आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एस.एम.सी', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.3293/Mum/2015**

(**निर्धारण वर्ष /** Assessment Year :2007-2008)

M/s South Carrying Corporation, A-201, Royal Crown, Opp. Municipal School No.13, Khopat Road, Thane (W)-400601	Vs.	ITO Ward-3(3), Thane
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AATFS 3130 J**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

निर्धारिती **की ओर से** /Assessee by : Shri Rajendra Sawale, Kishore Poddar

राजस्व **की ओर से** /Revenue by : Shri Pradeep Kumar Singh

सुनवाई की तारीख / **Date of Hearing : 11/08/2016**

घोषणा की तारीख/**Date of Pronouncement 24/10/2016**

आदेश / O R D E R

This is an appeal filed by the assessee against the order of CIT(A) for assessment year 2007-2008, wherein the assessee is aggrieved for disallowance of Rs.31,87,641/- u/s.40(a)(ia) of the Act.

2. Rival contentions have been heard and record perused. Facts in brief are that disallowance has been made u/s.40(a)(ia) of the Act for non deduction of TDS u/s.194C on the payments made for engaging various carriers/lorries for transportation of mobile towers.

3. It was contended by ld. AR that since there exists no contract between the assessee and the owners of the carrier so hired; no question arises on applicability of section 194C of the Act, 1961.

4. The issue under consideration is squarely covered by the decision of coordinate bench in the case of Bhail Bulk Carriers, 50 SOT 622, wherein the Tribunal observed as under :-

> *S.194C(1) applies to any payment made to a person for carrying out any work in pursuance of a contract between contractor and person making payment.*
>
> *Assessee-transporter is not liable to deduct TDS under s.194C(1) for payments made to the outside parties whose vehicles were hired for fulfilling contract when outside tank owners do not had any responsibility or liability towards the fulfillment of contract.*
>
> *If condition of carrying out any work in pursuance of a contract is not fulfilled then provisions of this section will not be applicable at all.*

5. As the facts and circumstances during the year under consideration are exactly similar, respectfully following the decision of the coordinate bench, I do not find any merit in the disallowance so made by the AO.

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

Order pronounced in the open court on this 24/10/2016.

Sd/-

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 24/10/2016

प्र.कु.मि/pkm, नि.स/ PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	11-8-16		Sr.PS
2.	Draft placed before author	11-8-16 (dictation pad has been enclosed along with this original file)		Sr.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.PS/PS			Sr.PS/ PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			