

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.2078/Bang/2019
Assessment Year: 2015-16

M/s. Sri Balaji Prasanna Travels Hemanth Complex 1 <sup>st</sup> Floor, Amruthalli Main Road Bytarayanapura, B.B. Road Bengaluru-560 092  <b>PAN NO : ABMFS2721F</b>	<b>Vs.</b>	ACIT, Circle-6(3)(1) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Shri Priyadarshi Mishra, D.R.

Date of Hearing	:	24.11.2020
Date of Pronouncement	:	25.11.2020

**ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by the assessee is directed against order of the CIT(A) dated 30.7.2019. The assessee has raised following grounds of appeal:-

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence probabilities, facts and circumstances of the appellant's case.*

2. *The learned CIT[A] is not justified in upholding the disallowance to the extent of Rs.1,04,44,105/- made u/s.40[a][ia] of the Act for the alleged failure of the appellant*

*to deduct tax at source u/s. 194C of the Act in respect of the hire charges paid to third party vehicle owners under the facts and in the circumstances of the appellant's case.*

*2.1 The learned CIT[A] ought to have appreciated that the provisions of Section 194C had no application to the aforesaid payments discursively labeled as hire charges in as much as these payments represented the revenue shared by the appellant with third party vehicle owners for providing their vehicles to the appellant to discharge the appellant's contractual obligations with M/s.Orix Infrastructure Pvt. Ltd., under the facts and in the circumstances of the appellant's case.*

*2.2 The learned CIT[A] ought to have appreciated that there was a contract for transportation of employees between M/s Orix Infrastructure India Pvt. Ltd. and the appellant and there was no contract, either written or oral between the appellant and the third party vehicle owners for transportation and hence, the provisions of section 194C of the Act was not applicable.*

*The learned CIT[A] ought to have appreciated that the substance of the arrangement / transaction had to be considered and it was apparent that the appellant had borne the fuel charges for the vehicles provided by third party vehicle owners and the revenue received by the appellant was shared between the appellant and the third parties vehicle owners and the said payments made could not be regarded as a payment made for carrying out work in terms of section 194C of the Act.*

*3. Without prejudice to the above, the learned CIT[A] ought to have appreciated that the payments made by the appellant as hire charges would, if at all require deduction of tax at source, come within the ambit of the provisions of Section 1941 of the Act and in as much as none of the payments made exceeded the prescribed limit of Rs. 1,80,000/- to each payee, there was no liability to deduct TDS even in terms of the said provisions of the Act and hence, no disallowance was warranted under the facts and in the circumstances of the appellant's case.*

*4. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234A, 234B and 234D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

*5. For the above and other grounds that may be urged at the time of hearing of the appellant, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees a part of the costs.*

2. At the time of hearing, Ground No.3 is not pressed. Accordingly, ground No.3 is dismissed as not pressed.

3. Facts of the case are that the appellant firm, which is engaged in providing vehicles on hire, filed its return of income for A.Y. 2015-16 on 14.9.2015, declaring income of Rs.27,53,170/-. The appellant's case was selected for scrutiny and notices u/s 143(2) and 142(1) were served on it. During the assessment proceedings, the A.R. submitted ledger extracts of vehicle hire charges. The A.O. observed from the profit and loss account that the appellant had not incurred payment towards drivers. The A.O. therefore held that the appellant was hiring the cars along with the drivers and accordingly, the provisions of section 194C and not section 194I were applicable in the appellant's case. However, as the appellant had not deducted TDS on payments above Rs.30,000/-, the A.O. disallowed 30% of such payments totaling Rs.4,22,22,161/-, invoking the provisions of section 40(a)(ia). Accordingly, the A.O. made a disallowance of Rs.1,26,66,648/- being the vehicle hire charges on which TDS had not been deducted."

4. On appeal, CIT(A) observed that the assessee is liable to deduct TDS u/s 194C of the Income-tax Act, 1961 [the Act' for short] on the vehicle hire charges and the assessee failed to deduct the TDS hire charges the disallowance u/s made by AO u/s 40(a)(ia) of the Act is justified. Against this, the assessee is in appeal before us by way of

above grounds. The Ld. A.R. submitted that the appellant firm carries on the business of providing vehicles to M/s. Orix Infrastructure India Pvt. Ltd., [hereinafter for short "Orix Company"]. The aforesaid Orix Company is itself in the said business i.e., providing vehicles on hire to the end user corporate companies, who are the ultimate users of the service provided by the Orix Company. The appellant is one of the vendors of the said company and entered into a Transport Service Agreement with the said company on 30/07/2014, a copy of which is placed at page 25 of the Paper book No.2 filed alongwith the written submissions.

