

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.2814/Bang/2018 & 782/Bang/2019
(Assessment Years : 2015-16 & 2014-15)

M/s.Parry Sugar Industries Limited,
No.1/2, 3rd Floor, Venus Building,
Kalyanamantapa Road, Jakkasandra,
Koramangala, Bengaluru-560 034

....Appellant.

Vs.

1. Dy. Commissioner of Income Tax,
Circle 5(1)(2), Bengaluru.
2. Asst. Commissioner of Income Tax,
Circle 5(1)(2), Bengaluru.

.....Respondent.

Assessee By:	Shri Vikram Raghavan, Advocate.
Revenue By:	Shri Vilas V Shinde, CIT (D.R)

Date of Hearing :	06.02.2020.
Date of Pronouncement :	29.05.2020.

ORDER

PER SHRI B.R. BASKARAN, Hon'ble AM :

Both the appeals filed by the assessee are directed against the orders passed by Ld CIT(A)-5, Bengaluru and they relate to the assessment years 2014-15 and 2015-16. Since the issues urged in these appeals are identical in nature, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The main ground urged by the assessee relate to the disallowance made u/s 40(a)(ia) of the Act for non-deduction of tax at source from the payment

made towards Harvesting charges. The assessee has also raised certain legal grounds, which we shall deal with later.

3. The facts in brief are that the assessee company is engaged in the business of manufacture of sugar and generation of power. The assessee was initially known as M/s Parry Sugar Industries Ltd. It has since merged with M/s EID Parry India Limited. Before the Tribunal, the assessee has raised a ground, viz., the impugned orders of tax authorities are non-est in the eyes of law, since they have been passed in the name of non-existing entity, viz., M/s Parry Sugar Industries Ltd, which has since been merged with M/s EID Parry India Limited. However, the ld A.R could not clarify as to whether the factum of merger was brought to the notice of tax authorities during the course of either assessment proceedings or appellate proceedings. In the absence of availability of all facts relating to the legal ground, we decline to admit this legal ground of the assessee.

4. The facts relating to the addition made u/s 40(a)(ia) of the Act are discussed in brief. The AO noticed that the assessee has paid Harvesting Charges for harvesting of sugarcane without deduction of tax at source in both the years. Hence he proposed to invoke the provisions of sec. 40(a)(ia) of the Act for disallowing the payments so made without deduction of tax at source. The assessee submitted that it is purchasing Sugarcane from farmers at "Fair Remunerative Price" (known as FRP) determined by the Central Government as per Sugarcane (Control) Order, 1966. The FRP rate is for delivery of sugarcane at the gate of factory or at sugarcane purchasing centre. It accordingly submitted that the responsibility to harvest sugarcane and deliver it to the assessee lies upon the farmers. In order to facilitate the harvesting of sugarcane, the assessee has engaged workers on behalf of the farmers for scientific harvesting of the sugarcane. The assessee has done so on behalf of the farmers as their agent. The amount paid to the workers through the Gang leaders is adjusted against the FRP and the remaining amount was paid to the farmers. Accordingly, it was submitted that it has paid the harvesting charges on behalf of the farmers only and not on its own

account. The assessee further submitted that the assessee has not separately claimed harvesting charges as expenditure in its books of account. It has only accounted the purchase price of sugarcane.

5. The AO, however, took support of the decision rendered by Hon'ble Karnataka High Court in the case of Ryatar Sahakari Sakkare Kharkhane Niyamit vs. ACIT (67 taxmann.com 283)(Kar) and held that the assessee is liable to deduct tax at source u/s 194C of the Act from the harvesting charges paid by it. Accordingly he disallowed harvesting charges of Rs.9.46 crores and Rs.11.74 crores paid respectively in the years relevant to AY 2014-15 and 2015-16. The Ld CIT(A) confirmed the addition in both the years and hence the assessee has filed these appeals.

6. Before us, the Ld A.R reiterated the submissions made by the assessee before the tax authorities. He submitted that the assessee has paid harvesting charges only on behalf of the farmers as their agent and hence the same constitute expenditure in the hands of the farmers. Hence, the assessee has not claimed the harvesting charges as its own expenditure. The payments made by it to the gang leaders have been adjusted against the sugarcane purchase price while making payment to farmers. Hence the harvesting charges paid by the assessee shall constitute part payment towards purchase price of sugarcane. Accordingly he contended that there is no liability upon the assessee to deduct tax at source from the payments so made. The farmers, being agriculturists, are also not liable to deduct tax at source from the harvesting charges. Accordingly he submitted that the tax authorities are not justified in invoking the provisions of sec.40(a)(ia) of the Act. The Ld A.R further submitted that the tax authorities are not justified in placing reliance on the decision rendered by the Hon'ble jurisdictional Karnataka High Court in the case of Ryatar Sahakari Sakkare Kharkhane Niyamit (supra), as the questions adjudicated by the Hon'ble Karnataka High Court in the above said case were different and hence the said decision cannot be considered as binding precedent. He submitted that the Hon'ble Karnataka High Court, in the above said case, was considering as to

whether the TDS provisions would apply only to expenses remaining payable as at the yearend or they would apply to the entire expenses. Further whether the contract entered by the company with the harvesters without the knowledge of the farmers can still be considered as contracts, when the assessee has claimed harvesting charges as its own expenses?. Accordingly he submitted that the decision rendered by Hon'ble Karnataka High Court is not applicable to the present dispute.

7. The Ld CIT (D.R) submitted that the assessee has only entered into Contract with the Gang leaders for harvesting Sugarcane and hence the decision rendered by Hon'ble Karnataka High Court in the case of Ryatar Sahakari Sakkare Kharkhane Niyamit (supra) shall apply to the facts of the present case. He submitted that the Ld CIT(A) has followed the binding decision of the jurisdictional High Court in both the years and hence the orders passed by Ld CIT(A) in both the years do not call for any interference.

8. We have heard rival contentions and perused the record. It is an undisputed fact that the assessee has not claimed harvesting charges as its expenditure. It is the submission of the assessee that it has paid the harvesting charges to the labourers through the gang leaders on behalf of the farmers. At the time of hearing, the Ld A.R also took us to the Sugarcane purchase agreement entered by the assessee with the farmers. A model copy of agreement is available at pages 37 to 43 of the paper book. Since it is in Kannada language, the translated copy is placed at pages 44 to 46 of the paper book. The clause 8 of the agreement (translated copy) reads as under:-

“8. Harvesting and supplying of cane to the factory is my responsibility, however for any reason if it is not possible, on my request the factory can arrange both harvesting and transportation on my behalf and I do not have any objection to the deduction of costs of such harvesting and transportation from my cane bill. Further, I agree to make appropriate inner roads to the plots to facilitate smooth transportation of cane from the field to the factory and extend all such help that may be required in this respect. In case the factory has to incur expenses to lay such roads, I agree to deduction of such cost(s) from my cane bill.”

The above said clause of Sugarcane purchase agreement makes it clear that the responsibility of harvesting sugarcane and transporting them to the factory of the assessee is placed upon the farmers. It is further stated that the assessee can also arrange harvesting and transportation on behalf of the farmers on the request of the farmers and in such case, the costs incurred in that connection shall be adjusted against the Cane bill. This clause makes it clear that the assessee shall be acting on behalf of the farmers and hence the payment of harvesting charges is also made on behalf of the farmers only, which shall be adjusted against the Sugarcane bill. Hence there is merit in the submission of the assessee that the harvesting charges do not constitute its own expenditure.

9. We notice that an identical issue was examined by the co-ordinate bench in the case of M/s NSL Sugars Ltd (ITA No.1228/Bang/2017 relating to assessment year 2012-13 in its order dated 8th November, 2019. For the same of convenience, we extract below the relevant portion of the order passed by the co-ordinate bench in the above cited case:-

