आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ " ए " , चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नापूर्णा गुप्ता, लेखा सदस्य

BEFORE: Sh. SANJAY GARG, Judicial Member & SMT. ANNAPURNA GUPTA, Accountant Member

आयकर अपील सं./ ITA NO. 435/CHD/2013

निर्धारण वर्ष / Assessment Year : 2007-08

Bal Krishan Sood Prop. New SewaK Transport Co. Patiala Bye Pass Road, Rajpura	बनाम	The ITO Rajpura
स्थायी लेखा सं./PAN NO: AKRPS1868H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Smt. C. Chandrakanta, CIT(DR)

सुनवाई की तारीख/Date of Hearing : 06/03/2020

उदघोषणा की तारीख/Date of Pronouncement : 14.08.2020

आदेश/Order

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The above appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals), Patiala [(in short referred to as 'CIT(A)'] dt. 26/02/2013 relating to assessment year 2007-08, passed under section 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

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

> *1. The learned CIT(A) has erred on facts and law in upholding the assessment at an amount of Rs. 3,43,87,183/- against the returned income of Rs. 2,82,565/-*
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> *2. That the ld. CIT(A) has erred on facts and law in upholding the addition of Rs. 3,38,34,918/- on account of disallowance of business expenditure u/s 40(a)(ia) of the Act 1961 on account of no deduction of TDS on freight.*
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> *3. That learned CIT(A) has erred on facts and in law in upholding the addition of Rs. 1,06,500/- on account of disallowance of business expenditure u/s 40(a)(ia) of the Act 1961 on account of non deduction of TDS on freight.*
>
> *4. That the learned CIT(A) has erred on facts and law in upholding the addition of Rs. 1,59,200/- on account of disallowance of depreciation on truck.*

Further additional grounds of appeal were raised during the course of hearing before us as under :

Additional Grounds:

1. That, in law and on the facts of the case, the impugned assessment order, is barred by limitation in terms of provisions of section 142(2A), 142(2C) read with section 153(1) of IT Act 1961.

2. That, the Commissioner of Income Tax (Appeals)-Patiala, erred in law and on the facts of the case, by holding that there was no irregularity in referring the matter to Special Audit proceedings under Section 142(2 A) of the Act.

3. The initiation of special audit was bad in law, as no opportunity was given to the assessee by the Assessing Officer before appointment of special auditor and consequently the order is bad in law and the assessments barred by limitation.

4. The impugned order issued under section 142 (2A) being bereft of legal requirements, is bad in law and liable to be quashed.

5. That, in law and facts of the case, impugned additions made, based on so called special audit report are liable to be deleted, as no report in prescribed form 6B was received by AO in terms of provisions of section 142(2A) of IT Act 1961.

Vis a vis the additional ground raised Ld. Counsel for the Assessee contended that they were all legal grounds, challenging the validity of the assessment order on the ground being barred by limitation, having been passed in the extended time period on account of reference made by the AO to special audit u/s 142(2A) of the Act , which reference has been challenged as being not in accordance with law. Ld.Counsel for the assessee contended that the aforesaid additional grounds had been dealt with by the Ld. CIT(A) but had been inadvertently not raised originally in the appeal filed before us. It was therefore requested that the grounds be admitted for adjudication.

3. The Ld. DR objected to the ground raised challenging the reference made by the AO for special audit u/s 142(2A) of the Act stating that the order making the reference was not appealable before the ITAT as per section 253 of the Act. That the assessee could have challenged the order in a writ.

The Revenue has placed heavy reliance on the judgement of the Hon'ble apex court in the case of Sahara India (Firm) vs Commissioner of Income Tax & Anr.(2008) 216 CTR 303 in support of its aforesaid contention that challenge to an order u/s 142(2A) of the Act cannot be made before the Tribunal.

Ld. Counsel for the assessee countered by pointing out that the ITAT in several cases had entertained this ground and placed reliance on the following case laws :

Sunder Mal Sat Pal vs DCIT 65 ITR Trib 28

ITO vs Vilsons Particle Board Industries Ltd. 55 ITR Trib 114

4. We have heard both the parties. We are not in agreement with the contention of the Revenue that the ITAT cannot adjudicate on the validity of the order passed u/s 142(2A) of the Act making reference for special audit.

