

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “A” , BANGALORE**

Before Shri Chandra Poojari, AM & Smt.Beena Pillai, JM

ITA No.785/Bang/2018 : Asst.Year 2014-2015

Sri.Singonahalli Chikkarevanna Gangadharaiah, No.116/A, 1 st Floor, Gowri Arcade, 8 th Cross, 2 nd Block, 2 nd Stage, Near BDA Complex, Nagarabhavi Bengaluru – 560 072 PAN : ASXPC2633G.	Vs.	The Asst.Commissioner of Income-tax, Circle 3(2)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri. Narendra Sharma, Advocate

Respondent by : Ms.Neera Malhotra, CIT-DR

Date of Hearing : 18.02.2020	Date of Pronouncement : 24.02.2020
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ORDER

Per Chandra Poojari, AM :

This appeal filed by the assessee is directed against the order of the CIT(A), dated 16.01.2018. The relevant assessment year is 2014-2015.

2. The assessee has raised the following grounds:-

“1. The order of the authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies himself liable to be assessed on a total income of Rs.8,96,19,460/- determined by the learned assessing officer and confirmed by the learned Commissioner of Income-tax [Appeals], as against the income declared by the appellant of Rs. 28,64,560/-, on the facts and circumstances of the case of the appellant.

3. The learned Commissioner of Income-tax [Appeals] is not justified in confirming the addition made by the learned assessing officer disallowing a sum of Rs. 6,18,73,785/- by invoking the provisions of section 40 (a)(ia) of the Act for non deduction of TDS on the payments debited as vehicle hire charges, on the facts and circumstances of the case.

4. The learned Commissioner of Income-tax [Appeals] is not justified in disallowing a sum of Rs.2,42,41,856/- by invoking the provisions of section 40(a)(ia) of the Act towards the reimbursement of petrol and diesel charges to the drives. The learned authorities below failed to appreciate that the provisions of section 40(a)(ia) of the Act is not applicable to the reimbursement of expenditures and consequently the addition made by the learned assessing officer and confirmed by the learned Commissioner of Income-tax [Appeals] amounting to Rs. 2,42,84,856/- requires to be deleted, on the facts and circumstances of the case.

5. The authorities below failed to appreciate the fact that the appellant had not entered into an agreement with either with the owners of the vehicles nor with the drivers for the transportation and thus applicability of section 194C of the Act do not arise and consequently disallowance under section 40[a][ia] is not warranted under the facts and circumstances of the case.

6. Without prejudice the learned authorities below failed to appreciate that by virtue of the provisions of section 194C(3) of the Act no disallowance under section 40(a)(ia) of the Act is warranted, on the facts and circumstances of the case.

7. Without prejudice the learned authorities below failed to appreciate that the provisions of section 40(a)(ia) of the Act is applicable only in the cases where the assessee is held to be as an assessee in

default as per the provisions of section 201 [1] of the Act under Chapter - XVII B of the Act, whereas the same is absent in the instant case and consequently the disallowance under the provisions of section 40[a][ia] of the Act is not warranted under the facts and circumstances of the case.

8. Without Prejudice the learned authorities below failed to appreciate the fact that disallowance under section 40(a)(ia) is permissible only if the deduction is claimed under section 30 to 38 of the Income-tax Act, 1961 under the facts and circumstances of the case. Where the payment to the drivers and also towards the petrol and diesel expenditure incurred by the appellant partakes the payment made under section 28 of the Income-tax Act, 1961 and consequently no disallowance under section 40[a][ia] of the Act is warranted under the facts and circumstances of the case.

9. Without further prejudice though not conceding only 30% of the expenditure incurred and claimed for the alleged violation of the TDS provisions can be disallowed under section 40(a)(ia) of the Act if at all it is to be disallowed, not the entire expenditure claimed by the appellant, on the facts and circumstances of the case. The learned authorities failed to appreciate that considering the draconian provisions of section 40(a)(ia) of the Act, the legislature reduced the disallowance to 30% of the expenditure claimed in the Finance Act [No.2], 2014 w.e.f. 01/04/2015, which has to be given retrospective effect. The legislature in its wisdom has reduced the disallowance to 30% instead of 100% of the expenditure claimed considering the hardship caused to the assessee and thus, the intent of the legislature has to be given retrospective effect, on the facts and circumstances of the case.

