IN THE INCOME TAX APPELLATE TRIBUNAL,

KOLKATA 'B' BENCH, KOLKATA

Before Shri Waseem Ahmed, Accountant Member and
Shri K. Narasimha Chary, Judicial Member

I.T.A. No. 1420 /KOL/ 2015

Assessment Year: 2012-2013

Soma Rani Ghosh,.....Appellant
274, Canal Street,
Sreebhumi, Lake Town,
Kolkata-700 048
[PAN: AFMPG 0109 B]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-49, Kolkata,
Uttarapan Building, Maniktala Civic Centre,
Kolkata-700 054

Appearances by:
Shri I. Banerjee, FCA, for the assessee
Shri Aloke Nag, Additional CIT, D.R., for the Department

Date of concluding the hearing : August 23, 2016
Date of pronouncing the order : September 9th, 2016

O R D E R

Per Shri K. Narasimha Chary, J.M.:

This is an appeal by the Assessee challenging the order dated 15.10.2015 passed by the learned Commissioner of Income Tax (Appeals)-15, Kolkata (hereinafter referred to as "learned CIT") for the assessment year 2012-13.

2. Brief facts of the case are that the Assessee is an individual engaged herself in Export Business under the name and style M/s Mediimpex of export of Chemical, Surgical and Clinical Goods. According to her she needs to incur Transport Charges by way of Lorry Hire

Charges, both in relation to Purchases, referred to as Carriage Inward, and Exports to Bangladesh referred to as Carriage Outward. On 29.09.2012 she filed her return of income for the AY 2010-11, declaring a total income of Rs.15,27,440/-. After scrutiny, the learned AO opined that the assessee was required to deduct tax at source on the expenses incurred under the head Transport Charges under the provisions of section 194C of the Act and since the assessee failed to deduct the same, treated such expense incurred for Carriage inward and carriage outward as disallowable under section 40(a)(ia) of the Act, added back Rs.1,63,78,648/- claimed as expense towards Carriage Inward and Rs.1,13,00,980/- claimed as expense towards Carriage Outward, to the income of the assessee.

3. Appeal carried to the learned CIT ended up in confirmation of the additions made by the learned AO. Learned CIT held that the benefit under section 194C (6) is available only when the assessee fulfils the conditions laid down in sub-section 194C(7) of the Act, and since the assessee has not fulfilled the conditions laid down in 194C(7), and thus committed the default of non-deduction of TDS in the case of the transporters for both Carriage Inward and Carriage Outward, the learned AO was justified in disallowing the said sums u/s 40(a)(ia) of the Act.

4. Aggrieved by the impugned order of the learned CIT, the assessee preferred this appeal on the following grounds:

> *1. For that under the facts and circumstances the Ld. Appellate Authority failed to appreciate the facts and details of expenses in support of carriage inward charges for an amount of Rs.1,63,12,648/- which were paid to different Goods Transport Agencies during the course of purchase of goods for the purpose of export.*
>
> *All of the said transport agencies since had furnished their PAN and your petitioner has not deducted any TDS in terms of provision of section 194C(6) of the Act and the entire disallowance and addition is uncalled for and liable to be deleted.*
>
> *2. For that the Ld. Appellate Authority failed to appreciate the details and documents as were field during the course of appeal hearing in support of Carriage Outward for an amount of Rs.65,17,325/- which were paid to different Goods Transport Agencies and the said transport agencies since had furnished their PAN and issued a declaration confirming their PAN and your petitioner has not deducted any TDS in terms of provision of section 194C(6) of the Act and the entire disallowance and addition is uncalled for and liable to be deleted.*

3. For that the Ld. Appellate Authority was absolutely wrong in his observation that the individual declaration so issued by the transporters confirming their PAN do not prove about non applicability of section 40(a)(i)(a) in the instant case.

4. For that the Ld. Appellate Authority 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 liability to deduct tax ceases the moment the appellants obtains PAN of the contractors. That liability cannot be considered to be reinstated on a subsequent non compliance with the provision of section 194C(7)."

5. Before us, the Learned AR confined, in his arguments, to the plea of immunity of payments made by the assessee towards Carriage Inward and Carriage Outward from TDS by virtue of Sec. 194C(6) and its due fulfilment. He has not canvassed the other contentions addressed before the learned CIT. On this aspect, he contends that despite production of Permanent Account Numbers/PAN declaration from each of the payee transporter for both Carriage Inward and Carriage Outward, the authorities below failed to notice that no TDS would be deductible from the payments to the payee-transporters, consequent upon due furnishing and corresponding availability of their respective PAN copies with them, by virtue of Sec. 194C(6) of the Income Tax Act, 1961 providing for mandatory non-deduction of Tax at the time of crediting/making payment to account of a Contractor undertaking carriage of Goods. He further submits that by virtue of sec. 194C(6) on furnishing the PAN, the carriage inward amount of Rs.16312648.00 and the carriage outward amount of Rs.6517325.00 had become immune from Deduction of Tax at source, as such, the rigour and adversity of its disallowance under sec. 40(a) (ia) could not be invoked. On the other side, learned DR vehemently relied upon the orders of the authorities below.

6. Basing on the above rival contentions, the issue that arises for our consideration is whether the authorities below are justified in disallowing u/s 40(a)(ia) of the Act an amount of Rs.1,63,78,648/- claimed as expense towards Carriage Inward and Rs.1,13,00,980/- claimed as expense towards Carriage Outward?

7. Facts are simple and mostly admitted. Assessee carrying on proprietary export business in export of Chemical, Surgical and Clinical Goods had to incur Transport Charges by way of Lorry Hire Charges, both in relation to Purchases, referred to as Carriage Inward, and Exports to Bangladesh referred to as Carriage Outward. On the premise that the assessee was required to deduct tax at source on the expenses incurred under the head Transport Charges under the provisions of section 194C of the Act and since the assessee failed to deduct the same, learned AO disallowed the expenses of Rs.1,63,78,648/- claimed as expense towards Carriage Inward and Rs.1,13,00,980/- claimed as expense towards Carriage Outward, treating such expense disallowable under section 40(a)(ia) of the Act.

8. Assessee contended before the learned CIT that because of the provision of Section 194C(6), she was not liable to deduct TDS on payments to transporters who had submitted their PAN, and those details of PAN and addressees of the transporters were filed during the course of scrutiny assessment before the AO. Relevant portion of the appellate order is as follows:

> *"To decide the issue, we need to read the entire section 194C together to understand its true interpretation.*
>
> *194C(1) reads as under:*
>
> *(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 contractor 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 credited 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.*
>
> *The word "contractor" above means the person who is making the payment, another person for carrying out any "work".*
>
> *Expln. (iv) below the sub-section 194C(7) reads as under:*
>
> *"Work "shall include*
>
> *(a).....*
>
> *(b) .....*

(c) carriage of goods or passengers by any mode of transport other than by railways.

(d)..... .

(e)..... .

It means that transportation of goods is included in the definition of "work" and thus transportation charges is liable for TDS. In the present case, the assessee becomes "contractor" who is making the payment to the transporter for carrying of goods and was thus liable to deduct TDS on such payment.

Section 194C(6) reads as under:

> *"(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. "*

It thus, means that if a transporter is making any further payment for hiring/leasing of vehicles during the course of his business then it would not deduct TDS if the sub-contractors have supplied their PAN to it.

Thus 194C(6) is applicable to a transporter who during the course of his business of plying, hiring or leasing goods carriages, makes payment to another contractor for hiring of vehicles, then he is not supposed to deduct the TDS. This sub-section will not apply to payments made by a person who himself is not a transport, to another sub-contractor for plying, hiring or leasing goods carriages. Any other interpretation given to the wordings of sub-section 194C(6) will become contradictory to the wordings and spirit of the wordings of sub-section 194C(1). The intent of legislature cannot be contradictory. It cannot say in sub-section 194C(1) that if the person is making payment for transportation charges, then it should deduct TDS and in sub-section 194C(6), it would say that no TDS deduction would be made if the payment is given to a contractor in the business of transportation on furnishing of his PAN.

Further, the provisions of Section 194C(6) and 194C(7) have to be read together. Sub-section 194C(7) read as under:

> *(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 from and within such time as may be prescribed.".*

Thus, the benefits of sub-section 194C(6) can be availed only then the assessee fulfils the conditions laid down in sub-section 194C(7). However, in this case, the assessee has not fulfilled the conditions as she has not furnished the requisite particulars in such form to the prescribed income-tax authority within the stipulated time period.

This logic is also indirectly confirmed by the order of ITAT Hyderabad In ITA No.1536/Hyd/2014 in the case of Mr. Muhammad Suhail, on which the assessee had relied during the appellate proceedings. In this case, the relevant A.Y. is 2010-11 & the Hon'ble ITAT have held that provisions of Section 194C(7) are not applicable in this A.Y. but they are certainly applicable to subsequent assessment years. The relevant portion of the judgement reads as under:

"After considering the rival submissions and perusing the submissions and notifications issued in this regard, we are of the opinion that there is no need to deviate from the order of Ld. CIT(A). Even though new provisions were introduced and assessees were made liable to deduct tax on the payments made to transporters, provisions of section 194C(6) gives exemption to the person not to deduct the amount, in case they obtain/furnish the PAN. Assessee has complied with these provisions. Therefore, there is no need to deduct any lax and disallowance under section 40(a)(ia) does not arise. Even though it was stated in sub-section 7 that 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 within such time as may be prescribed, this provision was not made applicable for the impugned assessment year as the relevant notification was not issued immediately. In fact, the Board has given notification on 15.10.2010, which was made effective for the forthcoming second quarter statement due on 15th October, 2010. Since CBDT itself has issued notification in a later year, assessee's contention that in the impugned assessment year, no such prescribed authority was stated has to be accepted. "

The second judgement relied upon by the assessee in the case of Vijay Siddharaj Bashte (49 taxmann.com 334, Pune), is not applicable in this case. There has been no finding pertaining to the applicability of Section 194C(7).

In view of the above discussion, it is held that the assessee has not fulfilled the conditions laid down in sub-section 194C(7) and thus committed the default of non-deduction of TDS in the case of the transporters for both carriage inward and carriage outward. Hence, the AO had rightly disallowed the sums u/s 40(a)(ia). The action of the AO is confirmed".

9. A reading of the appellate order shows that the learned CIT dismissed the appeal of the assessee on the premise, firstly, that u/s 194C(1)) r/w clause (c) to Explanation given below Sec. 194C(7) the assessee is a contractor making payments to the transporter for carrying of goods and was thus liable to deduct TDS on such payment. According to him, according to Section 194C(6), if a transporter is making any further payment for hiring/leasing of vehicles during the course of his business then he would not deduct TDS if the sub-contractors have supplied their PAN details to the principal transporter. He further observed that Section 194C(6) will not apply to payments made by a person who himself is not a transporter, to another sub-contractor for plying, hiring or leasing goods carriage. Secondly, he stated that provisions of section 194C(6) and 194C(7) have to be read together and the benefit under section 194C (6) is available only when the assessee fulfils the conditions laid down in sub-section 194C(7) of the Act. On this aspect, he derives strength

from the decision in the case of Muhammad Suhail. Now, we shall proceed to appreciate the rival contentions in the light of the provisions of the Act and the decisions rendered by different High Courts and Tribunal.

10. For proper appreciation of the finding of the learned CIT that the assessee is a contractor making payments to the transporter for carrying of goods and was thus liable to deduct TDS on such payment, it is necessary to look at the provisions of section 194C)1) of the Act. The said provision reads as follows:

> *"194C. Payments to contractors and sub-contractors.— [(1) Any person responsible for paying any sum to any resident (hereinafter 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) the Central Government or any State Government; or*
>
> *(b) … … …*
>
> *… … …*
>
> *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 in case of advertising,*
>
> *(ii) in any other case two per cent,*
>
> *of such sum as income-tax on income comprised therein:*
>
> *Provided that no individual or a 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.]*

11. The expressions "Any person responsible for paying any sum" and "to any resident (hereafter in this section referred to as the contractor)", used in this section plainly makes it clear that the receiver of the payment is the contractor, and the person making such payment is the contractee. It goes without saying that the person who in pursuance of a contract, is responsible for payment is the contractee and the person carrying out any work (including supply of labour for carrying out any work) is a contractor. As a matter of fact, these expressions in the context of section do not admit of any other interpretation.