The assessee has challenged the order making reference u/s 142(2A) of the Act, for the purpose of pleading that the assessment order is invalid being barred by limitation having been passed in the extended time period allowed as per law in such circumstances, as per section 153 of the Act,The primary contention of the assessee therefore, while challenging the validity of the reference made for special audit, is regarding the validity of the assessment order .For adjudicating the validity of the assessment order ,in our considered opinion ,all aspects integral to the process of completing the assessment and material for determining the limitation are capable of being challenged. Undoubtedly Special audit is an investigative proceeding for assessment purposes,and referred to where it is found that the accounts are complex and the assistance of specialized persons would enable unraveling the complexity so as to assist in determining the true and correct income chargeable to tax. A reference to special audit also grants extended time for completion of assessment as per section 153 of the Act. Therefore whether or not the reference was as per law is crucial for determining the time period

within which the assessment was to be completed. In view of the same,since special audit is integral to the process of assessment whose validity has been challenged before us, we have no hesitation in holding that the order making reference for special audit u/s 142(2A) of the Act is also appealable before us.

The reliance placed by the Revenue on the decision of the Hon'ble apex court in the case of Sahara India Firm (supra) we find has been considered by the Hon'ble Delhi high court while dealing with an identical issue and found to be misplaced, in the case of Consulting Engineering Services (India) Private Limited Vs Income Tax Appellate Tribunal & Anr in W.P © 7734/2017 dated 01-09-17.The said petition of the assessee before the Hon'ble High Court was against an interim order of the ITAT refusing to admit the ground challenging reference made u/s 142(2A) of the Act relying on the judgement of the Hon'ble apex court in the case of Sahara India (Firm) (supra), understanding it to be holding that challenge to such reference cannot be raised before ITAT while examining whether assessment order was barred by limitation. The Hon'ble Delhi High Court held that the observations of the Hon'ble Supreme court were in the peculiar facts of the case before it and not a general observation. The relevant portion of the order of the Hon'ble High Court is as under:

> *4.The Petitioner challenges an interim order dated 8th August, 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in Petitioner's appeal being ITA No.1443/Del/2014 for the Assessment Year ('AY') 2008 – 2009. By the said impugned order, the ITAT has declined to permit the Petitioner to raise additional ground '22' which reads as under:*
>
> > *"22. That the assessment order passed on 25.06.2012 is illegal, bad in law, without jurisdiction & barred by time limitation as the reference & order under section 142(2A) of the Act is illegal and bad in law. "*
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> *5. According to the ITAT in view of the decision in Sahara India (Firm) v CIT (2008) 169 Taxmann 328 (SC), it was impermissible to permit the ITAT to examine the validity of order passed under Section 142(2A) of the Income Tax Act, 1961 ('the Act') in order to hold that the assessment has been barred by limitation. In other words, the said decision of the*

Supreme Court was understood by the ITAT as holding that the challenge to the order under Section 142(2A) of the Act cannot be raised before the ITAT while examining whether the assessment order has been barred by limitation.

6. The Court finds that the ITAT itself has been taking a different position in many other cases, the orders in which have been enclosed with the present petition. For instance, in its order dated 9th December, 2015 passed in ITA No. 2256/Del/2005 (PHI Seeds Ltd. New Delhi v. Dy. Commissioner of Income Tax, Circle 14(1), New Delhi), the ITAT after noticing the aforementioned decision of the Supreme Court in Sahara India (Firm) v CIT (supra) held:

> *"7.4. In the present proceedings what we are examining, is whether the extended period of limitation as provided under Explanation I (iii) of Section 153 is available to the Assessing Officer for completion of assessment u/s 143(3), or not. The assessee contends that the order u/s 142(2C), extending the period granted for completion and submission of audit report is made without an application being made for extension by the assessee and for any good and sufficient reason, and hence the extension is bad in law and hence the AO would not get the benefit of the extended period of time to specified in Explanation I(iii) of Section 153 of the Act. In our view, the Tribunal has jurisdiction to adjudicate the issue as to whether an order of assessment 143(3), is passed within the period of limitation prescribed under the Act or not. For coming to such a conclusion, in our view the Tribunal can examine whether the order passed u/s 142(2A) or u/s 142(2C) is in accordance with law or not. The order passed u/s 142(2A) or u/s 142(2C) cannot be appealed separately. But when an assessment order is challenged, then the different aspects which are integral to the process and ultimate completion of amount can be challenged in Appeal. For example a notice u/s 148 or reasons recorded by the A.0 prior to re-opening of assessment cannot be challenged separately. But an assessment order can be challenged in an Appeal before the Ld. CIT(A) or the ITAT on the ground that the re-opening itself is bad in law, as the notice is illegal or not served or that there is no material based on which reasons were recorded etc. Every facet of an assessment can be challenged in appeal to deny once liability to be charged to tax or to challenge the quantum of tax demanded. In the case of hand, the legality of the orders passed u/s 142(2A) or u/s 142(2C) can be challenged to demonstrate that the order of assessment has been passed beyond the period of limitation. Thus, we reject this contention of the Ld. CIT. DR."*

7. A similar view was taken by the ITAT in Unitech Ltd. v. Additional Commissioner of Income-tax, Range- [2016] 74 taxmann.com 121 (DelhiTrib.). The order of the ITAT on the same lines was upheld by this Court in Principal Commissioner of Income-tax v. Nilkanth Concast (P.) Ltd. [2016] 70 taxmann.com 157 (Del).

8. The Court notices that the observation in Sahara India (Firm) v CIT (supra) was in the peculiar facts of that case and was not meant to be a general observation applicable across the board for all cases. This is apparent from the observations in the following paras:

> *"24. The upshot of the entire discussion is that the exercise of power under Section 142 (2A) of the Act leads to serious civil consequences and, therefore, even in the absence of express provision for affording an opportunity of pre-decisional hearing to an assessee and in the absence of any express provision in Section 142 (2A) barring the giving of reasonable opportunity to an assessee, the requirement of observance of principles of natural justice is to be read into the said provision. Accordingly, we reiterate the view expressed in Rajesh Kumar's case (supra).*
> *.....*
>
> *29. There is no denying the fact that the law on the subject was in a flux in the sense that till the judgment in Rajesh Kumar (supra) was rendered, there was divergence of opinion amongst various High Courts. Additionally, even after the said judgment, another two-Judge Bench of this Court had expressed reservation about its correctness. Having regard to all these peculiar circumstances and the fact that on 14th December, 2006, this Court had declined to stay the assessment proceedings, we are of the opinion that this Court should be loathe to quash the impugned orders. Accordingly, we hold that the law on the subject, clarified by us, will apply prospectively and it will not be open to the appellants to urge before the Appellate Authority that the extended period of limitation under Explanation 1 (iii) to Section 153 (3) of the Act was not available to the Assessing Officer because of an invalid order under Section 142 (2A) of the Act. However, it will be open to the appellants to question before the appellate authority, if so advised, the correctness of the material gathered on the basis of the audit report submitted under sub-section 2A of Section 142 of the Act."*

9. In the considered view of the Court, the ITAT ought to have permitted the Petitioner to raise the aforementioned additional ground and ought to have decided the said additional ground on its merits in accordance with law.

In view of the same we dismiss the objection of the Revenue and admit the grounds raised by the assessee challenging the reference made by the AO to special audit u/s 142(2A) of the Act.

5. We shall first deal with the additional grounds raised, since they are legal grounds challenging the reference made to special audit and in turn therefore validity of the assessment order as being barred by limitation having been passed in the extended time period as a consequence of the reference .

6. The facts relating to the case are that the assessee is a transporter and during the assessment proceedings the A.O. noticed that while the assessee had shown receipt on account of freight amounting to Rs. 4,05,93,864/- he had correspondingly shown freight expenses of Rs. 4,01,69,450/-. On perusal of the freight account the A.O. noticed that most of the entries of freight paid ranged from Rs. 23,800/- to Rs. 49,800/- and the payment against these expenses were made in parts in cash of amounts less than or equal to Rs. 20,000/- each. It was further noticed that these amounts had been credited to account with different truck number and most of the trucks had been hired only once. The A.O. noticed that the assessee had not deducted any tax at source on these payments. When confronted with the same the assessee contended that it had made payment of freight to sub contractors who did not own more than two goods carriage at any time during the year and who had furnished the prescribed declaration to this effect in form no. 15-I to the assessee and as per the proviso to section 194C(3)(i) to the Act, accordingly the assessee was not required to deduct tax at source on these payments of freight. The assessee contended that it had made payments to 599 trucks during the year taken on hire. On perusal of Form No. 15-I submitted by the assessee the A.O. noticed several discrepancies in the same finding them unsigned or signature put on some of them in the father's name. Further the A.O. noticed that the vouchers which were produced as proof of making payment to the truck owners bore signature of some other

persons, that no name was mentioned and no other particulars were given. He further noticed that payments had been made in parts in cash and every time the payments was made to a different persons. He noticed that there was no record of who actually received the payments from the assessee. The A.O. noticed that all the three documents relating to expenditure of freight i.e; GRs, vouchers and Form 15-I had different particulars mentioned on each whether they related to the truck number or the truck driver. He therefore found that verification was required to examine the veracity of innumerable vouchers and supporting documents ,which formed web of complex transactions and accordingly referred the case for special audit under section 142(2A) of the Act after obtaining approval of the Commissioner of Income Tax. The special auditor thereafter submitted his report on 10/05/2010 and subsequently assessment order was passed on 09/07/2010 making disallowance of freight expenses of Rs. 3,38,34,918/- +1,06,500/- on account of non deduction of tax at source u/s 40(a)(ia) of the Act. The assessment year involved in the impugned case A.Y. 2007-08.

7. Before us, the solitary contention raised by Ld. Counsel for the assessee against the reference made for special audit by the A.O. was that since there was no complexity in the accounts pointed out by the A.O., which was a necessary prerequisite for making the reference, the reference was bad in law. Ld. Counsel contended that as per the AO the special audit had been referred only for checking the veracity of the documents pertaining to freight and not on account of the accounts being complex. He therefore contended that the only purpose for making the reference was for seeking extension of time for passing the assessment order which was liable to be extend by a period of six months if the period remaining on completion of special audit was less than six months, as per the provisions of section 153 of the Act. He therefore contended that the assessment order passed in the extended time limit was bad and needed to be quashed. In this regard Ld. Counsel for the Assessee relied on the following case law:

Sunder Mal Satpal vs DCIT 65 ITR Trib 28

Hind Samachar Ltd.vs ACIT 78 CCH 626

8 On the other hand the Ld. DR contended that the reference was not bad in law since the accounts of the assessee were complex considering the number of truck owners to whom freight payment had been made and the fact that payment were made to them in cash in parts and the vouchers did not even bear signatures of the actual truck owner and therefore it was not clear as to how the assessee controlled the payment to the large numbers of truck owners.Ld. DR drew our attention to the findings of the Ld. CIT(A) in this regard rejecting the submissions made before him, at para 3.2 of his order as under:

> *3.2 The appellant during the course of appellate proceeding request for submission of an additional ground as under :-*
>
> *'That the ld. A.O. was not justified in referring the matter to the Special Auditors u/s 142(2A) on the ground of examining veracity of innumerable vouchers and supporting documents which formed web of complex transactions whereas as per the assessee there is no complexity in the books of accounts and the reference was made just to extend the jurisdiction which is illegal and unsustainable in the eyes of law."*
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> *I have considered the submission. The A.O. has duly noted the various discrepancies on page 2 and 3 of the assessment order. It can't, therefore, be said that there was no complexity in the accounts of the appellant. I don't find, therefore, any irregularity in referring the matter for Special Audit. The additional ground, therefore, can't be accepted.*

9. Ld DR also drew our attention to the findings of the AO at para 3.1 & 3.2 of the order while recording his satisfaction regarding the complexity of accounts for making reference to special audit:

> *"3.1 It was observed from the perusal of copies of Form 15 I as submitted by the assessee that some forms are unsigned, signature put on some forms are in father's name(as is written in the column of Father's name) and no date is mentioned in most of the forms. These appeared to be prepared by the assessee himself just for avoiding the TDS liability. Moreover, vouchers produced as proof of making payment to these truck owners bear signatures of any other person. Only name has been mentioned and complete particulars have not been given. Even the payments have been made in parts in cash and every time the payment is shown to*

have been made to a different person. No authority letter has been taken from the owner of the truck. No record of who actually received the payment has been maintained by assessee. Further, copies of booking receipts have different names of drivers.

Summing up, all three documents relating to the expenditure on freight i.e. GRs, vouchers & Form 15Ihave different particulars mentioned on each. Whether these forms are actually signed by the truck owners or the drivers was not clear.

