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IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR.

BEFORE: DR. S. SEETHALAKSHMI, JJUDICIAL MEMBER &
SHRI RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER

ITA Nos. 177 to 180/Jodh/2023
Assessment Year: 2016-17 to 2019-20

Adhunik Khanan VA Parivahan Theka Sahakari Samiti Limited, Bikaner, [PAN: AADFA 0801 G] **(Appellant)**	Vs.	ITO, (TDS), Bikaner **(Respondent)**

Appellant by	Sh. Rajendra Jain, Adv. & Smt. Raksha Birla, CA
Respondent by	Ms Nidhi Nair, Sr. DR

Date of Hearing	01.02.2024
Date of Pronouncement	12.02.2024

ORDER

PER BENCH:

These four appeals filed by assessee are arising out of the order of the National Faceless Appeal Centre, Delhi dated 17/03/2023 [here in after 'NFAC')] for assessment year s 2016-17 to 2019-20 which in turn arise from the order dated 26.02.2019 passed under section 201(1)/201(1A) of the Income Tax Act, by ITO, TDS, Bikaner.

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2. Since the issues involved in these appeals are almost identical on facts and are almost common, except the difference in figure disputed in each year, therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the ld. AR has submitted that the matter in ITA No. 177/Jodh/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount in dispute other cases. The ld. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 177/Jodh/2023 is taken as a lead case. Based on the above arguments we have also seen that for these appeals grounds are similar, facts are similar, and arguments were similar and therefore, were heard together and are disposed by taking lead case facts, grounds, and arguments from the folder in ITA No. 177/Jodh/2023.

4. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 177/Jodh/2023 on the following grounds;

> *"1. The learned ITO (TDS), Bikaner was wrong in computing and levying amount of TDS u/s 201(1) and interest u/s 201 (1A) at Rs. 1,16,094/-."*

5. Succinctly, the fact as culled out from the records is that the assessee deductor is engaged in the business of transportation & logistic services. A survey u/s 133A(2A) was conducted on 09.08.2018 at the business premises of the assessee deductor for verification of compliance of provisions of Chapter XVII-B of the Income-tax Act, 1961. During the survey proceedings, it was found that the deductor has made transportation payment to various persons without deducting TDS on the basis of declarations obtained from the vehicle owners. However it is observed that in some cases transportation charges paid to the person other than owner of the vehicle on the basis of power of attorney / sahmati patra and TDS has not been made on such payments. The assessee deductor requested to provide details of transportation charges paid on the basis of power of attorney / sahamati patra in the particular format along with declaration form, copy of PAN, registration certificate of vehicle and other documents. In compliance, vide letter dated 29.11.2018 it is submitted by the assessee that it is common

practice in the transportation business that truck owner may authorize driver or their relative to receive payment of transportation. In such cases, we have obtained power of attorney / declaration form / sahamati patra from the truck owners and make the payment to the drives or their relatives. The submission of the deductor has been carefully considered by the ld. AO. Subsequently, show cause notice u/s 201(1)/(1A) of the IT. Act, 1961 was issued on 07.09.2018 to the assessee. In response to this show cause notice, the deductor has submitted it reply. The submission of the deductor has been examined carefully but the same not accepted on merits by the ld. AO. The ld. AO noted that as per the provision of section 194C(6) of the I.T. Act, 1961, 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, where such contractor owns ten or less goods carriages at any time during the previous year and furnished a declaration to that effect along with his PAN, to the person paying or crediting such sum. It is relevant to mention here that declaration must be submitted by the owner of the vehicle along with his PAN but in the instant case neither declaration nor PAN has been submitted by the owner of the vehicle. Thus, the declaration obtained by the assessee deductor cannot be considered as

valid documents in light of the provisions of section 194C(6) of the I. T. Act, 1961. Thus, the assessee has not fulfilled the basic condition laid down under section 194C(6) of the Act. In view of the above discussion, as the assessee deductor has not complied with the provisions of section 194C(6) of the IT. Act, 1961, therefore, it is held that the assessee deductor is an assessee in default u/s 201(1) of the Act, 1961 and also liable to pay interest u/s 201(1A) of the IT. Act, 1961 and on that aspect of the matter a demand for an amount of Rs. 1,16,094/- for the F.Y 2015-16 relevant to A.Y 2016-17 was raised against the assessee.

