

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 216 of 2014 (O&M)
Date of decision: 16.9.2015**

The Commissioner of Income Tax, Faridabad

.....Appellant

M/s Ram Gopal & Sons

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Tejinder K.Joshi, Advocate for the appellant.

Mr. Jagmohan Bansal, Advocate for the assessee.

Ajay Kumar Mittal,J.

1. Delay in refiling the appeal is condoned.
2. The revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 8.6.2012, Annexure A.III passed by the Income Tax Appellate Tribunal Delhi Bench 'F', New Delhi (in short, "the Tribunal") in ITA No.20/DEL/2009 for the assessment year 2005-06, claiming following substantial question of law:-

“i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the addition of ₹ 13,04,528/- made by the Assessing Officer on account of labour

charges simply relying on the decision in assessee's own case in the assessment year 2001-02, without appreciating the facts brought on record by the Assessing Officer?

ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the addition of ₹ 20,97,572/- made on account of shortage in production even when the assessee has not been able to justify the shortage in finished product?

iii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was right in law in deleting the addition of ₹ 8,59,481/- made by the Assessing Officer on account of disallowance under section 40(a)(ia) of the Income Tax Act, 1961 ignoring the legal position that the tax was required to be deducted on the payment of ₹ 8,59,481/- under section 194C and the assessee's non deduction of tax on the basis of Form No.15-I was against the provision of law?"

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Assessment was framed by the Assessing Officer at an income of ₹ 6,15,69,300/- under Section 143 (3) of the Act vide order dated 26.12.2007, Annexure A.1 whereby inter alia the following additions were made:-

i) Addition of ₹ 13,04,528/- on account of labour charges;

ii) Addition of ₹ 20,97,572/- on account of shortage in production;

iii) Disallowance of ₹ 8,59,481/- under section 40(a)(ia);

The assessee had claimed labour charges of ₹ 3,71,208/- and ₹ 27,69,108/- on account of packing labour charges under the head consumption of goods.

The Assessing Officer mentioned instances of two manufacturers of *mehandi* in Faridabad viz. M/s Kuriya Mal & Sons, Faridabad and M/s Ishar

Dass Amir Chand, Faridabad claiming labour charges at 1.13% and 1.52% respectively. The Assessing Officer was of the opinion that the assessee had inflated the labour charges just to reduce its taxable income. The Assessing Officer thus allowed labour charges to the assessee on the basis of the same as claimed by the other two leading manufacturers of *mehandi* by adopting the figure of 1.52% i.e. the higher of the two figures, as allowable expenses. Thus, the Assessing Officer disallowed a sum of ₹ 13,04,528/- by taking the figure of 1.52% of the gross turnover of the assessee out of the total expenditure of ₹ 31,40,316/- claimed by it under these heads. On appeal, the CIT(A) relying upon the decision of the Tribunal in assessee's own case for the assessment year 2001-02 deciding similar issue in favour of the assessee deleted the disallowance of ₹ 13,04,528/-. The revenue went in appeal before the Tribunal. The Tribunal following its own decision in the assessee's case for the earlier year, dismissed the appeal filed by the revenue and deleted the addition made by the Assessing Officer. The second issue was with regard to addition of ₹ 20,97,572/- under the head shortage in production. The Assessee had claimed shortage in production at 80,995 kgs. which corresponded to 7.19% of the production. In view of claim of abnormal high losses by the assessee, the Assessing Officer did not rely upon the book version of the assessee and rejected the same in view of provisions of section 145(3) of the Act and applied loss at the rate of 3.7%. Thus, the Assessing Officer disallowed a sum of ₹ 20,97,572/- as against the loss claimed at 7.19%. Not satisfied, the assessee went in appeal before the CIT(A). Vide order dated 4.11.2008, Annexure A.II, the CIT(A) deleted the addition. The Tribunal relying upon its own decision in the case of the

assessee for the assessment year 1995-96 upheld the order of the CIT(A). The third issue was with regard to addition of ₹ 8,59,481/- under section 40(a)(ia) of the Act. The assessee had debited a sum of ₹ 9,41,982/- under the head 'freight inwards'. Out of these expenses, the assessee had made payment in excess of ₹ 50,000/- totalling ₹ 8,59,481/- to three transporters. The Assessing Officer was of the opinion that the assessee was liable to deduct tax at source under section 194C of the Act. The assessee submitted that no TDS was made on payments to these transporters because they had given Form No.15-I. The Assessing Officer observed that the said Form was meant for sub contractor to the contractor and not by the contractor to the contractee as was the case here. Thus, the assessee had violated the provisions of section 194C of the Act and made disallowance in view of the provisions of Section 40(a)(ia) of the Act. The CIT(A) deleted the addition of ₹ 8,59,481/- inter alia holding that the assessee was not required to deduct tax at source in view of Circular No.715 dated 8.8.1995. The Tribunal dismissed the appeal filed by the revenue. Hence the instant appeal by the revenue.

4. Learned counsel for the parties are agreed that question No.(i) is covered by the decision of this Court dated 29.7.2015 in ITA No. 215 of 2014 (*Commissioner of Income Tax, Faridabad vs. M/s Ram Gopal & Sons*), in favour of the assessee and against the revenue, wherein it was recorded as under:-

“The first question also does not arise as a substantial question of law. The assessee claimed deduction in respect of labour charges paid to about 50 labourers. The Assessing Officer reduced this amount having come to the conclusion that only a

few labourers were traceable at the given addresses and some of the addresses were not even confirmed. The Tribunal kept in mind the ground realities in such cases. There were comparable results in expenses of labour charges in earlier years. The deductions were allowed to the assessee. The quantum of expenditure can be compared to the production done by the labour. The labour was engaged on piece rate bases. It was found that there was a co-relation between the production as well as the number of labour engaged. The issue really is a question of fact and appreciation of facts. We are unable to say that this analysis and the findings of the CIT(A) and of the Tribunal are perverse or absurd.”

5. As regards, question No.(ii), learned counsel for the parties are ad-idem that the same is also concluded in favour of the assessee and against the revenue by orders of this Court dated 29.7.2015 passed in ITA Nos.214 and 215 of 2014 (***Commissioner of Income Tax, Faridabad vs. M/s Ram Gopal & Sons***). In ITA No.214 of 2014, it was recorded as under:-

“5. The second question raised by the appellant does not raise a question of law at all. It is only a question of fact. The Assessing Officer made an addition to the assessee's income having rejected the assessee's case that there was a shortage in production. The CIT(A) found, as a matter of fact, that the assessee had been maintaining the complete details/particulars of opening stock, purchase, consumption, production and sales, which were in fact verified and accepted by the Assessing Officer. The finding is that the addition was made purely on imagination and assumptions without bringing any documentary material on record. The finding is neither absurd nor perverse.

6. The second question is also answered against the appellant and in favour of the assessee.”

6. With regard to question No.(iii), qua addition of ₹ 8,59,481/- made by the Assessing Officer on account of disallowance under Section 40 (a)(ia) of the Act on the ground that the tax was required to be deducted under Section 194C of the Act, the CIT(A) recorded that the assessee had no contract for transport with any transporter. Each GR note became a separate contract and since the value of such contract did not exceed ₹ 20,000/-, the assessee was not required to deduct tax at source from the said payments. Reliance was placed on Board Circular No.715 dated 8.8.1995. It was further recorded as under:-

“The assessee has made payments to the three transporters mentioned in the assessment order for each order of transport executed by them. The assessee has no contract for transport with any transporter. Thus each GR Note becomes a separate contract and since the value of such contract does not exceed ₹ 20,000/- the assessee was not required to deduct tax at source from the said payments. This is also borne out by the Board Circular No.715 dated 8.8.1995 wherein the following was stated:

Question 9: In the case of payments to transporters, can each GR be said to be a separate contract even though payments for several GRs are made under one bill?

Answer: Normally, each GR can be said to be a separate contract, if the goods are transported at one time. But if the goods are transported continuously in pursuance of a contract for a specific period or quantity, each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of the TDS.

It is not the case of the Assessing Officer that each GR is above ₹ 20,000/- and thus the assessee was required to deduct tax at source. This is a legal ground which can be taken up at any point of time in the appropriate proceedings.

3.2 The Assessing Officer has not brought on record any

document to show that the assessee had a contract with any transporter and thus just because the payments exceeded ₹ 50,000/- there was no implicit reason to hold that the payments were made in pursuance to a contract. You are requested to delete the disallowance.

13. I have carefully considered the submissions of the learned AR and tend to agree with them. The facts of the case are clearly established by the learned AR as above and considering those facts and Board's Circular No.715 dated 8.8.1995, the claim of the appellant is quite justified and correct. Thus the disallowance made by the AO is premature and without any solid finding or evidences. Rather the facts go in favour of the appellant. Hence the disallowance of ₹ 8,59,481/- stands deleted.”

7. The Tribunal while upholding the findings recorded by the CIT (A) held as under:-

“The AO made this disallowance as no TDS was made as per provisions of section 194C from the payments which were in excess of ₹ 50,000/- in respect of the following three transporters:-

- | | |
|---|--------------|
| i) Shri Babu Lal s/o Tikamji | ₹ 6,27,858/- |
| ii) Shri Narpat Raj s/o Shri Bhagar Lal | ₹ 98,256/- |
| iii) Shri Ram Lal s/o Shri Teekam Ram | ₹ 1,33,367/- |
| | ₹ 8,59,481/- |

The AO examined From No.15-I of these transporters and concluded that tax was required to be deducted on the said payments of ₹ 8,59,481/- under section 194C which the assessee had failed to do. Hence he made the above disallowance.

16. Before the learned CIT(A) it was submitted that the assessee has made payments to the three transporters mentioned in the assessment order for each order of transport executed by them. The assessee has no contract for transport with any transporter. Thus each GR Note becomes a separate

contract and since the value of such contract does not exceed ₹ 20,000/- the assessee was not required to deduct tax at source from the said payments. It was further submitted that this is also borne out by the Board Circular No.715 dated 8.8.1995 wherein the following was stated:-

Question 9: In the case of payments to transporters, can each GR be said to be separate contract, even though payments for several GRs are made under one bill?

Answer: Normally, each GR can be said to be a separate contract, if the goods are transported at one time. But if the goods are transported continuously in pursuance of a contract for a specific period or quantity, each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of the TDS.

It is not the case of the AO that each GR is above ₹ 20,000/- and thus the assessee was not required to deduct tax at source. This is a legal ground which can be taken up at any point in time in the appellate proceedings.

It was further submitted that the AO has not brought on record any document to show that the assessee had contract with any transporter and thus just because the payments exceeded ₹ 50,000/- there was no implicit reason to hold that the payments were made in pursuance to a contract.

17. Considering the above, the learned CIT(A) held that the claim of the assessee was justified and correct in light of the aforesaid Board Circular No.715 dated 8.8.1995. Hence he held that the disallowance made by the AO is premature and without any solid finding or evidence. Hence the disallowance of ₹ 8,59,481/- stands deleted.

18. Against the above order, the Revenue is in appeal before us.

19. We have heard the rival contentions in the light of the material produced and precedents relied upon. We find considerable cogency in the submissions of the assessee. Furthermore, the Board Circular No.715 as aforesaid comes to

the rescue of the assessee. Under the circumstances, we do not find any infirmity in the order of the learned CIT(A) and accordingly we uphold the same.”

8. Learned counsel for the appellant-revenue was not able to demonstrate that the approach and the findings recorded by the CIT(A) as well as the Tribunal with regard to question No.(iii) are illegal or perverse in any manner warranting interference by this Court. Consequently, in view of the above, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

September 16, 2015
'gs'

(Ramendra Jain)
Judge