3.2 In view of the above, verifications were required to be made to examine veracity of innumerable vouchers and supporting documents which formed web of complex transactions. This case was, therefore, referred for special audit under section 142(2A) of the Income Tax Act, 1961 to M/s Kansal Singla & Associates, Sector 17, Chandigarh vide letter No. ITO/Ward/Rajpura/2009-10/142(2A)/36J3-24-12-2009after obtaining approval of the worthy Commissioner of Income Tax, Patiala."

10. We have heard the rival contentions and carefully gone through the orders of the authorities below and also the case laws referred to before us.

The reference for special audit in the present case has been challenged on account of the absence of any complexity in the accounts pointed out by the AO,which is a prerequisite for making such reference as per section 142(2A) of the Act.

11. On going through the order of the AO we find that the reference for special audit was made by the AO in the context of the freight expenses claimed by the assessee on which no TDS had been deducted.The AO ,at para 3.1 of his order has detailed the discrepancies noted by him on examining the assesses documents relating to the said expenses ,i.e the GR's, the vouchers of payments made to truck owners and Form 15 I submitted by the truck owners for purposes of assessee claiming exemption from tax deduction at source on the freight payment, which led to him being satisfied that the accounts were compex and required special audit. We find that the AO has noted that there were 599 trucks in relation to which freight payments were made and all the documents pertaining to it had different

particulars noted therein .That while some form 15 I were unsigned or signed by father of the truck owners, the vouchers making payment were signed by different persons whose only detail mentioned was name and nothing else. That even the payments were not made in one go but in parts and each time to a different person. That no record of who actually received the payment was maintained.

12. On considering the above facts, which have not been controverted by the Ld. Counsel for the assessee , we do not find any infirmity in the order of the Ld.CIT(A) dismissing the assesses contention that there was no complexity in the accounts of the assessee and thus upholding the reference for special audit. Considering the volume of transactions involved ,the details of which, in the documents pertaining to them, were not reconcilable on account of different particulars mentioned therein ,some being signed by truck owners ,others by third parties , and payments being made in parts in cash that too to different parties ,the documents and accounts drawn therefrom were definitely not capable of presenting a clear picture of each transaction .On the contrary ,we agree with the Ld.CIT(A) that the different details mentioned in the documents pertaining to each transaction made it very complex requiring deeper verification of each transaction. We therefore do not find any infirmity in the order of the Ld.CIT(A) upholding the reference made for special audit. The reliance placed by the Ld. Counsel for the assessee on various case laws is of no assistance having been rendered on the facts of each case since whether accounts are complex or not involves a question of fact.

13. Having upheld the reference to special audit as above, the challenge by the assessee to the validity of the assessment order as being barred by limitation on account of the extended time taken by the A.O. for passing the assessment order in view of the reference made to special audit, being contested on the ground of invalid reference made,is also dismissed.

Therefore all the additional grounds raised by the assessee, number 1 to 5 are dismissed.

14. Now taking up the main ground raised by the assessee in Ground No. 1 to 3 the solitary grievance of the assessee in the above ground is against the disallowance of freight expenses for not deduction of tax at source as per the provisions of section 40(a)(ia) of the Act.

15. Briefly stated the assessee had claimed that it had not deducted tax at source on the freight payment since it had sub contracted its work of transportation to small truck owners who did not employ more than two trucks at any time during the year and the third proviso to Section 194 C of the Act did not require tax deduction at source in such cases on submission of Form 15I by the sub-contractors to the assessee. The A.O. had noted several discrepancies in these documents and also the GRs and vouchers relating to the freight expenses and accordingly had referred the audit of the accounts of the assessee to a special auditor under section 142(2A) of the Act who had reported enormous discrepancies in the claim of the assessee. The A.O. accordingly held that the assessee was not entitled to any exemption for deduction of tax at source on the freight payment made as claimed by it on account of the third proviso of section 194 C(iii) and accordingly held that since no TDS had been deducted by the assessee, the expenses on account of freight amounting to Rs. 3,38,34,918/- +1,06,500/- was liable to be disallowed under section 40(a)(ia) of the Act.

16. The solitary contention raised by the Ld. Counsel for the Assessee before us was that even if the assessee's claim of not being liable to deduct tax at source on the impugned freight payment under third proviso to section 194C(iii) was not acceptable, the assessee in any case was not liable to deduct tax at source even as per the main Section 194C(1) of the Act also. The Ld. Counsel for the assessee contended that section 194C(1) mandated tax deducted at source on work contracts entered into with other parties. Ld. Counsel contended that in the present case there was no oral or written

contract of the assessee with the truck owners and every GR was a separate contract and since no single payment exceeded the prescribed limit of Section 194C, the assessee was not liable to deduct tax at source. In this regard the Ld. Counsel for the assessee relied on the judgment of the jurisdictional High Court in the case of CIT vs United Rice Land Ltd (2008) 217 CTR 332 & CIT vs Bhagwati Steels (2011) 241 CTR 480.

