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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 435/2016 & ITA 437/2016**

PR COMMISSIONER OF INCOME TAX - 19 Appellant
Through: Mr. Zoheb Hossain, Sr. Standing
Counsel in both appeals.

versus

SHRI KULDEEP KUMAR SHARMA Respondent
Through: Mr. Ravi Pratap, Advocate for
respondent in both appeals.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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07.11.2016

The revenue claims to be aggrieved by an order of the Income Tax Appellate Tribunal ("ITAT") which had upheld the deletion of a disallowance made by the Assessing Officer under Section 40 (a) (ia) of the Income Tax Act ("Act").

The assessee provided transport service by utilizing the services of truck drivers. The payments made to the assessee by the principal employer/Jai Prakash Associates had suffered tax deduction under the relevant provisions of the Income Tax Act. The AO disallowed and added back certain amounts claiming that the assessee had defaulted in its obligation under Section 194C (2) of the Act. The CIT (A) granted relief. Both the CIT (A) and ITAT noticed that for previous years no disallowance was made for non-compliance with Section

194C on the ground that TDS was not deducted from payments made to the truck drivers.

The ITAT rejected the revenue's contentions in the following terms: -

18. Now, adverting to the case at hand, we are of the considered view, inter alia, that the case of the assessee is covered by the order passed by the Hon'ble ITAT, Visakhapatnam Bench, in the case of Mythri Transport Corporation (supra) and by Hon'ble ITAT, Delhi Bench, in the assessee own case passed for AY 2007-08; that no doubt, under the Indian Contract Act, there can be an oral contract between the parties, but the Assessing Officer in this case has not brought on record an iota of evidence to prove any such contract entered into between assessee and the alleged truck owners for part performance of its work with joint liability; that it is proved on record that the assessee was solely responsible for all the acts and default committed by him in due performance of its contract entered into with M/s Jay Prakash Associates; that the Assessing Officer has also not brought on record any evidence that the assessee has earned another income except the commission which has not otherwise been disputed by the Assessing Officer; that no doubt, in the assessment order for the year 2009-10, the Assessing Officer has pointed out in para 2 of the assessment order that under Section 133(6) of the Act, a letter dated 25.11.2011 was issued to M/s Jai Prakash Associates to furnish the copy of account of the assessee for producing their books of accounts by 07.12.2011 positively but no reply was filed by him, however, from the assessment order dated 28.12.2011 for AY 2009- 10, it has come on record that the Assessing Officer has hastily passed the assessment order without applying coercive method in order to obtain the requisite information; that on the other hand, the requisite information called upon by the Assessing Officer at the time of assessment for the year 2008-09, has been filed by M/s Jai Prakash Associates as has been comprehensively discussed in para 3 of the assessment order; that when the tax has been duly deducted at source by M/s Jay Prakash Associates and provided receipt of freight, the question of deduction of tax at

source by the assessee does not arise; that since the assessee's claim on the same issue has already been accepted in the assessment years 2004-05, 2005-06 and 2006-07, the Assessing Officer has erred in making the addition who was required to follow the rule of consistency, as held by Hon'ble Apex Court in the case of Radha Soami Satsang Vs. CIT(A), 193 ITR 321; that from the confirmation made by M/s Jai Prakash Associates and the record collected by the AO, it is proved that the assessee has received payment after deduction of tax at the hands of M/s Jai Prakash Associates again deducting the tax at source would have amounted to double taxation; that the Assessing Officer has also not disputed the fact that the assessee only gained advantage of a sum of Rs.22,37,127/- paid to him after tax deduction at source by the payee; that the coordinate bench in the assessee's own case In ITA No.5672/Del/2010 for AY 2007-08, has categorically held that the carriers/transporters engaged by the assessee to carry out the transportation work of M/s Jay Prakash Associates are not sub-contractors by applying the ratio of the order passed by ITAT, Visakhapatnam Bench, in the case of Mythri Transport Corporation Vs. ACIT, 124 TTJ 970; that Hon'ble Jurisdictional High Court in the case of CIT Vs. Hardarshan Singh, 350 ITR 427, decided the identical issues. The operative para of the judgment is as under:

"DEDUCTION OF TAX AT SOURCE-LORRY BOOKING BUSINESS-ASSESSEE COLLECTING FREIGHT CHARGES FROM CLIENTS WHO INTENDED TO TRANSPORT THEIR GOODS THROUGH SEPARATE TRANSPORTERS-ASSESSEE PAYING TO TRANSPORTERS ENTIRE AMOUNT COLLECTED FROM CLIENTS AFTER DEDUCTING HIS COMMISSION-NO PRIVITY OF CONTRACT OF CARRIAGE OF GOODS BETWEEN ASSESSEE AND HIS CLIENTS-

ASSESSEE NOT A PERSON RESPONSIBLE BUT ONLY A FACILITATOR - TAX NOT DEDUCTIBLE AT SOURCE-INCOME-TAX ACT, 1961, s. 194C."

19. The learned DR has failed to put on record the distinguishable facts of the case at hand to ignore the order passed by the coordinate bench of ITAT, Delhi in ITA No. 5672/Del/2010, for AY in the assessee's own case. In view of what has been discussed in the preceding paras, we are of the considered view that there is not illegality or perversity in the findings that "disallowance made by the Assessing Officer under Section 40(a)(ia) of the Act on account of deduction of TDS under Section 194C(2) are not justified" returned by the ld. CIT(A). Resultantly, both the appeals under consideration are hereby dismissed."

The Court notices that the decision of the Visakhapatnam Bench of the ITAT in *M/s Mythri Transport Corporation Visakhapatnam v. ACIT* (ITA No.183/Vizag/2008) has been followed by several other Benches of the ITAT, i.e., Pune, Agra, Cuttack and Mumbai Benches as well as the ITAT, Delhi Bench. Having regard to the nature of these contracts and the facts in issue, and furthermore having regard to the fact that such disallowance was not made for the previous years, this Court is of the opinion that no substantial question of law arises.

The appeals are, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 07, 2016

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