6. Aggrieved from the order of Assessing Officer, creating demand of TDS along with interest for an amount of Rs. 1,16,094/-, the assessee preferred an appeal before the ld. NFAC. Apropos to the grounds so raised the relevant finding of the ld. NFAC is reiterated here in below:

> "3. Decision
>
> 3.1 During the course of appellate proceedings, notices u/s. 250 of the 1. T. Act were issued and served on the appellant through ITBA on 31.03.2021, 09.07.2021, 15.03.2022, 08.04.2022, 25.04.2022 and 18.10.2022. In the meanwhile, the NFAC had also enabled 'Communication window' to the appellant on 22.11.2022 However, the appellant complied only to the notice issued on 09.07.2021 with a request for an adjournment stating as under-
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> *"On perusal of the notice it appears that various information have been asked which could not be collected in such a short period. It is therefore requested to adjourn the hearing of the case and fixed it up in the next month so that specific reply may be submitted in due course."*

3.2 However subsequently the appellant failed to comply with any of these notices issued or make any submission in response to communication window enabled. Since the appellant failed to comply with any of these notices issued, in the absence of any written submission or documentary evidences from the appellant in support of the grounds of appeal raised, in spite of sufficient and reasonable opportunities offered, I am left with no alternative but to adjudicate the appeal on the basis of material evidence available on case records.

3.3 The substantial ground of appeal raised by the appellant relate to treating the appellant in default u/s. 201(1) of the I. T. Act and charging of interest u/s. 201(1A) of the I. T. Act total amounting to Rs.1,16,094/-.

3.4 Briefly the facts of the case are stated as under:-

The appellant is engaged in the business of transportation & logistic services. A survey u/s 133A(2A) of the I. T. Act was conducted at the business premises of the appellant on 09.08.2018 for verification of compliance of provisions of Chapter XVII-B of the Income-tax Act, 1961. During the survey proceedings, it was found that the appellant has made transportation payment to various persons who were not the truck owners, without deducting TDS.

3.5 Since the appellant failed to deduct TDS on the transportation payment, the A.O. requested the appellant to submit his explanation as to why it should not be deemed to be an appellant in default in respect of the tax which is required to be deducted and order u/s 201(1) & 201(1A) may not be passed treating you as an assessee in default.

3.6 In response to this show-cause notice, the appellant submitted that the appellant has not violated the provisions of section 194C(6) of I.T. Act as there was no liability for deduction of tax. Section 194C(6) clearly states that deduction should not be made in the contractor during the course of plying, hiring and leasing good carriage and such contractor owns less than 10 goods carriage at any time during the year. It was further submitted by the appellant that the payment was made to the power of attorney holders on behalf of truck owners. The transactions are genuine and have been made through cheque. No contravention has been made u/s 40A(3) of I.T. Act, 1961. The use of PAN is to check the payment to the bogus persons. When payment is genuine and the owners of truck are traceable, having registration no and all details in the declaration. The only basis for producing PAN of power of attorney holders have no basis for violation of provisions of section 194C(6) of the I.T. Act, 1961. In this circumstances mentioned above the appellant should not be deemed to be default in respect to the deduction of tax and order should not be passed us 201(1) and 201(1) of the Act.

3.7 The appellant further submitted that section 139 of the Act clearly narrate the conditions for obtaining PAN. Several truck owners are not coming in the purview of aforesaid section. When a person is not liable for obtaining PAN u/s 139 of the I.T. Act, 1961, how can quote PAN. It means the section 194C(6) is contravening the provisions of section 139A of the IT. Act, 1961. Hence the

conditions of giving PAN of truck owners u/s 194C(6) of the I.T. Act is not possible.

3.8 This submission of the appellant was not found acceptable to the A.O. As per the A.O. in view of provision of section 194C(6) of the I.T. Act, 1961, no deduction shali 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, only where such contractor owns ten or less goods carriages at any time during the previous year and furnished a declaration to that effect along with his PAN, to the person paying or crediting such sum. It is further recorded by the A.O. that declaration must be submitted by the owner of the vehicle alongwith his PAN but in the instant case neither declaration nor PAN has been submitted by the owner of the vehicle. Thus, the declaration obtained by the appellant cannot be considered as valid documents in light of the provisions of section 194C(6) of the I. T. Act, 1961. Thus since the appellant did not comply with the provisions of section 194C(6) of the I. T. Act, it is held by the A.O. that the appellant is in default u/s. 201(1) of the I.T. Act, 1961 and also liable to pay interest U / s 201(1A) of the I.T. Act, 1961. Accordingly, the A.O. computed total default amount of TDS u/s. 201(1) and interest 201(1A) at Rs. 1, 16,094/-.

3.9 The submission made by the appellant during the course of penalty proceedings, as also the findings recorded by the A.O. are considered. As per the provision u/s. 194C(6) of the I. T. Act no TDS is required to be made in respect of the owner of the vehicle who are engaged in the business of plying, hiring or leasing goods carriage and who furnish declaration that they own ten or less goods carriages at any time during the previous year alongwith permanent account number to the person paying or crediting such sum. It is an admitted fact that the appellant failed to deduct tax at source on the payment made to various transporters as detailed by the A.O. in the impugned order, who are not covered by provision u/s. 194C(6) of the I. T. Act. Therefore, it is clear that the appellant has committed default within the meaning of provision u/s. 201(1) and consequent default u/s. 201(1A) of the I. T. Act.

3.10 It is held by the Hon'ble Supreme Court in the case of Shri Choudhary Transport Company vs. ITO (2020) 118 taxmann.com 47 (SC) that "where assessee had entered into a contract with a cement company to transport cement and for that assessee hired service of truck owners as sub-contractors, assessee would be liable to deduct tax at source under section 194C from payments made to truck owners". Since the facts of instant case are identical, this decision of Hon'ble Supreme Court squarely applies to it.

3.11 In view of the above facts of the case and in law, I am of the considered view that the order passed by the A.O. treating the appellant in default within the meaning of provision u/s. 201(1) / 201 * (1A) of the I. T. Act is in accordance with law. The impugned order passed by the A.O. u/s. 201(1) / 201 * (1A) of the I. T. Act dated 26.02.2019 is therefore upheld.

4. In the result, the appeal of the appellant is dismissed."

7. As the assessee did not find any favour from the order of the ld. CIT(A), the assessee preferred the present appeal on the ground as reproduced hereinabove. The ld. AR of the assessee heavily relied upon the written submissions filed before ld. CIT(A)/AO, the relevant contentions or the arguments relied upon the ld. AR of the assessee is as under:-

> "As regard to the list of transportation payment amounting to Rs.82,33,615/- during the financial year 2015-16 it is stated that the details of vehicle no., name of owners etc. and total payment made to each person is supplied to you and all the payment have been made through cheque which are verifiable from bank statement of assessee. The assessee has not violated the provisions of section 194C(6) of I.T. Act as there was no liability for deduction of tax. Section 194C(6) clearly states that deduction should not be made in the contractor during the course of ply, hiring and leasing good carriage and such contractor owns less than 10 goods carriage at any time during the year.
>
> As stated by you the PANs were submitted who has received the payment on behalf of the truck owners. Language of section 194C(6) clearly states the PAN of person paying/crediting the amount may be submitted by receiving the payment. Hence, your objection in respect to the not submitted the PAN of the owners of vehicle has no force.
>
> There is no doubt in respect to the payment made to the power of attorney holders on behalf of truck owners. The transactions are genuine and have been made through cheque. No contravention has been made u / s * 4OA(3) of I.T. Act, 1961. The use of PAN is to check the payment to the bogus persons. When payment is genuine and the owners of truck are traceable, having registration no and all details in the declaration. The only basis for producing PAN of power of attorney holders have no basis for violation of provisions of section 194C(6) of the I.T. Act, 1961. In this circumstances mentioned above the assessee should not be deemed to be default in respect to the deduction of tax and order should not be passed u/s 201(1) and 201(1A) of the Act.
>
> Your attention is also invited on section 139A of the Act, which clearly narrate the conditions for obtaining PAN. Several truck owners are not coming in the

purview of aforesaid section. When a person in not liable for obtaining PAN u/s 139 of the I.T. Act, 1961, how can quote PAN. It means the section 194C(6) is contravening the provisions of section 139A of the I.T. Act, 1961. Hence the conditions of giving PAN of truck owners u/s 194C(6) of the I.T. Act is not possible and it is requested that proceedings u/s 201(1) and 201(1A) may kindly be dropped."

8. Per contra, the ld. DR relied upon the orders of lower authorities and particularly he has emphasized on the facet of the matter that the vehicle owners are not having PAN and person who filed declaration are not owner of the vehicle. Therefore, the assessee is liable to make TDS and on account of such default demand has rightly been confirmed in the case of the assessee.

9. We have heard the rival contentions and perused the material placed on record. The bench noted that it is not under dispute that the assessee has furnished the declaration of the payee. But the ld. AO was of the view from the declaration so submitted by the assessee that the assessee has made the payment of Rs. 82,33,615/- to the persons who were not the owner of the vehicle. Thus, the apple of discord before us that whether the term “owns” be taken essentially to mean registered owner under Motor Vehicles (MV) Act or should it be read to mean the beneficial owner?

9.1 Since the only dispute that is made by the ld. AO and confirmed by the ld CIT(A) that the assessee has made the payment based on the declaration but the person who filed the declaration were not owner of the vehicle and thus the TDS default of the assessee was considered by the ld. AO. The ld. CIT(A) has taken a view that *"as per provisions of section 194C(6) of the Act no TDS is required to be made in respect of the owner of the vehicle who are engaged in the business of plying, hiring or leasing goods carriage and who furnish declaration that they own ten or less goods carriages at any time during the previous year along with PAN number to the person paying or crediting such sum. It is an admitted fact that the appellant failed deduct tax at source on the payment made to the various transporters as detailed by the ld. AO. In the impugned order, who are not covered by provision u/s. 194C(6) of the Act. Therefore, it is clear that the appellant has committed default."*

9.2 Thus, now the issue is that the **de**claration under section 194C (6) of the Income Tax Act is a statement made by a transporter and it confirms that the transporter does not own more than ten goods carriages during the previous year and is engaged in the business of the plying, hiring or leasing goods carriage. Thus, the term "owner" here refers to anyone who is in possession of the goods carriage, not

necessarily the registered owner. Transporters provide this declaration along with their Permanent Account Number (PAN) to the payer to avoid TDS deduction. The Finance Act 2015 has approved amendment to section 194C (6) providing for deduction of tax at source unless the transporter who is engaged in the business of playing, hiring or leasing goods carriage, owns not more than goods carriages and furnishes a declaration to this effect along with PAN to the payer. The amendment is applicable from 01-06-2015. The meaning of the word 'owner' as occurring in section 194C(6) regarding deduction of tax at source. Should the term "owns" be taken essentially to mean registered owner under Motor Vehicles (MV) Act or should it be read to mean the beneficial owner?. The term owner has occurred in the Income tax Act, 1961 at number of times, in number of section, providing for a charge on the income or giving a benefit to the assessee. Therefore, to decide this issue we refer the relevant presumption taxation to the transporters and the same reads as under:

> **Section 44AE**
> Section 44AE provides for special provisions for computing profits and gains of business of playing, hiring or leasing goods carriage. The presumptive taxation is based on the number of goods carriage owned by the assessee. The term 'owner' has been defined in explanation to the section as under:
>
> *"an assessee, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage"*

9.3 Thus, for the purpose of section 44AE, the term owner means anyone in possession of the goods carriage and not the registered owner. This assumes importance in defining the term "owns" in section 194C(6) because, the taxation of the assessee transporter is squarely covered under the provisions of section 44AE. In addition we also take support of our view from the various judicial precedent on the issue and the apex court of the country has decide the question of ownership based on the intention of the legislature, namely "to give benefit or to tax the assessee." This view which we have taken strengthen the support this view are as under :

(1) Owner for the purpose of depreciation benefit
The word ownership fell for the consideration of the Supreme Court in Mysore Minerals Ltd v CIT (1999) 239 ITR 775. The controversy before the Supreme Court was related to the true meaning of the word "owned" in section 32(1). The Apex Court held that the expression 'Building owned by the assessee' in section 32(1) means the person who have acquired the possession over the building in his own right and uses the same for the purposes of the business or profession despite the fact that a legal title has not been passed on to him under the requirements of laws such as the Transfer of Property Act and the Registration Act, etc. The Court opined that section 32 of the Act confers a benefit on the assessee, it should be so interpreted to enable the assessee getting the benefit intended to be given by the legislature to the assessee.

(2) Owner for the purpose of charge on House Property
The expression "owner" as appearing in section 22 related to income from house property also fell for the interpretation by the Supreme Court in CIT v Podar Cement Pvt. Ltd.(1997) 226 ITR 625. In this case also, the Court held that having regard to the object of the Income-tax Act, namely, " to tax the income", "owner" is a person who is entitled to receive income from the property in his own right.

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9.4 Thus for the purpose of section 194C(6), the term 'who owns" essentially means the one "who possesses". Since it is not a case of the revenue that the assessee has not submitted the declaration, it is available on record and based on that declaration the contention of the revenue that persons to whom the payments were not the owner and the ultimately owners name was displayed and contended that the person who filed the declaration is not the owner of the vehicle.

Based on the discussion recorded here in above, since in this case the declaration is already obtained by the assessee and the purpose of section 194C(6), the term 'who owns" essentially means the one "who possesses" and the assessee has paid to the person who filed the declaration, ergo we order accordingly.

In terms of these observations, the appeal of the assessee in ITA no. 177/Jodh/2023 is allowed.

10. The fact of the case in ITA No. 178 to 180-Jodh-2023 is similar to the case in ITA No. 177-Jodh-2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 177/Jodh/2023 is equally similar on set of facts and grounds. Therefore, it is not

imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 177/Jodh/2023 for the Assessment Year 2016-17 shall apply mutatis mutandis in the case of Adhunik Khanan VA Parivahan Theka Sahakari Samiti Limited in ITA Nos. 178 to 180-Jodh-2023 for the Assessment Year 2017-18 to 2019-20.

In the result, four appeals of the assessee are allowed.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

(Dr. S. Seethalakshmi)
Judicial Member

Sd/-

(Rathod Kamlesh Jayantbhai)
Accountant Member

Ganesh Kumar, PS
(On Tour)
Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy
By order

		Date	Initial	
1.	Draft dictated on			Sr.PS/PS
2.	Draft placed before author			Sr.PS/PS
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr. P.S./P.S.			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of Order			