17. The Ld. DR on the other hand contended that on account of the glaring discrepancies in the books of accounts of the assessee wherein it was not clear as to through whom the transporter had been undertaken by the assessee, this claim of the assessee was also not acceptable as rightly held by the Ld. CIT(A) .Our attention was drawn to the findings of the Ld. CIT(A) at para 4.2 of his order as under:

> *In this connection, the appellant has also referred to the case of CIT vs. United Rice Land Ltd. 322 ITR 594 (P&H) and contended that there was neither any oral or written agreement between the assessee and transporters and, therefore, the assessee was not liable to deduct tax u/s 194C. The appellant has also relied on the case of CIT vs. Bhagwati Steels 326 ITR 108 (P&H). I have gone through the case, it is noted that in the case under appeal the issue is different. In this case the appellant has failed to provide proper details to the A.O. and the details provided were found to be full of discrepancies, therefore, in my opinion, the case laws are not applicable in this case. The appellant has further relied on the case of Mythri Transport Corp. vs. ACIT124 LTD 40. However, the case is distinguishable as in the appellant's case, the facts are entirely different as mentioned above.*

18. We have heard the rival contentions. In the present case the assessee has initially claimed to being exempt from the requirement of tax deduction at source on the freight payments made, claiming to have made payments to small truck owners not owning more than two trucks ,as per second proviso to section 194C(3) of the Act.The AO while examining this claim had noted several discrepancies in the prescribed from no.15I submitted by the sub contractors for the purpose and in the accounts maintained by the assessee, and had therefore referred for special audit. Special auditor too had pointed out several discrepancies and therefore the AO had dismissed the claim of the assessee ,held it to be liable to deduct tax at source and having not done so disallowed freight expenses u/s 40(a)(ia) of the Act.

Before the Ld.CIT(A) the assessee denied its liability to deduct tax at source for a different reason claiming that it had not entered into any contract ,oral or written, with any sub-contractor and therefore ,was not required to deduct tax at source as per section 194C of the Act itself. He referred to decisions of the Hon'ble jurisdictional High Court in the case of United Rice Mills (supra) and Bhagwati Steels (supra) in support. The Ld. CIT(A) dismissed this contention based on the very same discrepancies which were relied upon for rejecting the assesses claim as per third proviso to section 194C of the Act.

The discrepancies noted by the special auditor, we find, were to the effect of dismissing assesses claim of having made payment to small truck owners for the purposes of claiming to be exempt from the liability of deduction tax at source as per second proviso to section 194C(3) of the Act. The Revenue at no point has doubted the veracity of the expenses incurred on freight. Having not doubted the factum of incurring freight expenses and the discrepancies only unsettling assesses claim of having made payment to small truck operators, we fail to understand how these very same discrepancies are sufficient for dislodging assesses claim of not entering into any contract of freight. There were separate GR's for every transportation sub contracted by the assessee. In fact the AO has noted that a separate truck was engaged in almost all cases of transportation, numbering 599, subcontracted. There is no finding by the Revenue of any oral or written contract with the sub-contractors for transportation. Every GR is therefore to be treated as a separate contract. And with each such contract not exceeding the prescribed limit for tax deduction at source, as finds mention in the order of the AO also, we find the assesses claim of no requirement of deduction of tax at source on the same in accordance with law as interpreted by the jurisdictional High Court in the case of United Rice Land (supra) as under:

> *"**7.** As per provisions of s. **194C** of the IT Act, any person responsible for paying any sum to any resident for carrying out any work in pursuance of a contract shall at the time of credit of such sum or at the time of*

payment thereof in cash or by cheque deduct a tax thereon at a prescribed rate. However, no such deduction at source is required to be made, if the sum paid or credited does not exceed Rs. 20,000. In the present case, the AO had held the assessee liable for deduction of tax only on the assumption that assessee was having agreement with the parties through whom trucks were arranged for transportation of goods. However, the CIT(A) has recorded a finding of fact that there was neither any oral or written agreement between the assessee and transporters for carriage of goods nor it has been proved that any sum of money regarding freight charges was paid to them in pursuance of a contract for specific period, quantity or price. This finding of fact was recorded by the CIT(A) after considering the certificate furnished by the transporters. The Tribunal has also recorded a finding of fact that the Department has not controverted the said finding of the CIT(A) even before the Tribunal. While recording this finding of fact, the Tribunal has clearly stated that nothing has been brought on record by the AO to prove that there was no (sic) written or oral agreement between the alleged parties for carriage of the goods.