12. Our understanding of the terms "Contractee" and "Contractor" is fortified by the judgement of Allahabad High Court in Moradbad Chartered Accountants vs Central Board of Direct Taxes And Anr. - 264 ITR 374 (All), wherein it is clearly held that a bare perusal of s. 194C shows that the said provision really deals with contractors who are businessmen, e.g., building contractor, or contractor who does work of transportation or loading of goods, or for supply of materials. Further it was held in Kirloskar Brothers Limited vs. DCIT (IT AT Pune)- 167 TTJ 102, that in common parlance, a contractor is understood as a person who carries out the assigned work as per the directions given by the contractee.

13. Ld. CIT(A) mistook the expressions "Any person responsible for paying any sum" and "any resident (hereafter in this section referred to as the contractor)", appearing in Sec. 194C(1) and categorized the assessee as the Contractor. Having categorized the assessee as a contractor, the Ld. CIT(A) observed that the immunity from making TDS from the payment under section 194C(6) is available only to a transporter that procured the PAN of the Sub-Contract Transporters.

14. The next question, therefore, that arises is whether the difference between "Contractor" and "Sub Contractor"has any impact on the liability to make TDS under Section 194C(1) of the Act. To understand this, it is necessary to refer to the position of law prior to and after amendment to Section 194C of the Act.

15. It is worth noticing that by means of Finance Act (No.2), 2009, rather than introducing a few changes, the entire section of 194C had been substituted. Before Amendment it was reading like

> *"(1) Any person responsible for paying any sum to any resident (hereinafter 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) the Central Government or any State Government; or*
>
> … … …
>
> … …

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—

… … …"

(2) Any person (being a contractor and not being an individual or a Hindu undivided family), responsible for paying any sum to any resident (hereafter in this section referred to as the sub-contractor) in pursuance of a contract with the sub-contractor for carrying out, or for the supply of labour for carrying out, the whole or any part of the work undertaken by the contractor or for supplying whether wholly or partly any labour which the contractor has undertaken to supply shall, at the time of credit of such sum to the account of the sub-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 one per cent of such sum as income-tax on income comprised therein

After Amendment by Finance Act (No.2), 2009 it is reading like,

(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—

… … …"

(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,—

… … …

… … …

(ii) … … …

(iii) "contract" shall include sub-contract;

(iv… … …"

16. Though the entire Section 194C is Subs. by Finance (No. 2) Act, 2009, s. 61 (w.e.f. 1-10-2009), in so far as the obligation of the person responsible for making payment/crediting

the Account of the Payee to deduct TDS when payment/credit is made pursuant to a contract between is concerned, even after amendment, Sec. 194C(1) had remained substantially the same. However, earlier "Contract" and "Sub-Contract" were covered by two different subsections, namely, Sec. 194C(1) and Sec. 194C(2) respectively. But, the Amendment, vide Finance Act, 2009 brought in the most significant change by obliterating the difference between Contract and Sub-Contract, by repealing Sec. 194C(2) which was dealing with sub-contractors and simultaneously introducing Sub Section (7) with Explanation, Clause No. (iii) of which clarifies that "Contract shall include sub-contract". Now as the things stand, there remains no distinction between a Contract and Sub-Contract. Unlike pre-amendment scenario, the entire provision of Sec. 194C now applies alike to both the situations, namely, in relation to jobs assigned by a person to a Contractor and the jobs assigned by a Contractor to a Sub-Contractors in a similar manner. A plain reading of Sec. 194C(2), as it stands now, clearly states that a Contractor entrusted with any work under sec. 194C(1) while making payment to a Sub-Contractor is still under obligation to effect TDS as well.

17. Reference to Contractor and sub-contractor by the Ld. CIT(A) indicates that he been still labouring under the impression that, as provided by the pre-amended provisions, such immunity would be available in the hands of the Contractor- Transporter making payment to the Sub Contractors-Transporters. It shows that he had failed to take note of the fact that by virtue of the Amendment introduced by Finance Act (No.2) 2009, the distinction between a contractor and a sub-contractor has been done away with. Ld CIT should have noticed the significance of the amendments made by Finance (No. 2) Act, 2009 and make out the difference between the previous and prevailing provision

18. On this aspect, we are fortified in our conclusion by the decision of a coordinate Bench of the Mumbai Tribunal in the case of HCC-L&T Purulia Joint Venture v JCIT (ITA Nos. 1644, 3041/MUM/2010), wherein it was held as follows:

> *"The provisions of section 194 C as substituted by the Finance Act 2 of 2009 w.e.f. 1/10/2009 has now not made any distinction between a payment to a contractor or sub-contractor and all payments for carrying out any work in pursuance of contract are covered within the fold o f section 194C (1) of the Act. Further Explanation (iii) also provides that a contract include sub- contract. Thus on and from 1/10/2009 payments made by sub-contractor to a sub sub-contractor would also be covered under section 194C of the Act".*

19. Further, CBDT Circular No. 05/2010 F.No.l42/13/2010- SO (TPL), dated 3Td June, 2010, in the context of the Explanatory Notes on Finance Act (No.2) 2009, clearly delineates reason for removal of dividing line between a Contractor and a Sub-Contractor by the Finance Act, (No.2) , 2009 in the following terms:

> *"Under the existing provisions of section 194C of the Income-tax Act, TDS at the rate of 2% is deducted on payment for a contract. However, in the case of a sub-contract, TDS is deducted at the rate of 1 %. Further, in the case of payment for an advertising contract, TDS is required to be deducted at the rate of 1 %. In order to reduce the scope for disputes regarding classification of contract as sub contract, The Act has been amended to specify the same rate of TDS for payments to both contractors as well as sub- contractors."*

20. It, therefore, flows from our above discussion that by virtue of the Amendment introduced by Finance Act (No.2) 2009, the distinction between a contractor and a sub-contractor has been done away with, and Cl. (iii) of Explanation under 194C(7) now clarifies that "contract" shall include sub-contract.

21. Now coming to the contention that under Sec. 194C(6) as it stands now, providing for immunity from TDS under sec. 194C(1) in relation to payments to transporters, applies only to a transporter making payment to another sub-contractor submitting his PAN to the former, Section 194C(6) does not give any such indication.

Section 194C(6) reads as follows:

> *(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, where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with, his Permanent Account Number, to the person paying or crediting such sum.*

22. Prior to the amendment by Finanace Act, 2015 (w.e.f. 1-06-2015, it was reading as follows:

> *(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.*

23. A plain reading of the above sub-section makes it amply clear that on the Contractor undertaking Transport of Goods in course of his Transport Business, furnishing PAN to the person making such payment/credit, the payee shall not be required to effect TDS from such payment to the Transporter. On furnishing the PAN No. from the recipient Transporter-Contractor, the immunity from making TDS under sec. 194C(1) shall be available to all payers by virtue of 194C(6), in relation to all Goods Transport Charges irrespective of the fact, whether it was under a Contract or a Sub-contract.

24. We wish to refer profitably to Para No. 49.3 of CBDT Circular No. 05 12010 F.No.142/13/2010-S0 (TPL), dated 3rd June, 2010 (Explanatory Notes on Finance Act (No.2) 2009), where under the PAN based immunity and exemption from making TDS to Transporters was extended in all Transport contracts.

"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 63 to be deducted at source. Transport operators are reporting, problem in obtaining TDS certificates as these are not issued immediately by clients and 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.

C) Applicability - This amendment has been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to the assessment year 2010-2011 and subsequent assessment years."

The Circular, while referring to the amendment in Sec. 194C(6) made it plainly clear that from the A.Y. 2010-11 onwards, by virtue thereof when Transport Operators furnish their

PAN to the person responsible for making payments to them, the Transport Operators would be outside the purview of TDS u/s 194C. Needless to say that subject to compliance with the provisions of Section 194C(6), immunity from TDS under sec. 194C(1) in relation to payments to transporters, applies transporter and non-transporter contractees alike.

25. Next ground of disallowance stated by the learned CIT is that Sec. 194C(6) and 194C(7) are to be read together, and if after obtaining PAN from the Transporters, the requisite particulars so obtained from the Transporters are not furnished to the prescribed Authority as provided U/S 194C(7), deduction and for that matter disallowance, U/S 194C and 40(a)(ia) would get attracted. On this aspect, as indicated above a reading of provisions of Section 194C (6), prior to the amendment of by Finance Act, 2015 (w.e.f. 1-06-2015), makes it clear that that during the relevant Assessment year, if the sub-contractors have supplied their PAN to the person making payments in respect of hiring /leasing/of vehicles during the course of his business, then such person making such payment shall not deduct any TDS. It is only by way of subsequent amendment by Finance Act, 2015 (w.e.f. 1-06-2015), the expression "where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with" was substituted in the place of "*on furnishing of*" thereby introducing the requirement of the declaration to the effect indicated by the amendment. Therefore, under Sec. 194C(6), as it stood prior to the amendment in 2015 in order to get immunity from the obligation of TDS, filing of PAN of the Payee-Transporter alone is sufficient and no confirmation letter as required by the learned CIT is required.

26. On the aspect of observation of the learned CIT that Sections 194C(6) and Section 194C(7) have to be read together to extend the immunity from TDS, our attention is drawn to the fact that though the Finance Act, (N0.2) 2009 introduced, inter alia, Sec. 194C(6) and 194C(7), similar and analogous provision had been very much in existence under proviso 2 and 3 to Section 194C(3) of the Act. Placing such provisions in juxtaposition in the following chart makes it clear that they are very much analogous and the difference is that only in respect of requirement of a declaration and furnishing the particulars to the to the prescribed income-tax authorities under the provisos 2 and 3 of pre-amended section 194C(3)

is being replaced by the Permanent Account Number under present Sections 194C(6) and (7) respectively.

194C prior to Amendment by Finance Act, (N0.2) 2009)	194C as Amended by Finance Act, (N0.2) 2009
194C(3) No deduction shall be made under sub-section (1) or sub-section (2) from— … … … … … … Provided that …. …	
Provided further that no deduction shall be made under sub-section (2), from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year:	(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, [1]["where such contractor owns ten or less goods carriages at any time during the previous year and furnishes a declaration to that effect along with"], his Permanent Account Number, to the person paying or crediting such sum.
Provided also that the person responsible for paying any sum as aforesaid to the sub-contractor referred to in the second proviso shall furnish to the prescribed income-tax authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may be prescribed; or]	(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.

27. From the above, it could be observed that only slight modification had been introduced as to the procedure by replacing “declaration” with the words “Permanent Account Number” as the thing to be obtained from the Transporter. We are, therefore, inclined to hold that the provisions of Section 194C(6) and 194C(7) are similar to the Proviso (2) and (3) of the pre-amended Section 194C(3), and on this premise we shall proceed to

examine whether Section 194C(6) and 194C(7) are to be read together to invoke provisions under section 40(a)(ia) of the Act.

28. After drawing an analogy between the pre-amended proviso between Clause (2) and Clause (3) of section 194C(3) and the present amended section 194C(6) and 194C(7), Learned AR submitted that even on earlier occasions when the declaration obtained in Form 15I (requirement similar to the PAN particulars under Sec. 194C(6)) obtained from the Transporter under Second Proviso is not submitted in Form 15J to the Commissioner of Income Tax in Form 15J (requirement similar as is provided under the third proviso and equivalent to the requirement Sec. 194C(7), the Department made attempts to make additions, but such additions have been deleted and rendered invalid. He submitted that the Courts and Tribunals consistently held that on obtaining of either the declaration contemplated under second proviso to the pre-amended section 194C(3) or the PAN details under the present section 194C(6), the assessee was not required to make any deduction at source on the payments made to the contractor or sub-contractor, irrespective of the fact whether or not such information was furnished to the authorities as prescribed under third proviso to the amended section 194C(3) or the present section 194C(7).

29. In CIT –vs.- Valibhai Khanbhai Mankad (Tax Appeal No. 1182 of 2011, order dated 01.10.2012), it is held by the Hon'ble Gujarat High Court at Ahmedabad that :-

> *"(6) Section 194C, as already noticed, makes provision where for certain payments, liability of the payee to deduct tax at source arises. Therefore, if there is any breach of such requirement, question of applicability of section 40(a)(ia) would arise. Despite such circumstances existing, sub-section (3) makes exclusion in cases where such liability would not arise. We are concerned with the further proviso to sub-section (3), which provides that no deduction under sub-section (2) shall be made from the amount of any sum credited or paid or likely to be credited or paid to the sub-contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum in the prescribed form and verified it in the prescribed manner within the time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.*
>
> *7) The exclusion provided in sub-section (3) of section 194C from the liability to deduct tax at source under sub-section (2) would thus be complete the moment the requirements contained therein are satisfied. Such requirements, principally, are that the sub-contractor, recipient of the payment produces a necessary declaration in the prescribed format and further that such sub-contractor does not own more than two*

goods carriages during the entire previous year. The moment, such requirements are fulfilled, the liability of the assessee to deduct tax on the payments made or to be made to such sub-contractors would cease. In fact he would have no authority to make any such deduction.

8) The later portion of sub-section (3) which follow the further proviso is a requirement which would arise at a much later point of time. Such requirement is that the person responsible for paying such sum to the sub-contractor has to furnish such particulars as prescribed. We may notice that under Rule 29D of the Rules, such declaration has to be made by the end of June of the next accounting year in question.

9) In our view, therefore, once the conditions of further proviso of section 194C(3) are satisfied, the liability of the payee to deduct tax at source would cease. The requirement of such payee to furnish details to the income tax authority in the prescribed form within prescribed time would arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable under sub-section (2) of section 194C of the Act. In our view, therefore, the Tribunal was perfectly justified in taking the view in the impugned judgment. It may be that failure to comply such requirement by the payee may result into some other adverse consequences if so provided under the Act. However, fulfilment of such requirement cannot be linked to the declaration of tax at source. Any such failure therefore cannot be visualized by adverse consequences provided under section 40(a)(ia) of the Act.

10) When on the basis of the record it is not disputed that the requirements of further proviso were fulfilled, the assessee was not required to make any deduction at source on the payments made to the sub-contractors. If that be our conclusion, application of section 40(a)(ia) would not arise since, as already noticed, section 40(a)(ia) would apply when there is a requirement of deduction of tax at source and such requirement is either not fulfilled or having deducted tax at source is not deposited within prescribed time".

30. In CIT –vs.- Sri Marikamba Transport Co. in ITA No. 553 of 2013 reported in 379 ITR 129 (Karn.), Hon'ble Karnataka High Court has formulated a question as to whether non-filing of Form No. 15I/J within the prescribed time is only a technical default or the provisions of section 40(a)(ia) of the Act are attracted? and proceeded to answer the same as under:-

"Section 40 (a)(ia) and Section 194C(3) of the Act reads thus:

"Section 40(a)(ia) : Any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub- section(i) of Section 139".

Section 194C/3): No deduction shall be made under sub-section (1) or sub- section(2) from -

(i) the amount of any sum credited or paid or likely to be credited or paid to the account of or to the contractor or sub-contractor, if such sum does not exceed twenty 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 fifty thousand rupees, the person responsible for paying such sums referred to in sub-s.(l) or as the case may be sub-s.(2) shall be liable to deduct income-tax under this section:

Provided further that no deduction shall be made under subs. (2) from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business of plying hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.

Provided also that the person responsible for paying any sum as aforesaid to the sub-contractor referred to in the second proviso shall furnish to the prescribed IT authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may be prescribed: or

(ii) any sum credited or paid before the 1st day of June, 1972; or

(iii) any sum credited or paid before the 1st day of June, 1973, in pursuance of a contract between the contractor and a co-operative society or in pursuance of a contract between such contractor and the sub-contractor in relation to any work (including supply of labour for carrying out any work) undertaken by the contractor for the co-operative society. "

4. The combined reading of these two provisions make it clear that if there is any breach of requirements of Section 194C(3), the question of applicability of Section 40(a)(ia) arises. The exclusion provided in Sub-Section(3) of Section 194C from the liability to deduct tax at source under sub-section(2) would be complete, the moment the requirements contained therein are satisfied. Once, the declaration forms are filed by the subcontractor, the liability of the assessee to deduct tax on the payments made to the sub-contractor would not arise. As we have examined, the sub-contractors have filed Form No. 1Sl before the assessee. Such being the case, the assessee is not required to deduct tax under Section 194C(3) of the Act and to file Form No.15]. It is only a technical defect as pointed out by the Tribunal in not filing Form No.15J by the assessee. This matter was extensively considered by the ITAT, Ahmedabad Bench in Valibhai Khanbhai Mankad's case (supra) and the said Judgment has been upheld by the High Court of Gujarat reported in (2013) 216 Taxman 18 (Guj) wherein it is held that once the conditions of Section 194C(3) were satisfied, the liability of the payee to deduct tax at source would cease and accordingly, application of Section 40(a)(ia) would also not arise. The Tribunal, placing reliance on the judgment of the ITAT, Ahmedabad Bench, has dismissed the appeal filed by the Revenue. We agree with die said propositions and hold that filing of Form No.15I/j is only directory and not mandatory."

31. A Coordinate Bench of this Tribunal in ITA No. 86/VIZ/2013 in the case of ITO –vs.- Kolli Brothers, order dated 11.12.2013 followed the decision of the Hon'ble High Court of Gujarat in the case of Valibhai Khanbhai Mankad (supra). In the case of M/s. Mahalaxmi Cargo Movers –vs.- ITO in ITA No. 6191/MUM/2013, order dated 09.12.2015, another Coordinate Bench of this Tribunal reached the same conclusion while following the decision of the Coordinate Bench in the case of CIT –vs.- Valibhai Khanbhai Mankad (supra) and CIT –vs.- Sri Marikamba Transport Co. in ITA No. 553 of 2013 reported in 379 ITR 129 (Karn.).

32. It is worth noticing that in ACIT –vs.- Mr. Mohammed Suhail, Kurnool in ITA No. 1536.Hyd/2014, order dated 13.02.2015, the Coordinate Bench of this Tribunal specifically held 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).

33. In view of the above and respectfully following the judicial reasoning delineated in the above judgments, we find that if the assessee complies with the provisions of section 194C(6), disallowance under section 40(a)(ia) does not arise just because there is violation of provisions of section 194C(7) of the Act.

34. From our above discussion it follows that,-

i) in the context of Section 194C(1), person undertaking to do the work is the Contractor and the person so engaging the contractor is the contractee;

ii) that by virtue of the Amendment introduced by Finance Act (No.2) 2009, the distinction between a contractor and a sub-contractor has been done away with and Cl. (iii) of Explanation under 194C(7) now clarifies that "contract" shall include sub-contract;

iii) subject to compliance with the provisions of Section 194C(6), immunity from TDS under sec. 194C(1) in relation to payments to transporters, applies transporter and non-transporter contractees alike;

iv) under Sec. 194C(6), as it stood prior to the amendment in 2015, in order to get immunity from the obligation of TDS, filing of PAN of the Payee-Transporter alone is sufficient and no confirmation letter as required by the learned CIT is required;

v) Sections 194C(6) and Section 194C(7) are independent of each other, and cannot be read together to attract disallowance u/s 40(a)(ia) read with Section 194C of the Act; and

vi) If the assessee complies with the provisions of Section 194C(6), no disallowance u/s 40(a)(ia) of the Act is permissible, even there is violation of the provisions of Section 194C(7) of the Act.

35. Consequent to our findings in the preceding paragraphs, we reach a conclusion that the authorities below are not justified in treating the expense incurred by the assessee for Carriage inward and carriage outward as disallowable under section 40(a)(ia) of the Act, and adding back Rs.1,63,78,648/- claimed as expense towards Carriage Inward and Rs.1,13,00,980/- claimed as expense towards Carriage Outward, and such additions shall stand deleted.

36. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on September 9th, 2016.

Sd/-	**Sd/-**
(Waseem Ahmed)	**(K. Narasimha Chary)**
Accountant Member	**Judicial Member**

Kolkata, the 9th day of September, 2016

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(3) *Commissioner of Income Tax, Kolkata-15, Kolkata;*

(4) *The Departmental Representative*

(5) *Guard File*

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.