4.1 Ld. A.R. further submitted that the appellant is also an aggregator of vehicles i.e., the appellant itself does not own sufficient number of vehicles required by it for fulfilling its obligations under the Service Contract entered with Orix Company. It necessarily has to co-opt other third party vehicle owners to fulfill its obligations under the Service Agreement and accordingly the appellant entered into an understanding with several vehicle owners, who are invariably driver-cum-owners, for fulfilling its obligations under the Service Contract mentioned above. The amounts paid to such third party vehicle owners amounted to Rs.5,75,07,494/- and instead of netting the same from the gross receipts of vehicle hire charges received, the same was discursively debited to the Profit & Loss account as "Vehicle Hire Charges".

4.2 Ld. A.R. submitted that while examining the same during the course of assessment proceedings, the A.O. noted that the drivers of such third party vehicles were not the employees of the appellant i.e., the appellant had incurred no salary expenditure towards the salaries of the drivers of such third

party vehicles. This, according to the A.O., implied that the appellant had hired a car alongwith a driver, which meant that the provisions of section 194I of the Act, would not apply and that instead, the provisions of section 194C of the Act, would get attracted. Thereafter, the A.O. made an addition of Rs.1,26,66,648/- being 30% of the sum of Rs.4,22,22,167/- being the amount spent on which the appellant had failed to deduct tax u/s.194C of the Act.

4.3 Ld. A.R. further submitted that in the statement of facts, there is no privity of contract between Orix Company and such third party vehicle owners and thus, there cannot be any sub-contract to invoke the provisions of section 194C of the Act. As already explained in the statement of facts, the revenue derived by the appellant is shared between the appellant and such third party vehicle owners, who are themselves carrying on the business of transport operators. The entire bill is raised in the name of the appellant only since there is no privity of contract between Orix Company and such third party vehicle owners. He submitted that the arrangement between the appellant and such third party vehicle owners is neither in the nature of a sub-contract nor in the nature of hire. It is more a case of a Joint Venture wherein two persons jointly performing a work and share the revenue received between them. Hence, it is submitted that neither the provisions of section 194C nor the provisions of section 194I of the Act would be attracted to the facts of the appellant's case in respect of the payments made by the appellant to such third party vehicle owners since the aforesaid payment have been made by one Joint Venturer to another. Reliance for this proposition is placed on the decision of the Hon'ble 1TAT, Hyderabad in the case of MEIL-SEW-MAYTAS BHEL, a copy of which is placed at page 27 of the Paper

book. Reliance is also placed on the decision of the Hon'ble ITAT Pune Bench, in the case of MUNICIPAL CORPORATION, a copy of which is placed at page 60 of the Paper book. Accordingly, the Ld. A.R. prayed that the disallowance made requires to be deleted.

5. On the other hand, Ld. D.R. submitted that assessee has paid the hire charges to the vehicle owners which falls under the purview of section 194C of the Act on which payment, assessee is liable to deduct TDS, which is not deducted by the assessee mainly the applicability of section 40(a)(ia) of the Act is justified. Accordingly, invoking of provisions of section 40(a)(ia) of the Act is justified is supported by the order of the lower authorities.

6. We have heard the rival submissions and perused the material on record. The provisions of section 40(a)(ia) are very clear if the assessee fails to deduct the tax at source or after deduction has not paid before the due date specified in sub-section (1) of section 139, the same will not be allowed in computing the income under the head "profit and gains of business or profession". The contention of the assessee, however, is that the provisions of section 194C are not applicable on the facts as there is no agreement or contract between the assessee and the persons from whom the vehicles have been hired. The provision of section 194C lays down as under:-

"194C - Payments to contractors.

(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.

(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 17 [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 [seventy five] thousand 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, on furnishing of 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.

Explanation.—For the purposes of this section,—

(i)“specified person” shall mean,—

(a) the Central Government or any State Government; or

(b) any local authority; or

(c) any corporation established by or under a Central, State or Provincial Act; or

(d) any company; or

(e) any co-operative society; or

(f) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(g) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or

(h) any trust; or

(i) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956 (3 of 1956); or

(j) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

(k) any firm; or

(l) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person,—

(A) does not fall under any of the preceding subclauses; and

(B) is liable to audit of accounts under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;

(ii)“goods carriage” shall have the meaning assigned to it in the Explanation to sub-section (7) of section 44AE;

(iii)“contract” shall include sub-contract;

(iv)“work” shall include—

(a) advertising;

(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(c) carriage of goods or passengers by any mode of transport other than by railways;

(d) catering;

(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.”]

6.1 A plain reading of this Section makes it clear that “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” is required to deduct tax at source under section from the amounts so paid or payable. There is no doubt that the assessee in this case has made the payments as hire charges to cab owners. The main contention of the assessee is, however, that the payments have not been made in pursuance of a contract between the assessee and the cab owners. Now the question arises before us, whether there is contractual relationship between the assessee and the persons to whom the assessee had made the payments in the nature of hiring of vehicles. In our opinion, a contract need not be in writing; even an oral contract is good enough to invoke the provisions of Section

194C. As Hon'ble Karnataka High Court has observed in the case of Smt J Rama V s CIT (236 CTR 105), "Law does not stipulate the existence of a written contract as a condition precedent for (invoking the provisions of Section 194 C with respect to payment of TDS". The cab owners have received the payments from the assessee towards the hiring charges, therefore, the presumption normally be that one would proceed on the basis that there was a contract for hiring of vehicles. Therefore, if the assessee has made the payment for hiring the vehicles, the provisions of section 194C are clearly applicable. The contract has to be looked into party-wise not on the basis of the individual. In our opinion, all the payments made to a cab owner throughout the year are to be aggregated to ascertain the applicability of the TDS provision as all the payments pertain to a contract. Contract need not be in writing. It may infer from the conduct of the parties. It may be oral also. We also noted that under section 194C, sub-section (5) proviso thereto, the aggregate amount of all the payments or credited to a person during a financial year should exceed only Rs.75,000, then the assessee shall be liable to deduct income-tax at source. The A.O. has to verify the aggregate payment made to each party in the light of section 194C(5) of the Act and decide afresh.

6.2 The ld. A.R. has also taken a submission that the 2<sup>nd</sup> proviso to section 40(a) (ia) as inserted by Finance Act, 2012 would apply in the case of the assessee. According to him, 2<sup>nd</sup> proviso is curative in nature intended to supply an obvious omission, take care of a n unintended consequence and make the section workable. Section 40(a)(ia) without the second proviso resulted in the unintended consequence of disallowance of legitimate business expenditure even in a case where the payee in receipt of the income had paid tax, and, therefore, he took the plea that the second proviso although inserted

w.e.f. 1st April, 2013 but being curative in nature has retrospective effect and accordingly contended that the issue be restored to the file of the Assessing Officer so that the assessee can provide all the details in terms of the second proviso to section 40(a)(ia)".

6.3 We find from first argument made by Ld. counsel for the assessee that the second proviso to section 40(a)(ia) of the Act inserted by the Finance Act, 2012 would apply in the instant case. According to him, the second proviso is curative in nature intended to supply an obvious omission, take care of an unintended consequence and make the section workable. Section 40(a)(ia) without the second proviso resulted in the unintended consequence of disallowance of legitimate business expenditure even in a case where the payee in receipt of the income had paid tax. According to him, it has for long been the legal position that if the payee has paid tax on his income, no recovery of any tax can be made from the person who had failed to deduct the income tax at source from such amount. In *Grindlays Bank v CIT*, (1992) 193 ITR 457 (Cal) decided on September 5, 1989, it was held by the Hon'ble Calcutta High Court as follows at pages 469-470 of the reports: "A point has been made by the assessee that as a result of this deduction the department is realizing the tax twice on the same income. It does not appear that this point was agitated before the Tribunal. We, however, make it clear that if the amount of tax has already been realised from the employees concerned directly, there cannot be any question of further realisation of tax as the same income cannot be taxed twice. If the tax has been realised once, it cannot be realised once again, but that does not mean that the assessee will not be liable for payment of interest or any other legal consequence for their failure to deduct or to pay tax in accordance with law to the revenue." (emphasis supplied) That such was the legal position was accepted

by the Central Board of Direct Taxes in its Circular No.275/201/95-IT(B) dated January 29, 1997. Reference in this behalf may also be made to the judgment of the Hon'ble Supreme Court in Hindustan Coca Cola Beverage P. Ltd. v CIT, (2007) 293 ITR 226 (SC) where the same view was taken. We find that the aforesaid settled position in law has also been legislatively recognized by insertion of a proviso in sub-section (1) of section 201 of the Act by the Finance Act, 2012. Thus, the settled position in law is that if the deductee/payee has paid the tax, no recovery can be made from the person responsible for paying of income from which he failed to deduct tax at source. In a case where the deductee/payee has paid the tax on such income, the person responsible for paying the income is no longer required to deduct or deposit any tax at source. In the similar circumstances, we find that the first proviso to section 40(a)(ia) inserted by the Finance Act, 2010, which has been held to be curative and therefore, retrospective in its operation by the Hon'ble Calcutta High Court in ITAT No. 302 of 2011, GA 3200/2011, CIT v Virgin Creations decided on November 23, 2011 provides for allowance of the expenditure in any subsequent year in which tax has been deducted and deposited. The intention of the legislature clearly is not to disallow legitimate business expenditure. The allowance of such expenditure is sought to be made subject to deduction and payment of tax at source. However, in a case where the deductee/payee has paid tax and as such the person responsible for paying is no longer required to deduct or pay any tax, legitimate business expenditure would stand disallowed since the situation contemplated by the first proviso viz. deduction and payment of tax in a subsequent year would never come about. Such unintended consequence has been sought to be taken care of by the second proviso inserted in section 40(a)(ia) by the Finance Act, 2012. There can be no doubt that the second proviso was inserted to supply an obvious omission and make the section

workable. The insertion of second proviso was explained by Memorandum Explaining The provision in Finance Bill, 2012, reported in 342 ITR (Statutes)234 at 260 & 261, which reads as under:-

**“E.RATIONALIZATION OF TAX DEDUCTION AT SOURCE (TDS) AND TAX COLLECTION AT SOURCE (TCS) PROVISIONS**

**I. Deemed date of payment of tax by the resident payee.**

Under the existing provisions of Chapter XVII-B of the Income-tax Act, a person is required to deduct tax on certain specified payments at the specified rates if the payment exceeds specified threshold. In case of non-deduction of tax in accordance with the provisions of this Chapter, he is deemed to be an assessee in default under section 201(1) in respect of the amount of such non-deduction. However, section 191 of the Act provides that a person shall be deemed to be assessee in default in respect of non/short deduction of tax only in cases where the payee has also failed to pay the tax directly. Therefore, the deductor cannot be treated as assessee in default in respect of non/short deduction of tax if the payee has discharged his tax liability.

The payer is liable to pay interest under section 201(1A) on the amount of non/short deduction of tax from the date on which such tax was deductible to the date on which the payee has discharged his tax liability directly.

As there is no one-to-one correlation between the tax to be deducted by the payer and the tax paid by the payee, there is lack of clarity as to when it can be said that payer has paid the taxes directly. Also, there is no clarity on the issue of the cut-off date, i.e., the date on which it can be said that the payee has discharged his tax liability.

In order to provide clarity regarding discharge of tax liability by the resident payee on payment of any sum received by him without deduction of tax, it proposed to amend section 201 to provide that the payer who fails to deduct the whole or any part of the tax on the payment made to a resident payee shall not be deemed to be an assessee in default in respect of such tax if such resident payee-

- (i) Has furnished his return of income under section 139;
- (ii) Has taken into account such sum for computing income in such return of income ; and
- (iii) Has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The date of payment of taxes by the resident payee shall be deemed to be the date on which return has been furnished by the payer.

It is also proposed to provide that where the payer fails to deduct the whole or any part of the tax on the payment made to a resident and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the such resident, the interest under section 201(1A)(i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident payee.

Amendments on similar lines are also proposed to be made in the provisions of section 206C relating to TCS for clarifying the deemed date of discharge of tax liability by the buyer or licensee or lessee.

These amendments will take effect from 1st July, 2012.

## II. Disallowance of business expenditure on account of non-deduction of tax on payment to resident payee.

A related issue to the above is the disallowance under section 40(a)(ia) of certain business expenditure like interest, commission, brokerage, professional fee, etc. due to non-deduction of tax. It has been provided that in case the tax is deducted in subsequent previous year, the expenditure shall be allowed in that subsequent previous year of deduction.

In order to rationalize the provisions of disallowance on account of non-deduction of tax from the payments made to a resident payee, it is proposed to amend section 40(a)(ia) to provide that where an assessee makes payment of the nature specified in the said section to a resident payee without deduction of tax and is not deemed to be an assessee in default under section 201(1) on account of payment of taxes by the

payee, the, for the purpose of allowing deduction of such sum, it shall be deemed that the assessee had deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee.

These beneficial provisions are proposed to be applicable only in the case of resident payee.

These amendments will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-14 and subsequent assessment years.”

6.4 We restore this issue to the file of the Assessing officer with the direction that the assessee shall provide all the details to the Assessing Officer with regard to the recipients of the income and taxes paid by them. The Assessing Officer shall carry out necessary verification in respect of the payments and taxes of such income and also filing the return by the recipient. In case, the Assessing Officer finds that the recipient has duly paid the taxes on the income, the addition made by the Assessing Officer shall stand deleted. Thus this ground is allowed for statistical purposes.

7. With regard to disallowance of reimbursement of petrol & diesel charges on hired vehicles, the Ld. A.R. submitted that assessee shown these expenses as reimbursement of petrol and diesel expenses on hired vehicles, which does not have any element of profit and paid directly to the petrol bunks and not to the cab owners. This cannot be subject to TDS and there is no applicability of section 40(a)(ia) of the Act.

8. The learned Departmental Representative, on the other hand, submitted that the assessee has argued that he had not entered into any contract with the cab owners for the vehicles and drivers provided by them and the individual payments made to them were not regular or routine and as such the provisions of section 194C

were not attracted. This argument of the assessee is without any merit, as this is not a case where the payments are being made once in a blue moon to a particular cab owner. Further, the assessee has not brought on record anything to show that the payments were not more than the prescribed limit of Rs.30,000 at any instance or Rs.75,000 during the financial year. It is an undisputed fact that the assessee is engaged in the business of vehicle hire and takes vehicles along with drivers on hire from various persons and pays vehicle hire charges and petrol and diesel expenses to such cab owners. When the Assessing Officer has confronted the assessee on the issue of tax deduction at source, the assessee has relied on the provisions of section 194C(6) of the Act and argued that he was not liable to deduct tax at source on the payments as he had obtained PAN of the persons from whom vehicle was taken on hire and these persons were regular income tax payers. Thus, the fact of existence of a contract with the cab owners was not denied by the assessee but he argued that the provisions of section 194C(6) of the Act are applicable to his case. The learned DR further submitted that the Assessing Officer has not accepted the above argument of the assessee as provisions of section 194C(6) of the Act do not apply to the business of plying passenger vehicles. The learned DR submitted that the claim of the assessee that petrol and diesel expenses were in nature of reimbursement is also not acceptable for the reason that the provisions of TDS get attracted even in the case of reimbursement. The assessee has taken vehicle on hire along with the drivers and the payment made to the cab owners includes that for petrol and diesel. This is not the claim of the assessee that expenses of petrol and diesel are to be borne by him and he is just making payment to the cab owners for filling petrol / diesel in their vehicles. Besides the above argument, the learned DR also relied on the orders of the Income tax Authorities.

9. After considering the rival submissions and perusing the relevant material on record, it is observed that as agreed by and between the assessee and the cab owners, a vehicle was to be provided by the assessee to the parties and thus, the assessee was to bear the vehicle expenses actually incurred by the said cab owners and which will be reimbursed by the parties concerned. If bills for such expenses incurred by the said cab owners were separately raised by them on the assessee in addition to bills for hire charges and since the amount of bills so raised was towards the actual expenses incurred by them, there was no element of any profit involved in the said bills. It was thus a clear case of reimbursement of actual expenses incurred by the assessee and the same, therefore, was not of the nature of payment covered by section 194C of the Act requiring the assessee to deduct tax at source therefrom, where bills were raised separately by the cab owners for reimbursement of actual expenses incurred by them. As such, considering all the facts of the case, we are of the view that the provisions of section 194C of the Act were not applicable to the reimbursement of actual expenses and the assessee was not liable to deduct tax at source from such reimbursement. Accordingly, we direct the A.O. to verify the claim of the assessee in the light of our above observation.

10. Further, the same view was taken up by coordinate bench in ITA No.785/Bang/2018 dated 24.2.2020 in the case of Sri Singonahalli Chikkarevanna Gangadharaiiah Vs. ACIT , Bengaluru by Bangalore bench.

11. In the result, assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 25<sup>th</sup> Nov, 2020.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 25<sup>th</sup> Nov, 2020.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.