In view of the above, we are not inclined to interfere in the finding of fact recorded by the Tribunal. The appeal being without merit is dismissed."

And Bhagwati Steels (supra) as under:

***"3.** On the first question, the Tribunal recorded a categorical finding of fact that there was no material on record to prove any written or oral agreement between the assessee and the recipients of goods for transportation or carriage thereof. The Tribunal had further observed that there was no material to show that the payments of freight had been made in pursuance to a contract of transportation of goods for a specific period, quantity or price. The aforesaid fact being an essential feature to test the applicability of s. **194C** of the Act as considered by Division Bench of this Court in the case of CIT vs. United Rice Land Ltd. (2008) 217 CTR (P&H) 332. A further finding of fact is that the freight payment is Rs. 1,72,723 and none of the individual payment exceeded Rs. 20,000. It was also not disputed that the payments were made on the basis of individual GRs. issued by the truck owners for each trip separately. Although aggregate of payments of two truck owners during the assessment year exceeded Rs. 20,000 which would still not lead to deduction of tax at source because there was no contract for a specific period, price or quantity for carriage of goods. The finding of the Tribunal in para 11 reads thus :*

*"11. In the instant case, evidently, there is neither any material to suggest that there is any written or oral agreement between the assessee and the impugned parties for carriage or transportation of goods and nor it is proved that the impugned sum has been paid to the parties in pursuance to a contract for specific period, quantity or price, therefore, following the parity of reasoning laid down by the Hon'ble jurisdictional High Court in the case of United Rice Land Ltd. (supra), in the instant case, it has to be held that the assessee was not liable to deduct tax at source under s. **194C** of the Act on the payment of freight charges of Rs. 1,72,723, as detailed by the AO. Though the two parties in question have transported the goods*

for the assessee on more than one occasion during the financial year, yet it was based on individual GRs. which represent individual and separate contracts. There is no single contract for carriage or transportation of goods referred to between the assessee and the impugned parties which would make the assessee liable for deduction of tax at source under s. ***194C*** *of the Act. Reliance placed by the Revenue on the proviso to s.* ***194C****(3)(i) also does not help since in this case, the assessee does not fall within the scope of sub-s. (1) of s.* ***194C*** *following the reasoning laid down by the Hon'ble High Court in the case of United Rice Land Ltd. (supra). Consequently, the disallowance of such amount cannot be justified by invoking the provisions of s. 40(a)(ia) of the Act. The order of the CIT(A) is set aside and the AO is directed to delete the impugned addition. The assessee succeeds on this ground."*

4. *In view of the above, question No. 1 would not arise for determination as the factual foundation needed for answering the question is entirely against the Revenue. The finding of facts recorded by the Tribunal, being the last Court of fact, cannot be gone into by this Court merely because after reappreciation of evidence any other view would be possible. Therefore, we find that there is no substance in the first question of law claimed by the Revenue."*

19. In view of the same we hold that the Revenue has failed to establish the case of tax deduction at source on the freight payment made in the present case and therefore the disallowance of expenses of freight made for non deduction of tax at source amounting to Rs. 3,38,34,918/- +1,06,500/- is directed to be deleted.

20. Ground no. 1 to 3 of appeal are allowed.

21. Ground No. 4 was not pressed before us and is therefore dismissed.

22. In effect the appeal of the assessee is partly allowed.

Order could not be pronounced earlier due to non-functioning of the Bench on account of curfew / lockdown in the wake of Covid-19 Pandemic.

Order pronounced on 14.08.2020 .

Sd/-	**Sd/-**
संजय गर्ग	**अन्नापूर्णा गुप्ता,**
(SANJAY GARG)	**(ANNAPURNA GUPTA)**
न्यायिक सदस्य/ Judicial Member	**लेखा सदस्य/ Accountant Member**

AG/rkk
Date: 14.08.2020

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File