense incurred by the assessee for Carriage inward and carriage outward as disallowable under section 40(a)(ia) of the Act, and adding back Rs.1,63,78,648/- claimed as expense towards Carriage Inward and Rs.1,13,00,980/- claimed as expense towards Carriage Outward, and such additions shall stand deleted."*

9. In light of above discussions and in the entirety of facts and circumstances of the case, we don't see any infirmity in the order of the ld CIT(A) and the same is hereby confirmed. The grounds of appeal taken by the Revenue are dismissed.

In the result, appeal of the Revenue is dismissed.

Pronounced in the Open Court on 19/03/2019.

Sd/-	Sd/-
(विजय पाल राव)	(विक्रम सिंह यादव)
(Vijay Pal Rao)	(Vikram Singh Yadav)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 19/03/2019
*Ganesh Kr.
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- ACIT, Circle- Bharatpur
2. प्रत्यर्थी/ The Respondent- M/s Arihant Trading Co. Pahari, Bharatpur
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {ITA No. 1113/JP/2018}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar