

(2015) 03 JH CK 0097
In the Jharkhand High Court
Case No : T.A. No. 33 of 2013

The Commissioner of Income Tax

APPELLANT

Vs

Tabarak

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Income Tax Act, 1961 — Section 139, 142(1), 143(2), 194C, 194H
University Grants Commission Act, 1956 — Section 3

Citation : (2015) 3 AJR 378 : (2015) 3 JLJR 112 : (2015) 234 TAXMAN 115

Hon'ble Judges : Dhirubhai Naranbhai Patel, J; Pramath Patnaik, J

Bench : Division Bench

Advocate : Deepak Roshan, Senior S.C.I.T., Ratnesh Kumar and Amit Kumar, for the Appellant; B. Poddar, Sr. Adv., M.K. Choudhary and Amrita Sinha, Advocates for the Respondent

Judgement

Dhirubhai Naranbhai Patel, J.—In this appeal following substantial questions of law have been raised:

"(i) Whether on the facts and in the circumstances of the Case the Learned Tribunal is justified in deleting the entire addition of Rs. 96,78,419/- on account of "Vehicle Hire Charges" by holding that there was no Contract?

(ii) Whether on the facts and in the circumstances of the Case the Learned Tribunal is justified in deleting the entire addition of Rs. 12,76,000/- on account of "Loading and Unloading Charges" by holding that there was no Contract?

(iii) Whether on the facts and in the circumstances of the Case the Learned Tribunal is justified in ignoring the categorical finding of the CIT(A) that there was a contract between the parties and Assessee was liable to deduct TDS?

(iv) Whether on the facts and in the circumstances of the Case the Learned Tribunal is justified in relying upon the decision delivered in the case of Bhagwati Steel reported in (2011) 198 TAXMAN 275 (P&H) which was not at all applicable in the instant Case?

(v) Whether on the facts and in the circumstances of the Case the impugned Order is perverse?"

2. This matter has been taken up for its final hearing by the consent of the learned counsel for both the sides and have argued out the case at length.

3. Counsel for the appellant on behalf of the Commissioner Income Tax, Jamshedpur has submitted that the respondent has claimed deduction of Rs. 98,76,419/-, which is paid to the sub contractor for transportation. Similarly, the respondent-assessee has also claimed deduction of Rs. 17,60,600/- under the heading of "loading and unloading charges". These deductions not having been allowed, appeal was preferred by the respondent before the Commissioner, Income Tax (Appeals) Jamshedpur bearing Appeal No. 525/JSR/2011-12. Which was dismissed by the Commissioner of Income Tax vide order dated 31st December, 2012 mainly on the ground that the assessee has not deducted TDS, as required u/s. 194C of the Income Tax Act, 1961 and, therefore, deductions are not permissible u/s. 40(a)(ia) of the Income Tax Act, 1961. Against this order, the respondent had approached Income Tax Appellate Tribunal, Ranchi Circuit Bench, Ranchi. The appeal preferred by the assessee bearing I.T.A. No. 16/Ran/2013 for the assessment year 2009-10 having been allowed by Income Tax Appellate Tribunal, Ranchi Circuit Bench, Ranchi vide order dated 3rd May, 2013, the Income Tax Department has preferred the present Tax Appeal raising the aforesaid substantial questions of law.

It is submitted by the counsel appearing for the appellant that learned Income Tax Appellate Tribunal, Ranchi Circuit Bench, Ranchi has stated that there is no written or oral contract for specific period, quantity or price and hence, the provision of Section 194C of the Income Tax Act, 1961 is not applicable and once this Section is not applicable, disallowance made u/s. 40(a)(ia) cannot be made. Thus, both the deductions from the income of the respondent-assessee was allowed without appreciating the fact that:--

"(a) Section 194C of the Income Tax Act, 1961 is also applicable to the oral contract.

(b) Assessee will never prove the contract even if it is in writing available nor they will produce. This is a fact within the specific knowledge of the assessee. Oral contract may be deduced from several facts available with the assessing officer.

(c) The learned ITAT has failed to appreciate the fact that the respondent-assessee is not a broker, who is claiming only brokerage per truck as argued vehemently here at the rate of Rs. 150-200 per truck. The respondent-assessee has made cash payments to various parties on different dates under the different heads which are as under:--

I. Vehicle hire charges

II. Labour charges.

III. Repair and Maintenance - mainly for the expenses for replacement of spare parts, tyres and tubes, batteries, engine, motors auto body, leaf spring and other general repairs.

IV. Loading and Unloading charges.

(d) On the basis of the aforesaid cash payments made for huge amounts under one of the headings, namely, vehicle hire charges Rs. 98,76,419/- have been paid in cash during the assessment year 2009-10 and financial year 2008-09. Looking to the repairs and maintenance charges, the amount has also been paid by this assessee over and above vehicle hire charges. There is also huge payments for loading and unloading charges. There is also payments for labour charges. There is an oral contract between this assessee and transporters, who are transporting goods of M/s. Rungta Mines Ltd.

It is submitted by the counsel for the appellant that looking to the payments made on different dates to the same party of more than Rs. 20,000/- in cash as stated in para 3.4 of the Assessment Order passed by the Assessing Officer dated 20th December, 2011 (Annexure 1 to the memo of the Tax Appeal). It appears that gross error has been committed by the ITAT that Section 194C of the Income Tax Act, 1961 is not applicable and consequently the deductions disallowed under Section 40(a)(ia) should have been allowed by the Income Tax Department. This is an error on the face of the record committed by the ITAT, which is not permissible.

(e) Similarly, learned counsel for the appellant submitted that for loading and unloading charges, deductions claimed by the respondent-assessee is of Rs. 17,60,600/-. Such a huge amount has also been paid in cash to various parties as stated in para 3.5 of the Assessment Order passed by the Assessing Officer. For this amount also tax had not been deducted at source as required under Section 194C of the Income Tax Act, 1961 and hence, this deduction is also not permissible under Section 40 (a)(ia). Learned Income Tax Appellate Tribunal, Ranchi Circuit Bench, Ranchi has failed to appreciate that oral contract can be deduced from the nature of the payments made by this assessee repeatedly, in cash for vehicle hire charges, labour charges, repairs and maintenance charges and loading and unloading charges etc. It should have been kept in mind by the ITAT that whenever these provisions are brought into operation, especially Section 194C of the Income Tax Act, 1961 to be read with Section 40(a)(ia), in not a single case there will be a written contract, looking to the tendency of the tax payers to avoid the payment of the taxes. Oral contract may be deduced, if the facts of the case permit. If any truck is hired and if the payment is made only a once, it may not be covered under the aforesaid two Sections. But, in the case on hand series of payments are made to one party e.g. in the facts of the present case Rs. 15,70,000/- have been paid by this respondent-assessee to one party repeatedly- Sri Sudhir Kumar Singh on 07th April 2008, 30th April 2008, 28th May 2008, 01st July 2008, 16th August 2008, 29th August 2008, 01st September 2008, 16th September 2008, 30th October 2008, 16th December

2008, 02nd January 2009, 05th January 2009, 28th January 2009, 12th February 2009, 27th February 2009, 14th March 2009 and 25th March 2009. All these payments have been made repeatedly to only one party and that to in cash and every time the amount is exceeding Rs. 20,000/-. These facts have been stated in para 3.4 of the Assessment Order passed by the Assessing Officer dated 20th December, 2012. There are other examples which have been given in the said order. Similarly, this respondent-assessee has also claimed vehicle hire charges, labour charges, repairs and maintenance charges and loading and unloading charges etc. which are undisputed facts, looking to the books of accounts and if these are the transactions carried out by the respondent-assessee during the assessment year then it can not be said that he is only a broker and earning Rs. 150-200 per truck. In fact, he is a transporter and he is giving sub contract for transportation of goods of M/s. Rungta Mines Ltd. and, therefore, as per Section 194C of the Income Tax Act, 1961, TDS ought to have been deducted by the respondent-assessee before making huge payment to the sub contractors and hence, this tax deduction at source has not been carried out. The deductions claimed from the total income by the assessee of Rs. 98,76,419/- for vehicle hire charges is not permissible under Section 40(a)(ia) of the Income Tax Act, 1961. Similar is the position with respect to the loading and unloading charges for Rs. 17,60,600/-.

Learned counsel for the appellant has relied upon the decision rendered in the case of *Raja and Company Vs. The Commissioner of Income Tax (Central)*, (2011) 196 TAXMAN 461 .

In view of the aforesaid decision, it is submitted by the counsel for the appellant that the conclusion arrived at by the Income Tax Appellate Tribunal, Ranchi Circuit bench, Ranchi deserves to be quashed and set aside and the order passed by the Commissioner of Income Tax (Appeals), Jamshedpur in Appeal No. 525/JSR/2011-12 dated 31st December, 2012 may be upheld by this Court."

4. Learned senior counsel appearing for the respondent submitted that no error has been committed by the ITAT, Ranchi Circuit Bench, Ranchi in allowing the appeal preferred by the respondent-assessee as the existence of the contract is not proved between the respondent and the so called sub contractors. There is neither oral or documentary evidence before the Income Tax Authorities and once there is no proof of contract, Section 194C of the Income Tax Act, 1961 is not applicable and thus, there is no need of deduction at source by the respondent, for the payment made by the assessee towards vehicle hire charges and towards loading and unloading charges and hence the amount paid by the respondent-assessee of Rs. 98,76,419/- towards vehicle hire charges is falling within the permissible deductions and, therefore, Section 194C of the Income Tax Act, 1961 is not applicable. Similar is the case with regard to loading and unloading charges.

Learned senior counsel for the respondent has relied upon (2008) 174 TAXMAN 286 (PUNJ. and HAR.), (2011) 198 TAXMAN 275 (Punj. and Har.) , The

Commissioner of Income Tax Vs. Poompuhar Shipping Corporation Ltd., (2006) 202 CTR 243 : (2006) 282 ITR 3 , CIT Vs. Hardarshan Singh, (2013) 3 AD 753 : (2013) 263 CTR 466 : (2013) 3 ILR Delhi 2097 : (2013) 350 ITR 427 : (2013) 216 TAXMAN 283 and on the basis of the aforesaid decisions, it is submitted by the senior counsel for the respondent-assessee that in absence of any contract between the respondent and the so called sub contractors, Section 194C of the Act, 1961 is not applicable. This aspect of the matter has been properly appreciated by the the ITAT, Ranchi Circuit Bench, Ranchi and hence, this tax appeal may not be entertained by this Court. It is also submitted by the senior counsel appearing for the respondent that the issue raised in this appeal has already been served by several High Courts and hence also this appeal may not be entertained by this Court.

Reasons:--

5. Having heard counsel for both the sides and looking to the facts and circumstances of the case, we hereby allow this tax appeal mainly for the following facts and reasons:--

"(I) The respondent is an assessee who has filed income tax return on 30th September, 2009 for the Financial Year 2008-2009, with the total income of Rs. 11,18,250/- which was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Income Tax Act, 1961 were served upon the assessee.

(II) It further appears that the respondent-assessee is a transporter and engaged in transporting of goods mainly through hired vehicles. Heavy vehicles have been hired by the respondent. It further appears that the respondent-assessee is not only paying vehicles hire charges, but, he is paying entire vehicles running expenses such as cost of diesel and lubricants, labour charges, repair and maintenance charges which mainly comprising replacement of spare parts, tyres and tubes, batteries, engines, motors auto body, leaf spring and other general repairs and maintenance and also towards loading and unloading charges. These are the payments made under the different major heads by the respondents during the financial year 2008-2009. Thus, it appears that he is not a broker at all who is earning Rs. 150-200 per truck as argued out by the respondent-assessee.

(III) Huge amount has been paid in cash for vehicle hire charges. Looking to the profits and loss accounts the said payment reads as under:--

All the aforesaid payments are exceeding the limits of Rs. 20,000/- per day and Rs. 50,000/- during the financial year 2008-2009. This payment is also in breach of section 40(A)(3) of the Income Tax Act, 1961.

(IV) The aforesaid amount of Rs. 98,76,419/- has been paid in cash. The assessee is seeking deduction of this amount from taxable Income u/s. 37 of the Income Tax Act, which is not permissible, looking to Section 194C of the Act, 1961 to be read with Section 40(a)(ia) of the Act, 1961.

(V) For the ready reference Sections 194C and 40(a)(ia) read as under:--

"194C. Payments to contractors

(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-

(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 credit 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.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation, tax shall be deducted at source-

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or 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.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed [thirty 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 [seventy five thousand rupees], the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.

(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.

(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 authorized 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,-

(a) the Central Government or any State Government; or

(b) any local authority; or

(c) any corporation established by or under a Central, State or Provincial Act; or

(d) any company; or

(e) any co-operative society; or

(f) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(g) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India; or

(h) any trust; or

(i) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under Section 3 of the University Grants Commission Act, 1956 (3 of 1956); or

(j) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

(k) any firm; or

(l) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person,-

(A) does not fall under any of the preceding sub-clauses; and

(B) is liable to audit of accounts under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;

(ii) "goods carriage" shall have the meaning assigned to it in the

Explanation to sub-section (7) of section 44AE;

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

(iv) "work" shall include-

(a) advertising

(b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

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

(d) catering;

(e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer,

but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer."

(Emphasis Supplied)

"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 XVIIB and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in Sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee had deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.

Explanation.--For the purposes of this sub-clause,-

(i) "commission or brokerage" shall have the same meaning as in clause (i) of the Explanation to Section to section 194H;

(ii) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of Sub-section (1) of section 9;

(iii) "professional services" shall have the same meaning as in clause (a) of the Explanation to section 194J;

(iv) "work" shall have the same meaning as in Explanation III to section 194C;

(v) "rent" shall have the same meaning as in clause (i) to the Explanation to section 194-I;

(vi) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;"

Repeatedly, it has been argued out by the counsel for the respondent that there is no existence of the contract between the respondent and the so called transporters or between the assessee and so called sub contractors. If there is no evidence on record as to the existence of the contract between the respondents- assessee and the parties to whom Rs. 98,76,419/-is paid, Section 194C is not applicable.

We are not in agreement with this arguments canvassed by learned counsel for the respondent, for the following reasons:--

(a). The words used u/s. 194C of the Act, 1961 "any person responsible for paying any sum to any resident (hereafter in this section referred to as contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and specified person shall..... ". The words in pursuance of a contract "also includes the oral contract".

(b). The oral contract has to be deduced from the existing evidence.

(c). Every time there cannot be a written contract and the tax payers" tendency specially, those who want to evade the tax will never prove or assist the authorities in giving evidence of the contract, especially when huge amount of cash is involved. Therefore, whenever any assessee is claiming huge cash paid e.g. in this case Rs. 98,76,419/- which is paid in cash to the aforesaid different persons on different dates then it is a prime duty of the Income Tax Authorities to look at the transactions carefully. In the facts of the present case repeatedly several amounts have been paid in cash exceeding Rs. 20,000/- in breach of Section 40 A (3) of the Income Tax Act, 1961 towards vehicle hire charges, without deducting the tax at source and, therefore, this amount of Rs. 98,76,419/- is to be added in the income of the respondent-assessee as deduction is not permissible under Section 40(a)(ia) of the Income Tax Act, 1961. When any assessee is paying once in a blue moon for a transportation charges, Section 194C of the Income Tax Act may not be applicable. But, looking to the totality of the evidence, in the facts of the present case as stated in the assessment order para 3.4 passed by Assessing Officer dated 20th December, 2011 (Annexure 1 to the memo of this tax appeal), it appears that repeatedly huge amount has been paid in cash. This is an evidence of the oral agreement between the respondent-assessee and sub contractor. Every time there is no

need of written agreement. It is a prime duty of the respondent authority to look at the transactions carefully when consistently huge cash is being paid by the assessee, in breach of Section 40(A)(3) of the Income Tax Act and without deduction of tax at source. This is not the only evidence in this case. The respondent-assessee looking to the books of accounts have made the payment towards labour charges, repair and maintenance as well as towards the loading and unloading. Thus, the assessee is not a broker at all, but, is more than a broker. Broker will never pay the repair and maintenance as happened in this case. Payments have been made for spare parts, tyres and tubes, batteries, for engine, for motors auto body, for leaf spring etc. during the financial year 2008-09. Looking to this aspect of the matter, no error was committed by the Income Tax Commissioner, while dismissing the appeal preferred by the respondent-assessee. Income Tax Appellate Tribunal, Ranchi Circuit Bench, Ranchi has failed to appreciate the cumulative effect of the evidences on record.

(VI) The respondent-assessee has paid loading and unloading charges of Rs. 17,60,600/- to various parties on different dates. Few of such cases are as under:

The aforesaid amount of Rs. 12,76,700/- out of Rs. 17,60,600/- cannot be allowed to be deducted from the income of the respondent-assessee as TDS has not been deducted under Section 194C of the Income Tax Act, 1961 to be read with Section 40(a)(ia).

(VII) Learned senior counsel appearing for the respondent has relied upon several decisions as stated hereinabove. The judgment reported in Commissioner of Income Tax Vs. Bhagwati Steels, (2011) 241 CTR 480 : (2010) 326 ITR 108 : (2011) 198 TAXMAN 275 is not applicable to the facts of the present case, mainly for the reason that looking to para 2 of the said decision, it has been observed by the Punjab and Haryana High Court that there was no material on record to prove any written or oral agreement between the assessee and the recipient of goods for transportation or carriage thereof. It has also been observed in the said decision in para No. 2 that there is no material to prove the payments of freight having been made pursuant to a contract of transportation of goods for specific period, quantity or price. There is also observations in the said para 3, while quoting para No. 25 of the Income Tax Appellate Tribunal's decision that the freight expenses incurred by Tata Steel are added to the cost of goods in the invoice raised, it cannot be inferred that assessee has paid any amount separately. Looking to the aforesaid peculiar facts of the case, the decision was rendered in favour of assessee, whereas, in the facts of the present case, vehicle hire charges have been paid by the respondent-assessee. Moreover, looking to the totality of the evidence on record it cannot be said that there is no evidence on record for oral agreement.

(VIII) Learned senior counsel for the respondent has relied upon the decision reported in (2008) 174 Taxman 286 (Punjab and Haryana). The fact of this case is also remarkably different from the fact of the present case. It has been observed in para 2 of the said decision that there is no repetition of the

payments to the same truck owners or truck operators, whereas, in the facts of the present case as stated hereinabove one Shri Sudhir Kumar Singh has been paid on seventeen different dates huge amount in cash exceeding Rs. 20,000/- in breach of Section 40 A (3) of the Income Tax Act, 1961 and that amount is Rs. 15,70,000/- for the year 2008-09. Moreover, in the said decision only freight charges have been narrated repeatedly, whereas, in the facts of the present case, the respondent-assessee as stated hereinabove, not only paid vehicle hire charges but also labour charges, repair and maintenance as well as loading and unloading charges. One type of payment may not prove sufficiently the oral agreement, but, payment of several types of charges under major heads is a sufficient evidence of the oral agreement between the respondent-assessee and sub contractors to whom huge amount is paid in cash. Thus, on facts the present case is remarkably different.

(VIII) Counsel appearing for the respondent has relied upon the decision reported in (2013) 218 Taxman 93 (Allahabad), the facts of the said case is also entirely different than the facts of the present case. It has been stated in paragraph 5 and 8 of the said decision that the assessee, who is M/s. Victor Service Shipping Pvt. Ltd. was taking help of M/s. Mercator Lines Ltd. for performing shipping management work. The salary was paid by this M/s. Mercator Lines Ltd. TDS was also made properly by the said company. This was sufficiently explained by the assessee who is M/s. Vector Shipping Services (P) Ltd. Thus, TDS was deducted and was paid also to the Department, whereas, in the facts of the present case no TDS has been deducted by the respondent-assessee and hence, deductions are not allowed under section 40(a)(ia) of the Income Tax Act, 1961.

(IX) Similarly, the decision upon which heavy reliance has been placed by the counsel for the respondent reported in CIT Vs. Hardarshan Singh, (2013) 3 AD 753 : (2013) 263 CTR 466 : (2013) 3 ILR Delhi 2097 : (2013) 350 ITR 427 : (2013) 216 TAXMAN 283 the facts of this case is also different from the facts of the present case. Looking to para 5 of the said decision it has been held that there was no privity of the contract for carriage of goods with the clients and the assessee, whereas, in the facts of the present case as stated herein above there is sufficient evidence for establishment of the oral agreement between the present assessee and the sub contractors, who has transported the goods.

(X) Similarly, the facts of the decision reported in The Commissioner of Income Tax Vs. Poompuhar Shipping Corporation Ltd., (2006) 202 CTR 243 : (2006) 282 ITR 3 are also remarkably different than the facts of the present case. The present respondent-assessee is a transporter and transporting the goods through sub contractors and as stated hereinabove on different dates in cash more than Rs. 20,000/- have been paid to a single party namely Sri. Sudhir Kumar Sinha. Similarly, two other persons also on more than one occasions the payments have been made not only for the vehicles hire charges, labour charges, repair and maintenance, but also loading and unloading charges have been made. Looking

to the books of accounts of the respondent-assessee, it can be safely deduced that there is existence of oral agreement enforceable by law between the respondent-assessee and sub contractors to whom the payments have been made.

(XI) It has also been argued out by the counsel for the respondent that an explanatory note has been issued by the respondent-Department by way of Circular No. 5/2005 dated 15th July 2005. It has been observed that to curb the bogus payment this provision of Section 40(a)(ia) of the Income Tax Act has been incorporated and it is submitted by the counsel for the respondent that the payment has already been made by the respondent-assessee for vehicle hire charges and towards loading and unloading charges and, therefore, these are not the bogus transactions and, therefore, the order passed by the Income Tax Appellate Tribunal, Ranchi Circuit Bench, Ranchi may not be disturbed by this Court.

(XII) We are not in agreement with the arguments canvassed by the counsel for the respondent-assessee mainly for the reasons that section 40(a)(ia) to be read with section 194C of the Income Tax Act, 1961 have not been incorporated to increase the morality of the assessee. In a taxing Statute, once there is a breach of section, the consequences are bound to follow happen. Looking to the provisions of Section 194C of the Income Tax Act, 1961 if the amount is paid in pursuance of the contract - which may be oral also, Section 194C of the Income Tax Act, 1961 is applicable. In the facts of the present case when aforesaid huge amount is paid towards vehicle hire charges in one year and also towards loading and unloading charges huge amounts is paid in cash. TDS ought to have been deducted before making such payments by the respondent to his sub contractors and as this TDS has not been deducted, the amount paid towards vehicle hire charges and amount paid towards loading and unloading charges which are at Rs. 98,76,419/- and at Rs. 12, 76,700/- is not deductible from the taxable amount u/s. 40(a)(ia) of the Income Tax Act."

6. As a cumulative effect of the aforesaid facts and reasons we, hereby, answer, in negative, the first four substantial questions of law (as stated in para 1 of this order) and in affirmative the the fourth substantial question of law. We, therefore, quash and set aside the order passed by the Income Tax Appellate Tribunal, Ranchi Circuit Bench at Ranchi dated 3rd May, 2013 in Income Tax Appeal No. 16/Ran/2013 in the assessment year 2009-10 and we, hereby, upheld the decision given by Commissioner Income Tax (Appeal), Jamshedpur in Appeal No. 525/JSR/2011-2012 order dated 31st December, 2012.

7. Accordingly, this tax appeal is allowed and disposed of.