IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'H' BENCH, NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER,
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 500/DEL/2021
[Assessment Year: 2015-16]

Chandigarh Freight Carrier 329, Uttam Nagar, Gupta Colony Meerut, Uttar Pradesh-250 002	Vs.	Pr. CIT Ghaziabad
PAN No. AAHFC 1874 H		
[Appellant]		[Respondent]

Date of Hearing : 26.04.2023
Date of Pronouncement : 28.04.2023

Assessee by : Shri Manish Jain, C.A.
Revenue by : Ms Sapna Bhatia, CIT-DR

ORDER

PER N. K. BILLAIYA, ACCOUNTANT MEMBER :

This appeal by the assessee is preferred against the order of the Pr. Commissioner of Income Tax, Ghaziabad dated 25.03.2021 framed u/s 263 of the Act pertaining to assessment year 2015-16.

2. The grievance of the assessee read as under :

1) That each ground of appeal is without prejudice to each other.

2) On the facts and circumstances of the case and in law, the Ld. PCIT has erred in exercising the revisionary powers by passing the order u/s 263 of the Income Tax Act, 1961 setting aside the order passed u/s 143(3) dated 25.08.2017. The action of the Ld. PCIT is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the revision order of Ld. PCIT passed u/s 263.

3) On the facts and in the circumstances of the case and in law, Ld. Principal Commissioner of Income Tax (PCIT) erred in passing order u/s 263 of the Income Tax Act, 1961 (the Act), when the assessment for the impugned assessment year had already been concluded by Assessing officer (AO), u/s 143(3) of the Act, after seeking explanations and making all the enquiries necessary for the completion of assessment. Appellant prays order so passed u/s 263 may please be held as bad in law.

4) On the facts and in the circumstances of the case and in law, Ld. Principal Commissioner of Income Tax (PCIT) erred in passing order u/s 263 of the Income Tax Act, 1961 (the Act), on wrong PAN (PAN mentioned in 263 order is AAHFC1874F). Correct PAN is AAHFC1874H. Appellant prays order so passed u/s 263 may please be held as bad in law.

5) That the learned Principal Commissioner of Income-tax (PCIT) erred in law and on facts in issuing the 263 proceedings show cause notice dated 01.02.2021 on the ground that the appellant did not produce the declaration u/s 194(C)(6) from the Truck operators even though the provisions of the Act does not require the appellant to get such declaration for the period prior to 01.06.205 as amended in

Finance Act, 2015. Relief may please be granted by quashing the revision order of ld. PCIT passed u/s 263.

6) On the facts and in the circumstances of the case and in law, Ld. Principal Commissioner of Income Tax (PCIT) erred in passing order u/s 263 of the Income Tax Act, 1961 (the Act), in making the disallowance of Rs.1,15,31,132.00 u/s. 40(a)(ia) of the Act even though the appellant is not required to deduct tax at source, as the provisions of section 194C(6) exempts the payer from deducting tax at source if PAN of the payee is provided. Appellant prays order so passed u/s 263 may please be held as bad in law.

7) That the learned PCIT erred in law and on facts in not appreciating the fact that the PAN of the payees were submitted during the assessment proceedings And 263 proceedings and therefore, complied with the provisions of section 194C(6) and 194C(7). And therefore, disallowance cannot be made on procedural lapse. Appellant prays order so passed u/s 263 may please be held as bad in law.

8) That the Learned PCIT failed to consider the observation of the Hon'ble ITAT in the case of ACIT, Circle-I vs Mr. Mohammed Suhail in ITA no: 1536/Hyd/2014, wherein it has been categorically observed by the Hon'ble ITAT ***"that the provisions of section 194C(6) are independent of section 194C(7), and just because there is violation of provisions of section 194C(7), disallowance under section 40(a)(ia) does not arise if the assessee complies with the provisions of section 194C(6),"***

Relief may please be granted by quashing the revision order of ld. PCIT passed u/s 263.

9) The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal"

3. The sum and substance of the grievance of the assessee is that the ld. PCIT erred in assuming the jurisdiction conferred upon him by provision of Section 263 of the Act and further erred in holding that the assessment order dated 25.08.2017 framed u/s 143(3) of the Act is not only erroneous but also prejudicial to the interest of the Revenue.

4. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the ld. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules and have also perused the Judicial decisions relied upon by the both the sides.

5. Assessee is a transport company operator and filed its return of income for the year under consideration on 26.09.2015 declaring income of Rs.82,980/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served

upon the assessee. The return income was assessed at Rs.1,32,980/- vide order dated 25.08.2017.

6. Assuming jurisdiction conferred upon him by the provision of Section 263 of the Act, the PCIT issued a show-cause notice to the assessee which reads as under:

"Show Cause Notice u/s 263 of the Income Tax Act, 1961
Dated:

ITR for AY 2015-16 was e-filed on 26.09.2015 declaring total income of Rs.82,980. Later on the case was selected for Limited scrutiny under CASS with reasons: "Mismatch in amount paid to related persons u/s 40A (2)(b) reported in Audit Report and ITR and Large other expenses claimed in the Profit & Loss a/e". The ITO, Ward-1(2), Meerut completed the assessment on total income of Rs. 1,32,980/-vide his order u/s 143(3) of the IT. Act, 1961 dated 25.08.2017.

2. From perusal of assessment record, for the year under consideration. it is observed that the assessee firm had debited sums amounting to Rs.3,84,37,105/- in the P&L account under the head transportation charges. On going through the said account, it appears that the assessee firm was liable to deduct TDS u/s 194C of the Income Tax Act (hereinafter referred to as the Act) on transportation charges amounting to Rs.3,84,37,105/- In this regard, it was submitted vide reply dated 11.08.2017 that the required declarations and PAN nu have been obtained from the parties to whom the payments of freight were made. But you have not furnished evidence in respect of declaration obtained from the said parties as per provision of sec. 194C (6) of the Income Tax Act. Further, no evidence for deduction of TDS was furnished by you. Hence, provision of sec 40lailial of the Income Tax Act are attracted in this case and 30% of the total amount of Rs 3.84,37,105/- ought to have been disallowed and added to the total income of the assessee firm.

3. In view of the above, the assessment order passed by the ITO, Ward-1(2). Meerut is erroneous and prejudicial to the interest of

revenue and may be cancelled or modified by invoking the provisions of section 263 of the Income Tax Act, 1961.

4. Accordingly, you are hereby required to show cause as to why an appropriate order under section 263 of the Income-tax Act, 1961, may not be passed in your case in the light of the facts mentioned in the foregoing paragraphs For this purpose you are hereby required to appear before me at my office at Room No. 101, 1" Floor, CGO Complex-1, Hapur Chungi, Ghaziabad on 24200.21 at 1:30 pm either in person or through an authorized representative and furnish your explanation, with documentary evidences in support of your contention, by way of complete books of accounts, all vouchers, registers & copies of bank statements etc., an maintained by you: Please note that in case of non compliance, it would be presumed that you have nothing to offer in this regard and necessary order shall be passed u/s 263 of the income-tax Act, 1961, on the basis of material available on record."

7. A bare perusal of the notice shows that the PCIT assumed jurisdiction on the ground that the assessee has not deducted tax at source u/s 194C of the Act on the sums debited to P & L account under the head transportation charges.

8. The assessee explained that all i.e. required is to obtain PAN from the parties to whom the payments of freight were made and since the assessee had obtained the PAN from the parties, he has complied with the provision of Section 194C (6) of the Act. The PCIT was not convinced with the contention of the assessee and was of the firm belief that since the assessee has not furnished the declaration as per the provision of Section 194C (7) of the Act, the AO should have

invoked the provision of Section 40(a)(ia) of the Act and should have made the appropriate disallowances.

9. We find that during the course of the scrutiny assessment proceedings vide notice dated 20.01.2017, the AO had made a specific query at point no.13, which reads as under:

> "Give details of TDS made on interest/other payments ex: freight, rent, payments u/s 194C, 195J and 194H etc. is applicable and furnished the proof of depositing the same in the Central Govt."

10. Vide reply dated 11.08.2017, the assessee has specifically replied at point no.4 as under:

> "As far as non deduction of TDS on freight paid by us, it is submitted that the required declaration and PAN number have been obtained from the parties to whom the payments of freight were made."

10.1 Provision of Section 194C (6) read as under:

> *"No deduction shall be made for 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 the sum."

"13. The provisions of sec. 194C(6) extracted above was amended w.e.f 01.10.2009 by Finance (No.2) Act 2009. The its scope of amendment was explained by the CBDT in Circular No. 5 dated 03-06 2010 as under:

> *"49.3 Provisions for payments and tax deducted at source to transporters:-*
>
> *A) Under Section 194C, tax is required to be deducted on payments to transport contractors engaged in the business of plying, hiring or leasing goods carriages. However, if they furnish a statement that they do not own more than two goods carriages tax is not to be required deducted at source. Transport operators are reporting problem in obtaining TDS certificates as these are not issued immediately by clients and ITA No. 2586/Bang/2018 they are not able to approach the client again as they may have to move across the country for their business*
>
> *B) It is, therefore, the Act has been amended to exempt payments to transport operators (as defined in section 44AE) from the purview of TDS. However, this would only apply in cases where the operator furnishes his Permanent Account Number (PAN) to the deductor. Deductors who make payments to transporters without deducting TDS (as they have quoted PAN) will be required to intimate these PAN details. to the Income tax Department in the prescribed format."*

14. Further we notice that the provisions of sec.194C(6) was amended w.e.f 1.6.2015 by Finance Act, 2015, restricting the applicability of this provision to those transport contractors who own not more than 10 goods carriages. The purpose of amendment was

explained by the CBDT in its Circular No.19/2015 dated 27-11-2015 as under:

> *"43.2 The Finance (No.2) Act 2009 substituted section 194 of the Income tax Act with effect from 1.10.2009, which inter ITA No.2586/Bang/2018 alia provided to: non deduction of tax from payments made to the contractor during the course of plying, hiring and leasing goods carriage if the contractor furnishes his Permanent Account Number (PAN) to the payer. The memorandum explaining the provisions of Finance (No.2) Bill, 2009 indicates that the intention was to exempt only small transport operators (as defined in section 44AE of the Act) from the purview of TDS on furnishing of Permanent Account Number (PAN). Thus the intention was to reduce the compliance burden on the small transporters. However, the language of sub section (6) of section 194C of the Income tax Act did not convey the desired intention and as a result all transporters, irrespective of their size, were claiming exemption from TDS under the existing provisions o/sub section (6) of section 194C of the Income tax Act did not covey the desired intention and as a result all transporters, irrespective of their size, were claiming exemption from TDS under the existing provisions of sub section (6) of section 194C of the Income tax Act by furnishing their PAN."*

11. From the above, we gathered that the payer is required to obtain PAN only from the payee for paying the charges without deduction of tax at source. In the present case, the assessee has obtained the PAN of the payees and has thus complied with the provision of Section 194C(6) of the Act as mentioned above. The AO had made specific enquires and after satisfying himself took a plausible view. In the case of Sunbeam Auto Ltd. [2011] 332 ITR 167 Hon'ble Delhi High Court has held as under:

> "…….therefore one has to see from the record whether was application of mind before allowing the expenditure in question as revenue expenditure. If there was an enquiry, even inadequate that would not by itself give occasion to the CIT to pass order u/s 263, merely because he has different opinion in the matter. It is only in cases of lack of enquiry that such a course of action would be open. [paras 12 to 15]. …….in sum and substance the accounting practice of the assessee is questioned… It is clear that view taken by the AO. was one of the possible views and therefore, the assessment order passed by the A.O could not be held to be prejudicial to the Revenue. Thus from whatever angle the matter is to be looked into, the conclusion could be that the order of the Tribunal does not call for any interference [paras 16,18 & 21]…….. the AO having made enquiries, elicited replies and thereafter allowed the expenditure……. it cannot be said that it is a case of lack of enquiry."

12. The second allegation of PCIT is that assessee has not furnished the requisite declaration. We do not find any force in this contention of the PCIT. Firstly; the provisions have been amended with effect from 01.06.2015 and therefore not applicable for the year under consideration and secondly; the only obligation on the assessee was that to obtain the PAN number of the payees which he has obtained. In our considered view merely because there is no compliance on the part of the assessee to furnish the prescribed information to the Revenue authorities the same cannot lead to a conclusion that the assessee has not complied with the first statutory obligation i.e. to obtain PAN of

the payees. Considering the facts of the case in totality in the light of the decision of the Hon'ble Delhi High Court in the case of Sunbeam Auto Ltd. (supra), we set aside the order of the PCIT dated 25.06.2021 and restore that of the AO dated 25.08.2017.

13. In the result, appeal of the assessee is accordingly allowed.

The order is pronounced in the open court on 28.04.2023

Sd/-	**Sd/-**
[ANUBHAV SHARMA]	[N.K. BILLAIYA]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 28th April, 2023

PY/

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi