IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N V VASUDEVAN, VICE PRESIDENT
AND SHRI A K GARODIA, ACCOUNTANT MEMBER

ITA No.37/Bang/2016
Assessment year : 2011-12

The Deputy Commissioner of Income Tax, Circle 5(1)(1), Bangalore.	Vs.	M/s. NSL Sugars Ltd., No.60/1, 2nd Cross, Residency Road, Bangalore – 560 025. **PAN: AAGCS 0938Q**
APPELLANT		RESPONDENT

1228/Bang/2017 & CO No.66/Bang/2016 [in ITA No.37/Bang/2016]
Assessment years : 2012-13 & 2011-12

M/s. NSL Sugars Ltd., Bangalore – 560 025. **PAN: AAGCS 0938Q**	Vs.	The Deputy Commissioner of Income Tax, Circle 5(1)(1), Bangalore.
APPELLANT		RESPONDENT

Revenue by	:	Shri C.H. Sundar Rao, CIT(DR-I), ITAT, Bangalore.
Assessee by	:	Shri B.S. Balachandran, Advocate

Date of hearing	:	05.11.2019
Date of Pronouncement	:	08.11.2019

O R D E R

Per N V Vasudevan, Vice President

ITA No.37/Bang/2016 is an appeal by the revenue against the order dated 12.10.2015 of the CIT(Appeals)-5, Bengaluru relating to assessment year 2011-12. The assessee has filed Cross Objection in CO No.66/Bang/2016 against the very same order of CIT(Appeals). The CO is purely supportive in nature and therefore needs no adjudication.

2. ITA No. 1228/Bang/2017 is an appeal by the assessee against the order dated 29.3.2017 of the CIT(Appeals)-5, Bengaluru relating to assessment year 2012-13.

3. We shall first take up for consideration the appeal of revenue for AY 2011-12. Ground Nos.1, 4 & 5 raised by the revenue are general in nature and calls for no specific adjudication. Ground No.2 raised by the revenue reads as follows:-

> "2. On the facts and circumstances of the case, the CIT(A) erred in law in allowing the deduction claimed u/s 80IA by the assessee when as per section 80IA(5) the profits of the eligible business has to be computed as if it were the only business of the assessee. Having computed the deduction, the provision of section 80A(1) comes into play in laying the guidelines or procedure to be followed for actually allowing the deduction u/s. 80A(1) which states that under this chapter specified in section 80C to 80U shall be allowed from the gross total income of the assessee. Hence, Chapter VIA deductions are allowed only after set off of losses including inter unit losses. Further as per the provisions of section 72 of the IT Act, the brought forward losses have to be adjusted against the gross total income of the assessee before arriving at the taxable income for the year, thereafter the deduction admissible u/s.80IA has to be allowed."

4. As far as ground No.2 is concerned, the facts are that the assessee is engaged in the business of manufacture of sugar. In the process of manufacture of sugar, steam is generated. That steam is used to generate electricity. The income earned from such activity is referred to in the order of assessment as income from Cogent plant. The assessee claimed deduction of Rs.24,36,83,037 u/s. 80IA of the Income Tax Act, 1961 (Act) in respect of profits derived from Cogent plant. There is no dispute that the Assessee was entitled to deduction u/s.80IA of the Act and the quantum of deduction was Rs.24,36,83,037 computed in accordance with the provisions of Sec.80IA(1) of the Act. The income from business of the assessee as per the computation of total income was a sum of Rs.22,09,10,637. The gross total income of the assessee was Rs.31,83,19,275.

5. The AO was of the view that u/s. 80IA of the Act, the deduction allowed cannot be more than the income under the head income from business. In this regard, the AO has observed that if the assessee has 2 or 3 segments of business and if in the eligible business the assessee has earned positive income and in the other segments there is a loss, then the loss in the other segments of business have to be adjusted against income of the eligible business and only on the resultant figure, the assessee would be entitled to deduction u/s. 80IA of the Act. The AO made a reference to the provisions of section 70 of the Act and ultimately came to the conclusion that the deduction claimed by the assessee u/s. 80IA should be restricted to income under the head income from business viz., a sum of Rs.22,09,10,637 as against the claim of assessee for deduction of Rs.24,36,83,037. Aggrieved by the aforesaid action of the AO, the assessee preferred appeal before the CIT(Appeals).

6. Before the CIT(Appeals), the assessee contended that the Assessee has two businesses during the relevant assessment year. One business was in the nature of industrial undertaking which fulfils all the conditions laid down in section 80IA and is eligible for deduction u/s.80IA of the Act. Another business is admittedly not eligible for deduction under section 80IA of the Act. The Assessee submitted that u/s.80IA(5) of the Act, the profits and gains of an eligible business has to be computed or determined as if such business were the only source of income of the assessee during the relevant year and the assessee had no other source of income. Consequently, the total income of the eligible business is to be computed under the provisions of the Act as if the eligible business were the only source of income of the assessee. The opening words of the sub section 5 of section 80IA reads as:- "Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall for the purpose of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made.". Therefore the subsection 5 of the section 80IA overrides all other provisions of the Act. Having regard to the cardinal principle of interpretation emerged from the maxim "generalia specialibus non derogant" the special provision of section 80-IA(5), which is over riding in the nature, must prevail over general provisions to the extent of its scope and limit. In other words it was submitted that for the purpose of determining the amount of deduction u/s 80IA, the taxable income of the eligible business is to be ascertained and computed as if such eligible business were an independent business owned by the assessee and the

assessee had no other source of income. Conversally the unabsorbed losses, unabsorbed depreciation etc relating to the eligible business are to be taken into account in determining the quantum of deduction admissible under section 80IA even though these unabsorbed losses ,unabsorbed depreciation etc relating to the eligible business may actually have been set off against the profits of the assessee from the non eligible business or other sources. Thus the gross total income referred in section 80A(1) and (2), 80AB and 80B(5) for the purpose of determining the quantum of deduction available under section 80IA for the relevant assessment year ,would mean the total income computed in accordance with the provisions of the Act, before making any deduction under chapter VI-A, with reference to the profits and gains of the eligible business, only to which section 80IA applies as if such eligible business were the only source of income of the assessee during that assessment year. The Assessee relied on the following decisions in support of its contention.

> CIT, Central Madras v/s Canara Workshop Pvt ltd (161 ITR 320) (SC) and
> CIT (WB)-v/s O.Belliss and Morecom(I) Ltd.(136 ITR 481)(Cal).

7. The CIT(Appeals) agreed with the submissions so made by the assessee and he directed the AO to allow deduction u/s. 80IA of the Act as claimed by the assessee. Following are the relevant observations of the CIT(Appeals):-

> "8. In the second ground of appeal, the deduction u/s.80IA has been restricted to Rs.22,09,10,637/- as against the claim made by the appellant of Rs.24,36,83,037/- with respect to the income earned from eligible business i.e. Cogen Plant, the appellant in its written submission has submitted that the plain reading of sub section 5 of section 80A, amply clear that profits and gains of eligible business be computed as if such eligible business were

> only source of the income of the assessee during the previous year. Having regard to the cardinal principle of interpretation emerged from the maxim "*generalia specialibus non derogant*", the special provision of section 80IA(5), which is overriding in nature, must prevail over general provision to the extent of its scope and limit. The appellant relying on the Hon'ble Supreme Court judgment in the case of CIT vs. Canara Workshop Pvt Ltd 161 ITR 320 and also CIT vs. O. Belliss & Morecom reported in 136 ITR 481, wherein it was held that for the purpose of allowing a deduction u/s.80IA, the words such profit occurring in the section mean "the profits and gains attributable to any priority industry" without deducting there from any loss arising in another business activity u/s.70, 71 & 72 of the Income Tax Act 1961. Therefore, in view of the above, I am of the opinion that the entire deduction claimed by the appellant u/s.80IA(5) has to be allowed."

8. Aggrieved by the order of CIT(Appeals), the revenue has raised ground No.2 before the Tribunal.

9. We have heard the submissions of the ld. counsel for the assessee, who relied on the order of CIT(Appeals).

10. The ld. DR submitted that the CIT(Appeals) in agreeing with the submissions of assessee, has placed reliance on the decision of the Hon'ble Supreme Court in the case of *CIT v. Canara Workshop Pvt Ltd. (supra)*. He pointed out that the aforesaid decision was rendered in the context of erstwhile section 80E of the Act and when the provisions of section 80B(5) and section 80AB of the Act were not part of the Act. He brought to our notice the decision of the Hon'ble Supreme Court in the case of *Synco Industries Ltd. v. AO, 299 ITR 444 (SC)* wherein the Hon'ble Supreme Court took the view that while working out the gross total income, losses suffered in the earlier years have to be adjusted and if gross total income of assessee is Nil, the assessee will not be entitled to deduction under Chapter VIA. The Court further held that the *non obstante* clause in

section 80I(6) is applicable only to quantum of deduction whereas the total income u/s. 80B(5) which is referred to in section 80I(1) is required to be computed in the manner provided in the Act, which pre-supposes that gross total income shall be arrived at after adjusting losses of other deduction against profits derived from an industrial undertaking. Our attention was also drawn to the decision of the Hon'ble Gujarat High Court in the case of Sintex Industries Ltd. v. ACIT, 219 Taxman 43 (Guj) wherein identical proposition was laid down by following the decision of the Hon'ble Supreme Court in the case of *Synco Industries Ltd. (supra)*. Our attention was also drawn to para 8.2 of this decision, wherein the Hon'ble High Court explained as to how the decision rendered by the Hon'ble Supreme Court in the case of *Canara Workshops Pvt. Ltd. (supra)* is not applicable in the context of deduction u/s. 80I(6) of the Act.

11. We have given a careful consideration to the rival submissions. In the decision of *Synco Industries Ltd.(supra)* rendered by the Hon'ble Supreme Court, the facts were that the Assessee was engaged in the business of oil and chemicals. It had a unit for oil division at Sirohi District, Rajasthan. It had also a chemical division at Jodhpur. The assessee had earned profit in the asst. yrs. 1990-91 and 1991-92 in both the units. However, the assessee had suffered losses in the oil division in earlier years. The Assessee claimed deductions under ss. 80HH and 80-I of the Act, claiming that each unit should be treated separately and the loss suffered by the oil division in earlier years is not adjustable against the profits of the chemical division while considering the question whether deductions under ss. 80HH and 80-I were allowable. The AO noticed that the gross total income of the appellant before deductions under Chapter VI-A was 'Nil'. Therefore, he concluded that the assessee was not entitled to the benefit of deductions under Chapter VI-A. On the above facts, the Hon'ble Supreme Court considered the correctness of the action of the

revenue authorities, the Tribunal and the Hon'ble High court concurring with the view of the AO. The Hon'ble Supreme Court held, Clause (5) of s. 80B defines the expression 'gross total income' to mean the total income computed in accordance with the provisions of the Act before making any deductions under Chapter VI-A. It follows, therefore, that deductions under Chapter VI-A can be given only if the gross total income is positive and not negative. If the gross total income of the assessee is determined as 'Nil' then there is no question of any deduction being allowed under Chapter VI-A in computing the total income. The AO has to take into account the provisions of s. 71 providing for set off of loss from one head against income from another and s. 72 providing for carry forward and set off of business losses. Sec. 32(2) makes provisions for carry forward and set off of the unabsorbed depreciation of a particular year. The effect of the above mentioned provisions is that while computing the total income, the losses carried forward and depreciation have to be adjusted and thereafter the AO has to work out the gross total income of the assessee. Sub-s. (2) of s. 80A specifically enacts that the aggregate of deductions under Chapter VI-A should not exceed the gross total income of the assessee. If the gross total income is found to be a net loss on account of the adjustment of losses of the earlier years or 'Nil', no deduction under this Chapter can be allowed. The effect of cl. (5) of s. 80B is that gross total income will be arrived at after making the computation as follows :-

(i) making deductions under the appropriate computation provisions;
(ii) including the incomes, if any, under ss. 60 to 64 in the total income of the individual;
(iii) adjusting intra-head and/or inter-head losses; and
(iv) setting off brought forward unabsorbed losses and unabsorbed depreciation, etc.

12. The Hon'ble Supreme Court further held that under s. 80-I(6) the profits derived from one industrial undertaking cannot be set off against loss suffered from another and the profit is required to be computed as if profit making industrial undertaking was the only source of income, has no merits. Sec. 80-I(1) lays down the broad parameters indicating circumstances under which an assessee would be entitled to claim deduction. On the other hand s. 80-I(6) deals with determination of the quantum of deduction. Sec. 80-I(6) lays down the manner in which the quantum of deduction has to be worked out. After such computation of the quantum of deduction, one has to go back to s. 80-I(1) which categorically states that where the gross total income includes any profits and gains derived from an industrial undertaking to which s. 80-I applies then there shall be a deduction from such profits and gains of an amount equal to 20 per cent. The words "includes any profits'' used by the legislature in s. 80-I(1) are very important which indicate that the gross total income of an assessee shall include profits from a priority undertaking. While computing the quantum of deduction under s. 80-I(6) the AO, no doubt, has to treat the profits derived from an industrial undertaking as the only source of income in order to arrive at the deduction under Chapter VI-A. However, the *non obstante* clause appearing in s. 80-I(6), is applicable only to the quantum of deduction, whereas, the gross total income under s. 80B(5) which is also referred to in s. 80-I(1) is required to be computed in the manner provided under the Act which presupposes that the gross total income shall be arrived at after adjusting the losses of the other division against the profits derived from an industrial undertaking. If the interpretation as suggested by the appellant is accepted it would almost render the provisions of s. 80A(2) nugatory and therefore the interpretation canvassed on behalf of the appellant cannot be accepted. It is true that under s. 80-I(6) for the purpose of calculating the deduction, the loss sustained in one of the units, cannot be taken into account because sub-s.

(6) contemplates that only the profits shall be taken into account as if it was the only source of income. However, s. 80A(2) and s. 80B(5) are declaratory in nature. They apply to all the sections falling in Chapter VI-A. They impose a ceiling on the total amount of deduction and therefore the non obstante clause in s. 80-I(6) cannot restrict the operation of ss. 80A(2) and 80B(5) which operate in different spheres. As observed earlier s. 80-I(6) deals with actual computation of deduction whereas s. 80-I(1) deals with the treatment to be given to such deductions in order to arrive at the total income of the assessee and therefore while interpreting s. 80-I(1), which also refers to gross total income one has to read the expression 'gross total income' as defined in s. 80B(5). Therefore, the High Court was justified in holding that the loss from the oil division was required to be adjusted before determining the gross total income and as the gross total income was 'Nil' the assessee was not entitled to claim deduction under Chapter VI-A which includes s. 80-I also.

13. The final conclusion of the Hon'ble Court was that gross total income of the assessee has first got to be determined after adjusting losses of earlier years, unabsorbed depreciation, etc., and if the gross total income of the assessee is 'Nil' the assessee would not be entitled to deduction under Chapter VI-A; *non obstante* clause in s. 80-I(6) cannot restrict the operation of ss. 80A(2) and 80B(5) which operate in different spheres and therefore, loss from the oil division of the assessee was required to be adjusted before determining the gross total income, and since the gross total income was 'Nil', assessee was not entitled to claim deduction under s. 80-I.

14. In *CIT Vs. RPG Telecoms Ltd. 292 ITR 355 (Karn)*, the Hon'ble Karnataka High Court considered the very same issue of deduction u/s.80-I of the Act, whether it should be restricted to gross total income or should be

allowed as computed under Sec.80-I(1) of the Act. After considering the decision of Hon'ble Supreme Court relied upon by the CIT(A) in the case of Canara Workshops (supra) in the impugned order, held that loss incurred in leasing business had to be taken into consideration for the purpose of computation of deduction under s. 80-I as Sec. 80AB overrides all sections for the purpose of deductions under Chapter VI-A.

15. We therefore hold the deduction u/s.80IA of the Act has to be allowed as per Sec.80IA(1) of the Act, but the deduction so arrived at cannot exceed the gross total income of the Assessee.

16. In the present case, the deduction u/s. 80IA of the Act, considering the business on which deduction u/s.80IA was claimed by the Assessee as the only income of the Assessee, was Rs.24,36,83,037/-. The gross total income of the Assessee was Rs.29,75,89,300/- (as per the return of income of the Assessee). Income under the head "Income from Business or profession" was Rs.20,01,80,662/-. The ceiling of deduction u/s.80IA read with Sec.80AB or 80B(5) or 80A(2) is that it cannot exceed the gross total income, not the income determined under the head "income from Business or profession". This aspect has not been noticed by the AO or the CIT(A). We therefore hold that the conclusions of the CIT(A) that the Assessee should be allowed deduction u/s.80IA at Rs.24,39,83,037/- as allowing the said deduction would not violate the mandate of law as laid down in the decision of the Hon'ble Supreme Court in the case of *Synco Industries Ltd. (supra)*. For the reasons given above, we sustain the order of CIT(A). We therefore find no merits in Gr.No.2 raised by the revenue in its appeal for AY 2011-12.

17. Ground No.3 raised by the revenue in its appeal reads as follows:-

> "3. On the facts and circumstances of the case, the CIT(A) erred in law by stating that harvesting charges paid to labourers by the assessee on behalf of the cane growers is part and parcel of the cost price of sugarcane and the payment of which cannot be covered within the expression "work contract" as defined u/s 194C, when as per assessee, the Alland unit cane price was fixed under two different heads."

18. This ground of appeal by the revenue for AY 2011-12 can be conveniently dealt with the grounds of appeal raised by the assessee in ITA No.1228/Bang/2017 for AY 2012-13 which reads as follows:-

> "1. The order of CIT (A) insofar as it is prejudicial to the interest of the appellant, is bad and unsustainable in the eye of law.
>
> 2. The CIT(A) grossly erred in confirming the disallowance of Harvesting charges disregarding the documentary evidences furnished before him including his own order for an earlier year.
>
> 3. The CIT(A) ought to have appreciated the plea of the Appellant that on the peculiar facts there was no applicability of S.194C of the Act 86 hence no deduction of TAS was required to be made. Consequently, the same was not hit by S.40(a)(ia) of the Act.
>
> 4. Without prejudice, the CIT(A) ought to have appreciated that there was no contract between the Appellant and the labourers who are all agriculturists with their respective incomes below taxable limit; and hence no deduction of TAS was to be made.
>
> 5. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed."

19. The facts and circumstances giving rise to the aforesaid grounds of appeal are as follows. In AY 2010-11, the assessee purchased sugarcane

from various farmers. The assessee makes payment on account harvesting charges. In AY 2010-11 the assessee paid a sum of Rs.2,07,29,975 on account of harvesting charges. It is an admitted position that the assessee did not deduct tax at source while making payment towards harvesting charges. According to the AO, the assessee ought to have deducted tax at source u/s. 194C of the Act on the aforesaid payment and since assessee failed to do so, the aforesaid sum which was claimed as deduction in computing income cannot be allowed as a deduction in view of the provisions of section 40(a)(ia) of the Act, which provides that where tax is liable to be deducted on a payment and is not so deducted, the same cannot be claimed as an expenditure in computing income from business.

20. Before the CIT(Appeals), the assessee submitted that the harvesting charges are nothing but payment for purchase of sugarcane from the farmers and that payment by any stretch of imagination cannot be considered as a payment to a contractor for carrying out any work as contemplated u/s. 194C of the Act. In this regard, the assessee pointed out that the payment made to the farmers are *ex*-factory gate purchase price in instalments following the well established policy of Central Govt. in determining the Statutory Minimum Price (SMP) of sugarcane. The assessee pointed out that it is the obligation and responsibility of the farmers for cutting and harvesting sugarcane and to transport the same from the field to the sugarcane factory. The farmers are paid consolidated price for their sugarcane fixed by Govt. of India and the said price also includes the harvesting and transportation charges. The assessee furnished copies of sugarcane purchase bills depicting the adjustment of harvesting and transportation charges from the cost of purchases. The assessee also placed reliance on the decision of ITAT Ahmedabad Bench in the case of *Shree Mahuva Prasad Sahakari Khand Udyog Mandal Ltd. v.*

ITO, ITA No.305/Ahd/2009 wherein the Tribunal took the view that provisions of section 194-C of the Act are not attracted for payment made to harvesting labourers and transporters because it was an obligation of cane growers to bring sugarcane to the assessee's factory and the aforesaid payments cannot be said to be payment covered by section 194C of the Act. Similar decision rendered by the ITAT Pune Bench in the case of *DCIT v. Dwarkadheesh Sakhar Karkhana Ltd. [2015] 55 taxmann.com 415 (Pune Trib.)* was also relied upon by the assessee.

21. The CIT(Appeals) accepted the arguments on behalf of the assessee and he found on perusal of the sugarcane purchase bills that farmers supplied sugarcane and harvested themselves and incurred transportation charges and those charges were deducted from the purchase price payable for sugarcane. The CIT(Appeals) was therefore of the view that the payment in question did not fall within the ambit of section 194C of the Act and he accordingly deleted the addition made by the AO. Following were the relevant observations of the CIT(Appeals):-

> "I have considered the written submissions filed by the appellant and also gone through the assessment order passed by the Assessing Officer. The first grounds of appeal is related to disallowance of harvesting charges of Rs.2,07,29,295/- made by the Assessing Officer in his assessment order, stating that the appellant company during the year under consideration has made payments towards harvesting charges on which no TDS u/s.194C was made. Therefore, the entire expenses under the head was disallowed by invoking the provisions of section 40(a)(ia) of the Income Tax Act without pointing out any violation of section 194C and also not made any observation that the harvesting charges paid by the appellant company are falling in the ambit of section 194C or not.
>
> 7.1 During the appellate proceedings, the appellant submitted that the harvesting charges are part and parcel of the sugar cane purchase cost as the said charges were duly deducted from the

sugar payments made to the farmers. The appellant through its representative has furnished the sugar cane purchase bills before me, which show that the farmers who supplied the sugarcane and harvested themselves were paid full amount of sugarcane price, and for those who could not pay the harvesting charges and transportation charges was paid by the appellant as sugarcane price in three heads as sugar cane purchase cost, harvesting charges, transportation cost. As the harvesting charges and transportation charges need to be paid in short time before the sugarcane payment such bifurcation was made to have the control over the payments. He further pleaded that since the payments were made to farmers as sugarcane purchase cost, the provisions of section 194C r.w.s 40(a)(ia) are not applicable. He further relied on the judgment of the Ahmedabad Tribunal in the case of M/s. Shree Mahuva Pradesh Sahakari Khand Udyog Mandal Ltd vs. ITO, wherein it was held that on the Fact and circumstances of the case the assessee is not liable to deduct the tax at source from the payment made to MUKADAMS (harvesting labourers and transporters by Zone samiti) and also in the case of DCIT vs. Dwarakadeesh Sahakar Kharkhana Ltd. it was held by the special bench that sugar factory was not liable to make TDS u/s.194C from the payments made to Mukadams and Transporters by the samiti. It was for the cane grower to bring the sugarcane to the appellant's factory and on behalf of the cane growers the harvesting charges were paid to the labourers by the appellant along with transport charges which are included in the cost price of the sugar cane which is evident from the invoices furnished before me. Therefore, in the light of the factual and the legal matrix of the case, as discussed above I am of the opinion that the harvesting charges paid to the labourers by the appellant on behalf of the cane growers which is the part and parcel of the cost price of the sugar cane, the payment can not be stated to be covered within the expression "work contract "as defined u/s 194C of the Income Tax Act,1961. Therefore, I hereby delete the addition made by the Assessing Officer on account of TDS not made u/s.194C. The first ground of appeal is hereby allowed."

22. Aggrieved by the order of CIT(Appeals), the revenue has raised ground No.3 before the Tribunal.

23. However, on the same set of facts, the CIT(Appeals) in AY 2012-13 held that the provisions of section 194C were attracted. In AY 2012-13 the sum paid on account of harvesting charges was a sum of Rs.9,54,22,413 and the said payment was disallowed for non-deduction of tax at source u/s. 194C of the Act by invoking the provisions of section 40(a)(ia) of the Act. The very same submissions made in AY 2011-12 were made before the CIT(Appeals) for AY 2012-13. The CIT(Appeals) has noticed these argument in para 6 of his order, but has not dealt with the same. Rather, the CIT(Appeals) proceeded on the question where section 40(a)(ia) of the Act would be applicable to a sum which is not paid, but remains payable by the assessee. On that aspect, the CIT(Appeals) came to the conclusion that the consequence of disallowance u/s. 40(a)(ia) of the Act will follow even in respect of amounts that were paid and not the sums which remain payable by the person who makes the payment. It is against the aforesaid order of CIT(A), that the assessee has preferred appeal in ITA No.1228/Bang/2017.

24. We have heard the rival submissions. The ld. counsel for the assessee reiterated submissions that were made before the CIT(Appeals) and relied on the order of CIT(Appeals) for AY 2011-12. The ld. DR relied on the order of AO.

25. We have considered the rival submissions. In the order of assessment for both AYs 2011-12 & 2012-13, there has been no discussion whatsoever by the AO as to why the harvesting and transportation payments made by the assessee to the farmers were regarded as payments falling within the ambit of section 194C of the act. In the appellate order for AY 2012-13, the CIT(A) has not discussed this aspect at all and has gone only by the legal proposition as to whether section 40(a)(ia) would be applicable to sums which have already been

paid or only to sums which remains payable as on the last date of the previous year. Therefore, the reasons given by the CIT(Appeals) in AY 2011-12 regarding payment on account of harvesting and transportation charges not being in the nature of payment falling within the ambit of section 194C of the Act is only the available material.

26. We have perused the paperbook filed by the assessee containing sample bills for purchase of sugarcane issued by the assessee. The sample bill shows the value of cane supplied by individual farmers and the transportation & harvesting charges are shown as deduction, which by implication means that the cane price is inclusive of transportation & harvesting charges. The plea of assessee that supply of cane by the farmers to the assessee is on ex gate of sugar factory basis appears to be correct. In our opinion, it would depend on the agreement between the assessee and cane farmers as to whether the cane price fixed between the parties is inclusive of harvesting & transportation charges. If the contract to supply sugarcane is *ex field (cost of harvesting and transportation to be borne by the Sugar manufacturer)*, then it is the responsibility of the assessee to lift the sugarcane from the field to its factory i.e., the assessee has to bear the harvesting and transportation charges for the sugarcane. There is no such material brought on record to come to the conclusion that the harvesting & transportation charges paid by the assessee is on *ex*-field basis. In such circumstances, we are of the view that, on the basis of probability, the plea of assessee has to be accepted and it has to be held that the payments made by the assessee towards harvesting and transportation charges have to be regarded as payment made for purchase of sugarcane and consequently the provisions of section 194C of the Act do not get attracted. Consequently, we are of the view that the CIT(Appeals) was justified in deleting the addition for AY 2011-12 and was not justified in not deleting the addition for AY 2012-13 apart from not

dealing with the submissions of assessee in this regard. We therefore find no substance in ground No.3 raised by the revenue for AY 2011-12 and dismiss the same. We find merit in the grounds of appeal raised by the assessee for the AY 2012-13 and allow the same.

27. In the result, the appeal by the revenue in ITA No.37/Bang/2016 is dismissed and the CO No.66/Bang/2016 by the assessee is dismissed, while ITA No.1228/Bang/2017 by the assessee is allowed.

Pronounced in the open court on this 8th day of November, 2019.

Sd/-	Sd/-
(A K GARODIA) ACCOUNTANT MEMBER	(N V VASUDEVAN) VICE PRESIDENT

Bangalore,
Dated, the 8th November, 2019.

/ Desai Smurthy /

Copy to:
1. Revenue
2. Assessee
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.