10. The learned Commissioner of Income-tax [Appeals] is not justified in not adjudicating the ground

on the issue of addition made by the learned assessing officer amounting to Rs. 5,22,346/- which was incurred by the appellant for the deficiency of service, on the facts and circumstances of the case.

11. The Appellant denies himself liable to be charged to interest under section 234B & 234D of the Income-Tax Act, 1961, on the facts and circumstances of the case.

12. The Appellant craves leave of this Hon'ble Tribunal, to add, alter, modify, delete or substitute any of the grounds urged above.

13. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

2. At the time of hearing before us, it was fairly conceded by the learned Counsel for the assessee that ground No.1, 2, 11, 12 and 13 are general in nature and does not require any adjudication. Accordingly, these grounds are dismissed being general.

3. Ground No.3 is with regard to disallowance of Rs.6,18,73,785 by invoking the provisions of section 40(a)(ia) of the I.T.Act. Since ground Nos.5, 6, 7, 8 and 9 are inter-related to ground No.3, they are clubbed together for adjudication.

4. Briefly stated the facts of these grounds are that during the course of assessment proceedings, the Assessing Officer noticed from the profit and loss account of the assessee that the assessee has debited a sum of Rs.6,18,73,785 for vehicle

hire charges paid and Rs.2,48,39,356 for petrol and diesel expenses paid. The assessee was asked to produce details of TDS on expenses, however, the assessee was failed to do so. Subsequently, the assessee submitted PAN card from cab drivers and owners for whom hire charges were paid and that the cab drivers and owners were all regular income-tax payers and hence as per section 194C no TDS was made where PAN was provided. According to the A.O. section 194C will only apply to a contractor during the course of business of plying, hiring or leasing goods carriages and not to a contractor engaged in the business of plying passenger vehicle. Accordingly, A.O. held the assessee liable to deduct TDS and disallowed a sum of Rs.6,18,73,785 for vehicle hire charges, u/s 40(a)(ia) of the Act.

5. On appeal, the CIT(A) confirmed the disallowance made by the Assessing Officer. Hence, the assessee is in appeal before us. Before us the contention of the learned AR is that the assessee has not entered into any contract with 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.

6. As regards ground Nos.5, 6, 7, 8 and 9, the learned AR submitted that the authorities below failed to appreciate the fact that the assessee had not entered into an agreement with either with the owners of the vehicles nor with the drivers for the transportation and thus, applicability of section 194C of

the Act do not arise and consequently disallowance u/s 40(a)(ia) is not warranted. The learned AR further submitted that without prejudice the authorities below failed to appreciate that by virtue of the provisions of section 194C(3) of the Act, no disallowance u/s 40(a)(ia) of the Act is warranted. It was also submitted that without prejudice the authorities below failed to appreciate that the provisions of section 40(a)(ia) of the Act is applicable only in the cases where the assessee is held to be as an assessee in default as per the provisions of section 201 [1] of the Act under Chapter - XVII B of the Act, whereas the same is absent in the instant case and consequently the disallowance under the provisions of section 40[a][ia] of the Act is not warranted. It was also contended by the learned AR that the authorities below failed to appreciate the fact that disallowance under section 40(a)(ia) is permissible only if the deduction is claimed under section 30 to 38 of the Income-tax Act, 1961 under the facts and circumstances of the case. Where the payment to the drivers and also towards the petrol and diesel expenditure incurred by the appellant partakes the payment made under section 28 of the Income-tax Act, 1961 and consequently no disallowance under section 40[a][ia] of the Act is warranted. Further, though not conceding only 30% of the expenditure incurred and claimed for the alleged violation of the TDS provisions can be disallowed under section 40(a)(ia) of the Act if at all it is to be disallowed, not the entire expenditure claimed by the assessee. The authorities failed to appreciate that considering the draconian provisions of section 40(a)(ia) of the Act, the legislature reduced the disallowance to

30% of the expenditure claimed in the Finance Act [No.2], 2014 w.e.f. 01/04/2015, which has to be given retrospective effect. The legislature in its wisdom has reduced the disallowance to 30% instead of 100% of the expenditure claimed considering the hardship caused to the assessee and thus, the intent of the legislature has to be given retrospective effect.

7. The learned Departmental Representative, on the other hand, relied on the orders of the Income-tax Authorities.

8. 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 18[seventyfive] 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.”]

8.1 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 should exceed only Rs.75,000, then the assessee shall be liable to deduct income-tax at source.

8.2 But before us, the ld. A.R. has taken a submission that the 2nd proviso to section 40(a) (ia) as inserted by Finance Act, 2012 would apply in the case of the assessee. According to him, 2nd 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, 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)".

8.3 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.”

8.4 No contrary decision was brought to our knowledge by the ld. D.R. By respectfully following the said decision, 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 tax es paid by them. The Assessing Officer shall carry out necessary verification in respect of the payments and taxes of such income and al so 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.

8.5 Further, having said so, we will be failing in our duty if we do not discuss the amendment brought in by the Finance (No.2) Act, 2014 with effect from 01.04.2015 by virtue of which proviso to section 40(a)(ia) has been inserted, which provides that if any such sum taxed has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such shall be allowed as a deduction in computing the income of previous year, such sum shall be allowed as a deduction in computing the income of previous year, and further, section 40(a)(ia) has been substituted wherein the 30% of any sum payable to a resident has been substituted. In the present case, the authorities below has added the entire sum of Rs.6,18,73,785 by disallowing the whole amount. Though the substitution in section 40 has been made effective with effect from 01.04.2015, in our view, the benefit of the amendment should be given to the assessee either by directing the Assessing Officer to confirm from the cab owners, as to whether the said parties have deposited the tax or not and further or restrict the addition to 30% of the disallowance. In our view, it will be tied of justice if the disallowance is only restricted to 30% of the amount liable for TDS u/s 194C of the Act. Accordingly, this issue is partly allowed.

9. Ground No.4 is with regard to disallowance of a sum of Rs.2,42,41,856 by invoking the provisions of section 40(a)(ia) of the Act towards reimbursement of petrol and diesel charges to the drivers.

8. The facts of this ground are that the lower authorities observed that the assessee has debited Rs.2,48,39,356 for petrol and diesel expenses paid. The assessee also shown petrol and diesel expenses collected amounting to Rs.2,42,41,856. According to the A.O., the assessee himself has debited TDS on the payment of Rs.2,48,39,356 paid for petrol and diesel expenses, however, the A.O. disallowed the amount of Rs.2,42,41,856 by invoking the provisions of section 40(a)(ia) of the Act, since it is in the nature of contract receipts and contract payments for which the assessee was liable to deduct TDS. In first appeal, the CIT(A) confirmed the disallowance made by the Assessing Officer.

9. Against this, the assessee is in appeal before us. The learned AR submitted that the assessee has collected a sum of Rs.2,42,41,856 towards petrol and diesel expenses from the parties and paid a sum of Rs.2,48,39,356 to the cab drivers. According to him, this amount was directly paid by the assessee to the petrol pump and not to the cab owners and accordingly it was reimbursed by the concerned parties. This was duly reflected in the profit and loss account of the assessee for the year ended on 31st March, 2014 and there was no dispute on this account. The learned AR submitted that when

the assessee paid the petrol and diesel expenses directly to the petrol pump, the assessee is not liable to deduct TDS on the same.

10. 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.

11. After considering the rival submissions and perusing the relevant material on record, we find no infirmity in the impugned order of the learned CIT(A) on this issue. 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 set aside the orders of the Income tax authorities and direct the A.O. to verify the claim of the assessee in the light of our above observation.

12. Ground No.10 is with regard to non-adjudication of the issue of addition of Rs.5,22,346 which was incurred for the deficiency of services.

13. The facts of this issue are that the Assessing Officer noted from the profit and loss account furnished by the assessee that the assessee has debited an amount of Rs.5,22,346 for penalty paid, which according to the A.O. is not an allowable expenses. Since the assessee has not made any submission before the CIT(A), he confirmed the same.

14. We have heard the rival submissions and perused the material on record. Before us also, the assessee could not furnish any evidence or submission to substantiate his claim.

In the absence of the same, we also confirm the orders of the lower authorities.

15. Ground No.11 is with regard to charging of interest u/s 234B and 234D of the I.T.Act, which is consequential and mandatory in nature, does not require any specific adjudication. Accordingly, this ground is dismissed.

16. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 24th day of February, 2020.

Sd/-
(Smt.Beena Pillai)
JUDICIAL MEMBER

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 24th February, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-3 Bengaluru.
4. The Pr.CIT-3, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore