

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(CONDUCTED THROUGH E-COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER**

I.T.A. No.88/Rjt/2018
(Assessment Year: 2014-15)

DCIT Circle-1(2), Rajkot	Vs.	M/s. Maahi Milk Producer Co. Ltd. 3 rd & 4 th Floor, Sakar Building, Opp. Rajkumar College, Dr. Radha Krishna Road, Rajkot
[PAN No.AAICM1550E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Shramdeep Sinha, CIT DR
Respondent by :	Shri Vimal Desai, A.R.

Date of Hearing	22/09/2022
Date of Pronouncement	09/12/2022

O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the Revenue against the order dated 13.12.2017 passed by the Commissioner of Income Tax (Appeals)-1, Rajkot (in short "CIT(A)") relating to the Assessment Year 2014-15 against the assessment order dated 26.12.2016 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The brief facts of the case the assessee is engaged in the business of selling milk and milk products. The assessee had made payment of

Rs. 29,63,90,780/- to M/s. Mother Dairy and M/s. Giriraj Milk Pvt. Ltd. for conversion of raw milk into processed milk and milk products. On these payments the assessee made TDS under Section 194C of the Act at 2% treating these payments to be contract payments. Whereas the Assessing Officer on the other hand has held that these payments are in the nature of payments of technical services and the assessee ought to have deducted TDS @ 10% under Section 194J of the Act. Thus, the Assessing Officer made disallowance under Section 40(a)(ia) on the proportionate amount of Rs. 23,71,12,624/- for short deduction of TDS @ 8%.

3. Aggrieved against this addition the assessee has challenged before the CIT(A)-1, Rajkot. The CIT(A)-1, Rajkot held that the assessee has correctly applied under Section 194C of the Act to payments made to the diaries, for conversion of raw milk into the processed milk. The alternative plea of the assessee namely for short deduction of TDS provisions of Section 40(a)(ia) cannot be invoked. Thus, the Ld. CIT(A) find merit in the alternative plea of the assessee, and following the case laws cited by the assessee, Ld. CIT(A) held that Section 40(a)(ia) cannot be invoked only in the event of non-deduction of tax at source and not for short deduction of tax at source. Thus, the Ld. CIT(A) deleted the addition made by the Assessing Officer and allowed the appeal.

4. Aggrieved against the same the Revenue is in appeal before us raising the following grounds of appeal:

“1. The Ld.CIT(A)-I, Rajkot has erred in law and on fact of the case in deleting the addition of Rs.23,71,12,624/- made on account of disallowance u/s. 40(a)(ia) treating the conversation charges u/s. 194-C instead of 194-J of the Act.

2. *It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.”*

5. At the outset, it is submitted by both the parties that the issue is covered in favour of the assessee in assessee's own case in ITA No. 161/Rjt/2017 & others vide order dated 23.03.2018 by the Coordinate Bench of this Tribunal wherein it is held as follows:

“8. So far as Ground No.3 is concerned that the ld. CIT(A) has erred in law as well as on facts of the case in holding that the assessee should not be treated as assessee in default for non-deduction of tax at source under section 194J of the I.T. Act, on short deduction of tax on payment of commissioner charges paid to dairies. Ld. AO has discussed this issue at Page No.14 Para 4(iii) and ld. CIT(A) has discussed at Page No.26 Para 7.3. In this case, in support of its contention, assessee submitted copy of conversion agreement with Mother dairy Fruit and vegetable Pvt. Ltd. & Giriraj Milk Products Ltd. Assessee further stated that it does not have own manufacturing facility, hence, it entered into job work contract with various dairies for conversion and packing of milk and milk products. Assessee provided raw milk and necessary materials to the dairies for processing as per specification of assessee. The dairies custom pack it on job work basis. Assessee deducted tax u/s.194C on conversion charges Rs.19.77 crores paid to such dairies since the job work falls within definition of ‘work’ u/s.194C. CBDT circular No.13/2006 dated 13th Dec, 2006 relied. Further stated the services rendered by the dairies are not technical services since the dairies are not expert on any technology which they could provide to the assessee, nor they provide any managerial services/consultancy services since there is no advice given by dairies to the assessee. The dairies are not assigned any exclusive work relating to quality check but are assigned work relating to conversion/processing of milk and milk products, wherein one of the requirements is to ensure quality parameters. The main and basic nature of transaction viz. conversion/processing of milk on job work basis does not lose its true characteristic. Similar issue was arisen for Financial Year 2014- 15. Ld. CIT(A) had given relief to the assessee by these issues as follows:

- “CIT(A) held that in view of the facts and nature of transaction payment is contractual in nature and appellant is justified in applying provisions of section 194C of the I.T. Act and cannot be considered as an assessee in default.*
- CIT(A) held that dairies are not assigned any exclusive work relating to quality check but they are assigned work relating to conversion/processing of milk into packed milk and milk products where they are also required to ensure certain quality parameters and therefore the main and basic nature of transaction viz. conversion/processing of milk on job work basis does not lose its true characteristic of works*

contract. In support of its contention assessee filed copy of the order of the ld. CIT(A).”

9. In support of its contention, ld. AR cited a judgment of Madras High Court in case of Kumudam Publications (P.) Ltd. 55 Taxman 526 and Pune Tribunal in case of Bharat Forge Ltd. vs. ACIT 36 taxmann.com 574 held that payment made for getting jobs done like testing, inspection of materials, etc. were of nature of material & labour contract liable to TDS u/s.194C.

10. Respectfully following the above said judgments, CIT(A) has already given them relief in F.Y. 2014-15 and on the principle of consistency, we dismiss this ground of appeal of the department.”

6. The Ld. Counsel for the assessee also relied upon the Coordinate Bench decisions dated 18.09.2019 in the case of Jayshri Silk Processing Mills Pvt. Ltd. vs. ACIT in ITA No. 170-172/Rjt/2017. However, Ld. D.R. appearing for the Revenue could not produce before us any contra judgment in favour of the Revenue. Thus, respectfully following the Coordinate Bench judgment in assessee’s own case in ITA No. 161/Rjt/2017, we have no hesitation in deleting the addition made by the Assessing Officer under Section 40(a)(ia) of the Act. Thus, we hold the processing of milk falls under Section 194C of the Act and there is no question of short deduction by the assessee. Thus, the grounds raised by the Revenue has no merit and the same is hereby rejected.

7. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the Court on 09.12.2022 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad, dated 09/12/2022
Tanmay, Sr. PS

TRUE COPY

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोक्त/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजोक्त / ITAT, Rajkot