

आयकर अपील अाधिकरण, अहमदाबाद ढायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And

Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1177/AHD/2018

अाधारण वर्ष/Asstt. Year: 2008-2009

Hanifbhai Hajimohammed Pinepalwala, 4116, Tajpur Navi Masjid, Vasant Raje Chowk, Jamalpur, Ahmedabad. PAN: ADQPC8189D	Vs.	I.T.O, Ward-1(3)(2), Ahmedabad.
--	-----	---------------------------------------

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Varis V. Isani, A.R
Revenue by :	Shri S.S. Shukla, Sr. DR

सुनवाई का तारख/Date of Hearing : 19/01/2021

घोषणा का तारख /Date of Pronouncement: 23/03/2021

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-10, Ahmedabad, dated 28/07/2016 arising in the matter of assessment order passed under s.143(3) the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2008-2009.

2. The assessee has raised the following grounds of appeal:

The Hon'ble CIT (A)-10 ahmedabad has erred in law in;

- 1. Passing the Appellant Order u/s. 143 of the IT Act for the A.Y. 2008-09 and confirming demand of Rs. 6,12,0307-/- raised by the Lrd. AO.*
- 2. That addition of Rs. 13,82,9007- made u/s. 40(a)(ia) of Income tax Act on account of non deduction tds on Fright Exp. However, the said addition by factually as well as legally does not fall in ambit of Section of 194C of Income tax Act. Lrd. AO has wrongly applied section 194C & 40(a)(ia) of Income tax act without applying mind and raise huge demand thereon.*
- 3. Calculating total assessed Income of Rs. 15,54,4907- and tax liability of Rs. 6,12,0307- without giving proper opportunity of being heard.*
- 4. Apply provision of section 194C of Income Tax Act as Transporter of Goods and Appellant are not known to each other and there is any no Oral or Written Contract between them for transportation of Goods. Appellant is not liable to deduct TDS on Fright Expenses as Section 94C of Income tax Act can't be applicable and Addition made of Rs.13,82,900/- u/s. 40[a](ia) of Income tax Act should be deleted.*
- 5. The appellant reserves, craves leave all these to Hon'ble Commissioner to add, alter, amend, delete, modify, vary, and/or rescind any of the facts/grounds hereafter, if necessary, in the interest of justice*

3. The only issue raised by the assessee is that the learned CIT (A) erred in confirming the disallowance made by the AO for Rs. 13,82,900/- on account of non-deduction of TDS under section 194C of the Act.

4. The facts in brief are that the assessee in the present case is an individual and engaged in the business of trading of pineapple fruits. The assessee in the year under consideration has incurred an expense under the head transportation amounting to Rs. 13,82,900/- without deducting the TDS under section 194C of the Act. Accordingly the AO made the disallowance and added the sum of Rs. 13,82,900/- to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT (A).

6. The assessee before the learned CIT (A) submitted that the transportation expenses have actually been incurred by the supplier who used to raised the bills

for the transport expenses along with the sales bills raised to the assessee. Accordingly, the assessee contended that such transportation expenses are part of the purchases and therefore the same are outside the purview of the provisions of TDS.

7. However the learned CIT (A) disagreed with the contention of the assessee by observing that the assessee has not brought any iota of evidence on record suggesting that the supplier was to incur the transportation expenses which used to be reimbursed to the supplier along with the bill raised by such supplier.

7.1 The learned CIT (A) further found that had the transportation expenses been the part of the purchases, then the assessee would not have claimed transportation expenses under the separate head. Accordingly the learned CIT (A) disregarded the contention of the assessee and confirmed the order of the AO.

8. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

9. The learned AR before us contended that there was no contract between the assessee and the transport contractor. Therefore the same outside the purview of the TDS.

10. On the other hand the learned DR before us filed the WS which is available on record and vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the assessee is buying the pineapples from different states which are brought to the state of Gujarat. Such goods cannot be transported by the assessee without incurring the transportation cost. Accordingly, the assessee has incurred transportation expenses in the year under consideration.

11.1 Now the question arises whether such transportation expenses incurred by the assessee are subject to the provisions of section 194C of the Act. There is no ambiguity that generally transportation expenses are subject to the provisions of section 194C of the Act. At this juncture, we find important to refer the provisions of section 194C (1) of the Act which reads as under:

194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (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.

11.2 The above provision requires the assessee to deduct the TDS on the expenses incurred in pursuance to the contract. Now, the controversy arises whether the transportation expenses incurred by the assessee are in pursuance to the contract as envisaged under the provisions of section 194C of the Act. In the case on hand, on perusal of the truck numbers to whom the assessee has made payment for the transportation expenses, we find that all of those numbers are registered with the state of Kerala from where the assessee is transporting the goods. Thus it can be inferred that all these transporters were engaged by the supplier but the payment was made by the assessee in her books accounts. Thus it can be inferred that there was no contract between the assessee and the transporters and accordingly the provisions of section 194C of the Act cannot be invoked in the case on hand. In holding so we draw support and guidance from the order of coordinate bench of this ITAT in ITA No. 3422/Ahd/2008 dated 18-09-2009 in the case of M/s Pramukh Jute Traders v. ITO Ward-2, Anand, wherein vide para-3 has allowed the claim of assessee, which is being reproduced as under:-

"3. It is the contention of the assessee that the transporters were engaged by agents in Calcutta and the assessee was merely paying the transport charges to them and that there was no transport contract between the assessee and the transporters named above. It was therefore submitted that there was no liability to deduct tax under Section 194C. We find that the contention is correct. At page 9 of the paper book the assessee has placed a copy

of the account of Bharat Roadlines for the period ended 31-3-2005. which shows that there was four payments aggregating to Rs.1,27,408/-. The bills of Bharat Roadlines placed pages 11 to 15 of the paper book show the names of the jute mills in Calcutta from where the jute goods were transported. From these bills it appears to us that it was the jute mills which engaged the transporters through agents in Calcutta and the assessee was required to pay the transport charges. The material on record does not show the existence of any transport contract between the assessee and the transporters. The same is the case with Roadco (India) Corporation, Calcutta to whom the assessee has paid the transport charges of Rs.44,792/-. The bills at pages 18 and 19 do not show that there was any contract for transport between the assessee and the transporters. These the single trips. Circular No.715 dated 8-8-1995 issued by the CBDT shows that each goods receipt can be considered to be a separate contract if the goods are transported at one time. This requirement is satisfied as can be seen from the bills issued by the transporters. The order of the Mumbai Bench of the Tribunal in City Transport Corporation Vs. ITO dated 12-9-2006 in ITA Nos.7708 to 7711/Mum/2003 (copy placed at page 46 of the paper book) and the judgment of the Punjab and Haryana High Court in CIT Vs. United Rice Land Limited dated 12-45-2008 in IT Appeal No.638 of 2007 (copy filed at page 41 of the paper book) support the assessee's case. In these circumstances we hold that the assessee was not liable to deduct tax under Section 194C from the transport charges. Consequently, section 40(a)(ia) is not attracted. The transport charges of Rs.1,72,200/- is accordingly, directed to be allowed. The transport charges of Rs.1,72,200/- is accordingly directed to be allowed. The grounds are allowed."

11.3 In view of the above we hold that there cannot be any disallowance of the expenses in the given facts and circumstances on account of non-deduction of TDS. Likewise, the judgments referred by the learned DR at the time of hearing are distinguishable from the facts of the present case. Accordingly we are reluctant to rely the same. Hence the ground of appeal of the assessee is allowed.

12. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Court on 23/03/2021 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

**(True Copy)
23/03/2021**