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

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

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

20. Before the CIT(Appeals), the assessee submitted that the harvesting charges are nothing but payment for purchase of sugarcane from the farmers and that payment by any stretch of imagination cannot be considered as a payment to a contractor for carrying out any work as contemplated u/s. 194C of the Act. In this regard, the assessee pointed out that the payment made to the farmers are ex-factory gate purchase price in instalments following the well established policy of Central Govt. in determining the Statutory Minimum Price (SMP) of sugarcane. The assessee pointed out that it is the obligation and responsibility of the farmers for cutting and harvesting sugarcane and to transport the same from the field to the sugarcane factory. The farmers are paid consolidated price for their sugarcane fixed by Govt. of India and the said price also includes the harvesting and transportation charges. The assessee furnished copies of sugarcane purchase bills depicting the adjustment of harvesting and transportation charges from the cost of purchases. The assessee also placed reliance on the decision of ITAT Ahmedabad Bench in the case of Shree Mahuva Prasad Sahakari Khand Udyog Mandal Ltd. v. ITA No. 37/B/2016, 1228/B/17 & CO No.66/B/2016 ITO, ITA No.305/Ahd/2009 wherein the Tribunal took the view that provisions of [section 194-C](#) of the Act are not attracted for payment made to harvesting labourers and transporters because it was an obligation of cane growers to bring sugarcane to the assessee's factory and the aforesaid payments cannot be said to be payment covered by [section 194C](#) of the Act. Similar decision rendered by the ITAT Pune Bench in the case of [DCIT v. Dwarkadheesh Sakhar Karkhana Ltd.](#) [2015] 55 taxmann.com 415 (Pune Trib.) was also relied upon by the assessee.

21. The CIT(Appeals) accepted the arguments on behalf of the assessee and he found on perusal of the sugarcane purchase bills that farmers supplied sugarcane and harvested themselves and incurred transportation charges and those charges were deducted from the purchase price payable for sugarcane. The CIT(Appeals) was therefore

of the view that the payment in question did not fall within the ambit of [section 194C](#) of the Act and he accordingly deleted the addition made by the AO. Following were the relevant observations of the CIT(Appeals):-

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

7.1 During the appellate proceedings, the appellant submitted that the harvesting charges are part and parcel of the sugar cane purchase cost as the said charges were duly deducted from the sugar payments made to the farmers. The appellant through its representative has furnished the sugar cane purchase bills before me, which show that the farmers who supplied the sugarcane and harvested themselves were paid full amount of sugarcane price, and for those who could not pay the harvesting charges and transportation charges was paid by the appellant as sugarcane price in three heads as sugar cane purchase cost, harvesting charges, transportation cost. As the harvesting charges and transportation charges need to be paid in short time before the sugarcane payment such bifurcation was made to have the control over the payments. He further pleaded that since the payments were made to farmers as sugarcane purchase cost, the provisions of [section 194C](#) r.w.s 40(a)(ia) are not applicable. He further relied on the judgment of the Ahmedabad Tribunal in the case of [M/s. Shree Mahuva Pradesh Sahakari Khand Udyog Mandal Ltd vs. ITO](#), wherein it was held that on the Fact and circumstances of the case the assessee is not liable to deduct the tax at source from the payment made to MUKADAMS (harvesting labourers and transporters by Zone samiti) and also in the case of [DCIT vs. Dwarakadeesh Sahakar Kharkhana Ltd.](#) it was held by the special bench that sugar factory was not liable to make TDS u/s.194C from the payments made to Mukadams and Transporters by the samiti. It was for the cane grower to bring the sugarcane to the appellant's factory and on behalf of the cane growers the harvesting charges were paid to the labourers by the appellant along with transport charges which are included in the cost

price of the sugar cane which is evident from the invoices furnished before me. Therefore, in the light of the factual and the legal matrix of the case, as discussed above I am of the opinion that the harvesting charges paid to the labourers by the appellant on behalf of the cane growers which is the part and parcel of the cost price of the sugar cane, the payment can not be stated to be covered within the expression "work contract" as defined u/s 194C of the Income Tax Act, 1961. Therefore, I hereby delete the addition made by the Assessing Officer on account of TDS not made u/s. 194C. The first ground of appeal is hereby allowed."

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

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

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

25. We have considered the rival submissions. In the order of assessment for both AYs 2011-12 & 2012-13, there has been no discussion whatsoever by the AO as to why the harvesting and transportation payments made by the assessee to the farmers were regarded as payments falling within the ambit of [section 194C](#) of the act. In the appellate order for AY 2012-13, the CIT(A) has not discussed this aspect at all and has gone only by the legal proposition as to whether [section 40\(a\)\(ia\)](#) would be applicable to sums which have already been ITA No. 37/B/2016, 1228/B/17 & CO No.66/B/2016 paid or only to sums which remains payable as on the

last date of the previous year. Therefore, the reasons given by the CIT(Appeals) in AY 2011-12 regarding payment on account of harvesting and transportation charges not being in the nature of payment falling within the ambit of [section 194C](#) of the Act is only the available material.

26. We have perused the paper book filed by the assessee containing sample bills for purchase of sugarcane issued by the assessee. The sample bill shows the value of cane supplied by individual farmers and the transportation & harvesting charges are shown as deduction, which by implication means that the cane price is inclusive of transportation & harvesting charges. *The plea of assessee that supply of cane by the farmers to the assessee is on ex gate of sugar factory basis appears to be correct. In our opinion, it would depend on the agreement between the assessee and cane farmers as to whether the cane price fixed between the parties is inclusive of harvesting & transportation charges. If the contract to supply sugarcane is ex field (cost of harvesting and transportation to be borne by the Sugar manufacturer), then it is the responsibility of the assessee to lift the sugarcane from the field to its factory i.e., the assessee has to bear the harvesting and transportation charges for the sugarcane. There is no such material brought on record to come to the conclusion that the harvesting & transportation charges paid by the assessee is on ex-field basis. In such circumstances, we are of the view that, on the basis of probability, the plea of assessee has to be accepted and it has to be held that the payments made by the assessee towards harvesting and transportation charges have to be regarded as payment made for purchase of sugarcane and consequently the provisions of [section 194C](#) of the Act do not get attracted.* Consequently, we are of the view that the CIT(Appeals) was justified in deleting the addition for AY 2011-12 and was not justified in not deleting the addition for AY 2012-13 apart from not ITA No. 37/B/2016, 1228/B/17 & CO No.66/B/2016 dealing with the submissions of assessee in this regard. We therefore find no substance in ground No.3 raised by the revenue for AY 2011-12 and dismiss the same. We find merit in the grounds of appeal raised by the assessee for the AY 2012-13 and allow the same.

10. The co-ordinate bench has expressed the view that the payments made for harvesting and transportation should be regarded as payments made towards purchase of sugarcane, if the purchase price is determined at ex-gate of sugar factory. The view expressed by the co-ordinate bench also finds support from the following decisions:-

(a) Khedut Sahakari Khand Udyog Mandli Ltd vs. CIT-TDS (2016-TIOL-2269-HC-AHM-IT)(76 taxmann.com 117).

In this case, the assessee paid transportation charges for transporting the sugar cane to its factory. On facts, it was found that the same formed part of Sale transaction and hence the assessee was not liable to deduct tax at source. In this regard, the Hon'ble Gujarat High Court followed its earlier decision rendered in the case of CIT (TDS) vs. Krishak Bharti Coperative Ltd.(Tax Appeal No.211 of 2006 dated 01-12-2014).

(b) The CIT vs. Dwarkadheesh Sakhar Karkhana Ltd (2018-TIOL-118-HC-Mum-IT).

In this case, the Hon'ble Bombay High Court has upheld the decision rendered by the Tribunal holding that there is no requirement of deducting TDS on payments made towards transportation and harvesting charges when these payments formed part of sugarcane purchase price payable to farmers. The Hon'ble Bombay High Court followed the decision rendered by the Hon'ble Gujarat High Court in the case of Khedut Sahakari Khand Udyog Mandli Ltd (supra). Following observations made by Hon'ble Bombay High Court are relevant:-

“(e) Further, on an identical facts, the Gujarat High Court in CIT (TDS) v/s. Khedut Sahakari Khand Udyog Mandli Ltd., 76 taxmann.com 117 = 2016-TIOL-2269-HC-AHM-IT has held that there is no liability to deduct the tax at source on payments made to Mukadam and Transport Contractor for supply of sugarcane to sugarcane factories. The SLP filed by the Revenue has also been dismissed by the Apex Court. Nothing has been shown to us to justify/warrant taking a view different from that taken by Gujarat High Court in Khedut Sahakari Khand Udyog Mandli Ltd., (supra).

(f) Mr. Walve, learned Counsel for the Revenue places reliance upon the order dated 18th December, 2017 of this Court, admitting the Revenue's appeal in CIT v/s Manisha Construction (ITA No.412 of 2015) to submit that an identical

question has been admitted. However, Mr. Walve is not able to point out the facts and circumstances in the case of Manisha Construction (supra) being identical to the facts in the present case. In the present case, there is a concurrent finding of fact recorded by the CIT(A) and the Tribunal that the payment made to the harvesting and transport contractor are on behalf of the sugarcane farmers, is a part of the price payable to them. Further no separate deduction for payments made to the Mukadam and transport contractor was claimed by the Respondent-Assessee. Therefore, the above decision does not assist the Revenue.”

(c) Sudalagunta Sugars Ltd vs. DCIT TDS (2017)(79 taxmann.com 88)(Visakhapatnam). In this case, it was held that though the payments were made by the assessee, yet for purpose of sec.194C, payers are farmers only. Since the income of farmers being agricultural income exempt from income-tax, impugned payments were not hit by provisions of sec.194C.

11. We have noticed that the tax authorities have taken support from the decision rendered by Hon’ble jurisdictional Karnataka High Court in the case of Ryatar Sahakari Sakkare Kharkhane Niyamit (supra) to hold that the assessee is liable to deduct tax at source from the harvesting charges paid by the assessee. We have gone through the said decision carefully. In the case before Hon’ble Karnataka High Court, the TDS officer initiated penalty proceedings u/s 201(1) of the Act for non-deduction of tax at source from the harvesting charges paid by the said assessee and accordingly raised demand u/s 201(1) and 201(1A) of the Act. The Ld CIT(A) confirmed the order of the TDS officer. The Tribunal, however, restored the matter to the file of the TDS officer directing him to restrict the demand to the portion relating to the harvesting charges which remained payable as at the year end. In this regard, the Tribunal followed the decision rendered by Hon’ble Allahabad High Court in the case of Vector Shipping Services (P) Ltd (2013)(38 taxmann.com 77). Aggrieved by the order passed by the Tribunal, both the assessee & revenue filed appeals before Hon’ble Karnataka High Court. The questions raised by both the parties before the High Court are extracted below, for the sake of convenience:-

“4. Assessee has raised following questions of law in its appeals:

- "i. Whether the Tribunal was justified to rest its decision upon the case of Vector Shipping Services (P.) Ltd. in the facts and circumstances of Appellant's case as against the CBDT Circular No. 6/2007 dated 11/10/2007?
- ii. Whether the Bond Agreement/s (produced in this Appeal as Annexure 'B' and 'C') for appointing Harvesters / Transporters by the Appellant as an Agent on behalf of the Farmers constituted a CONTRACT as per the Indian Contract Act, 1872?
- iii. Whether the Tribunal was right in not determining the issue relating to the existence of a CONTRACT between the Harvesters/Transporters and Appellant as per the Bond Agreement/s?
- iv. Whether the Tribunal was justified in directing the Appellant to furnish details to the Assessing Officer for verifying whether or not the recipients of Harvesting, Transportation and Legal Consultancy payments have been respectively offered for taxation so as to determining the levy of interest in the case of the Appellant?"

5. Revenue has raised following questions of law in its appeals:—

- '1. Whether on the facts and the circumstances of the case and in law the Tribunal is correct in interpreting the language of section 40(a)(ia) to mean that the consequence of disallowance is attracted only in respect of amounts which remain payable on the last day of the financial year?
- 2. Whether on the facts and circumstances of the case and in law, the Tribunal erred in not appreciating the fact that section 40(a)(ia) cannot be interpreted to mean that it applies only to amounts "payable" and not to those which have been "paid", as held by the Hon'ble High Court of Kerala in the case of *Thomas George Muthoot v. CIT* in ITA No. 278 of 2014?
- 3. Whether the Tribunal erred in placing reliance on the decision of Hon'ble Allahabad High Court in *CIT v. Vector Shipping Services (P) Ltd.* (2013) 357 ITR 642 (All.), that the provisions of Section 40(a)(ia) are applicable only in respect of amounts which remain payable on the last day of financial year ignoring the language used in the statutory provisions which makes it clear that the consequences of disallowance is attracted when a person liable to deduct tax on any interest payable to a resident, on which tax is deductible at source, commits a default?"

12. The revenue's appeal was allowed by the High Court by holding that the disallowance u/s 40(a)(ia) cannot be restricted to the amount remaining payable as at the year end. With regard to the assessee's appeal, the Hon'ble High Court noted the fact that the assessee has claimed harvesting expenses as deduction in its profit and loss account. Further the assessee has contended that the Contract entered by it with the Harvestors should not be considered as a valid contract, since the same has been entered without the consent of the farmers. Accordingly the assessee contended that there is no liability to deduct tax at source from the payments made out invalid contract. This argument of the assessee was rejected by the Hon'ble High Court. The relevant observations made by the Hon'ble Karnataka High Court are extracted below:-

“27. We have carefully gone through the judgment in the case of *Vector Shipping Services (P.) Ltd. (supra)*. In the said case, Hon'ble High Court of Allahabad was considering an issue with regard to non-compliance of provisions of Section 194C by the assessee therein. The said company had advanced a contention that work was carried out by one M/s. Mercator Lines Ltd., on behalf of *Vector Shipping Services (P.) Ltd. (supra)* and M/s. Mercator Lines Ltd., had deducted TDS in the salary of its employees and fully complied with the provisions relating to deduction of tax at source. It was also contended that no amount had remained payable at the year end. Thus, it was in the facts and circumstance of that case, the Hon'ble High Court of Allahabad had rendered the said decision. In contrast, in the instant case, it is an admitted position as borne out on records that the assessee has not deducted tax at source as required under Section 194C, 194I and 194J of the Act. However, non-compliance of the said provisions is sought to be justified on the ground that the agreement inter se between the assessee and the harvester is not a valid contract inasmuch as the farmer is not a party to the said agreement upon whose land the harvester works and whose produce is purchased by the assessee. It is also argued that the said agreement is not ratified

by the farmer. In our considered view, the said argument advanced on behalf of the assessee is fallacious and is noted only to be rejected. We say so because, there is no dispute with regard to the fact that the assessee has entered into specific agreement/s for harvesting and transportation of sugarcane and the harvester has been admittedly paid harvesting and transportation charges by the assessee. This leads to an irresistible inference that the produce namely the sugarcane has been harvested and transported by the contractor. Harvesting and transportation can be effected only with consent of the owner of the sugarcane namely farmer.”

The assessee also took two other arguments, viz., (a) the assessee, being a co-operative society existing for the benefit of members, the demand raised by the TDS officer would affect the interests of members. And (b) the assessee did not have the benefit of proper legal advice due to its locational disadvantage. Both these arguments were also rejected by Hon’ble High Court.

13. It can be noticed that the assessee before the Hon’ble Karnataka High Court took different kinds of arguments in support of its failure to deduct tax at source, which were not urged in this case. The arguments in the present case are that

- (a) the price of sugarcane is fixed at ex-factory gate and not at ex-field.
- (b) If the price is fixed at ex-field, then the responsibility to harvest and transport the sugarcane would be that of the assessee herein.
- (c) In the instant case, the purchase agreement clearly states that the price fixed is at ex-factory gate and the responsibility to harvest and transport sugarcane is that of the farmer.
- (d) Under the purchase agreement, the farmer agrees and authorises the assessee to harvest and transport the sugarcane on his behalf.

Further he agrees that the expenditure incurred in this connection shall be adjusted against the sugarcane price.

(e) The assessee has not claimed harvesting and transportation expenses separately, since it is not the expenditure of the assessee. The payment made on behalf of the farmers, in effect, constitute purchase price of sugarcane only, since the said payment has been adjusted against the purchase price.

(f) The assessee has only acted as agent of the farmers in connection with harvesting & transportation and hence the responsibility to deduct tax at source shall lie on the shoulders of the farmers only.

None of these kinds of arguments were placed before Hon'ble Karnataka High Court in the above said case. In our view, the above said facts prevailing in this case, would distinguish the present case from that decided by Hon'ble Karnataka High Court.

14. Accordingly, following the decision rendered by the co-ordinate bench in the case of M/s NSL Sugars Ltd (supra), we hold that the assessee is not liable to deduct tax at source from the harvesting charges paid by it on behalf of the farmers in both the years. Accordingly, we set aside the orders passed by Ld CIT(A) in both the years and direct the AO to delete the impugned additions in both the years.

15. The assessee has also raised certain other legal grounds. Since we have allowed the appeals on merits, we do not find it necessary to adjudicate them.

16. In the result, both the appeals of the assessee are treated as allowed.

Pronounced in the open court on 29th May, 2020.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Dated: 29th May, 2020.

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore