

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एफ', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI

सर्वश्री आर.एस. स्याल, लेखा सदस्य एवं श्री अमित शुक्ला, न्यायिक सदस्य, के समक्ष ।

Before Shri R.S.Syal, AM and Shri Amit Shukla, JM

आयकर अपील सं./I.T.A. No.7297/Mum/2010
(निर्धारण वर्ष / Assessment Year :2007-2008)

M/s.Underwater Services Company (Dissolved), 1-B Vulcan Insurance Bldg. Veer Nariman Road, Churchgate Mumbai – 400 020. PAN :AABFU9626P.	बनाम/ Vs.	The Income Tax Officer Ward 12(3)(4) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No.6894/Mum/2010
(निर्धारण वर्ष / Assessment Year :2007-2008)

The Income Tax Officer Ward 12(3)(4) Mumbai.	बनाम/ Vs.	M/s.Underwater Services Company (Dissolved), 1-B Vulcan Insurance Bldg., Veer Nariman Road, Churchgate, Mumbai – 400 020.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

राजस्व की ओर से/Revenue by : Shri Subachan Ram (CIT-DR)

निर्धारिती की ओर से/Assessee by : Shri D.P.Bapat

सुनवाई की तारीख / Date of Hearing : 03.07.2012	घोषणा की तारीख / Date of Pronouncement : 06.07.2012
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आदेश / ORDER

Per R.S.Syal, AM :

These two cross appeals – one by the assessee and the other by the Revenue - arise out of the order passed by the Commissioner of Income-tax (Appeals) on 05.08.2010 in relation to the assessment year 2007-2008. Since common issues are raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. Briefly stated the facts of the case are that the assessee claimed deduction for charter hire charges amounting to ₹8,67,20,000. The said amount was

payable to its sister-concern i.e. M/s. Samson Maritime Limited (hereinafter called "SML"). During the course of assessment proceedings the assessee was required to show as to whether any deduction of tax at source was made from such payment in terms of section 194C. In the alternative, the assessee was also required to explain as to whether any deduction of tax at source was made from the payment of charter hire charges to SML u/s 194-I, the relevant part of which became effective from 13th July, 2006. The assessee explained that no payment was made nor any amount was credited to the account of SML during the period 13.07.2006 to 02.11.2006. It was stated that certificate of tax exemption was granted u/s 197 by the competent tax authority permitting the deduction of tax at Nil rate in respect of charges credited after 03.11.2006. As regards the A.O.'s point of view about the applicability of section 194C, it was stated on behalf of the assessee that the learned CIT(A) decided this issue in assessee's favour in the preceding year by holding that the provisions of section 194C were not applicable to charter hire payment made to SML. It was also put forth that the view taken by the learned CIT(A) was upheld by the Tribunal. In the light of these facts it was contended that the assessee was not required to deduct tax at source from the payment made to SML u/s 194-I during the year in question. The Assessing Officer did not accept the assessee's contention that the certificate of Nil deduction of tax at source on 03.11.2006 applied to the amounts payable during the period 13th July, 2006 to 2nd November, 2006. It was observed that the assessee was required to pay charter hire charges of ₹36.90 lakh per month for Pearl, ₹4.50 lakh for MM-II and ₹25.42 lakh for Topaz. In this way, the Assessing Officer held the assessee liable for deduction of tax at source on the amount of ₹3,10,20,000 u/s 194-I. In the absence of the assessee having made any deduction of tax at source, the AO held that the disallowance was called for u/s 40(a)(ia). Since the Assessing Officer did not accept the view taken by the Tribunal in earlier year as regards the non-applicability of section 194C on the charter hire charges, it was held that such

amount was in the nature of contract payment and the total amount payable to SML for the period from 01.04.2006 to 03.11.2006 totaling ₹5.41 crore was liable to be disallowed u/s 40(a)(ia).

3. In the first appeal, the learned CIT(A) observed that section 194C could not be applied because of the view taken by the Tribunal in the preceding year. He however took note of the amendment carried out to the provisions of section 194-I. As Explanation extending the scope of 'Rent' to machinery and plant etc. was inserted from 13.07.2006, the learned CIT(A) held that the assessee was not liable to deduct tax at source on charter hire charges paid to SML for the period 01.04.2006 to 12.07.2006 and consequently no disallowance was called for u/s 40(a)(ia) for the said period. However for the period from 13.07.2006 to 03.11.2006 (being the date on which the assessee obtained certificate u/s 197 for non-deduction of tax at source on the charter hire charges paid to SML), the learned CIT(A) held that there was no force in the contention of the assessee that since no credit was made during the relevant period in the account of SML and also no payment was made, the provisions of section 40(a)(ia) were not applicable. Both the sides are in appeal against their respective stands.

4. After considering the rival submissions and perusing the relevant material on record it is observed that the first ground of the Revenue's appeal is against the direction of the learned CIT(A) that the payments made to SML were not covered u/s 194C of the Act. On a specific query from the Bench, the learned Departmental Representative admitted that the order passed by the Tribunal in respect of assessment year 2005-2006 holding non-applicability of section 194C to the payments made to SML was not yet modified or reversed by the Hon'ble High Court. In view of these reasons we find that this ground has no leg to stand on. Respectfully following the precedent we uphold the impugned order to the extent that the provisions of section 194C are not

applicable on the payments made by the assessee to SML towards charter hire charges and consequently no disallowance u/s 40(a)(ia) can be made on that account.

5. As regards the applicability of section 194-I, it is observed that the term “Rent” has been defined in *Explanation* to section 194-I. The provisions as it stand now, was substituted by Taxation Laws (Amendment) Act, 2006 with effect from 13.07.2006 extending the scope of “rent” to any payment by whatever name called for the use *inter alia* of machinery or plant or equipment. In the pre-substituted explanation the term “rent” did not encompass any payment under any arrangement for the use of machinery, plant or equipment. Earlier it extended only to the payment for the use of any land or any building together with furniture, fitting and land appurtenant thereto. The amendment in the provisions has been made with effect from 13.07.2006. In that view of the matter there can be no reason to apply such amendment retrospectively from 01.04.2006. As such we uphold the impugned order insofar as it is against the Revenue and hold that the amendment to section 194-I can be applied only with effect from 13.07.2006. In that view of the matter the ground raised by the Revenue for extending the amount of disallowance u/s 40(a)(ia) to the amount paid during the period 01.04.2006 to 12.07.2006, is dismissed.

6. Insofar as the assessee’s appeal is concerned, the dispute is for the sustenance of disallowance sustained u/s 40(a)(ia) for the period from 13.07.2006 to 02.11.2006. Page 1 of the paper book is certificate issued u/s 197 of the Act relating to deduction of tax at source which is dated 3rd November, 2006. As per this certificate the officer authorized the assessee “to pay the rent payments payable by you on the under mentioned sums credited in the name of Samson Maritime Limited..... at the rate of nil”. From the above certificate it is clear that the assessee was directed to make rent payment without any deduction of tax at source with effect from 3rd November, 2006. The case of the

assessee before us is for the period 13.07.2006 to 02.11.2006. The learned AR contended that neither any amount was credited to the account of SML during such period nor any payment was made against the charter hire charges and as such no disallowance could be made. In other words, it was contended that since the credit as well as payment for the period 13.7.2006 to 02.11.2006 were made towards charter hire charges from 03.11.2006 onwards, there could be no applicability of section 194-I and resultantly no disallowance could be made u/s 40(a)(ia). In support of this contention the learned AR relied on the order passed by the Mumbai bench of the Tribunal in the case of M/s. Pranik Shipping & Services Limited v. ACIT in ITA No.5962/Mum/2009 dated 25.01.2012. The learned Departmental Representative opposed this contention by arguing that the liability to pay arose on monthly basis during the period 13.07.2006 to 02.11.2006 and as such the manner in which the assessee recorded transactions in its books of account by not crediting this amount to the account of SML during such period or not making payment thereof was not determinative of the applicability of section 194-I. His contention was that since the amount became due to SML on monthly basis, the assessee was liable to credit its account during the period 13.07.2006 to 02.11.2006, being the period during which section 194-I is applicable and there is no exemption u/s 197.

7. It is obvious that the disallowance u/s 40(a)(ia) can be made if there is non-compliance of the relevant sections including section 194-I. Section 194-I, in turn, provides that “any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, shall, *at the time of credit of such income to the account of the payee or at the time of payment thereof* in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon” at the specified rate. A bare perusal of the statutory provision transpires that

liability to deduct tax at source u/s 194-I is attracted when any income by way of rent is either credited to the account of payee or payment is made thereof, whichever is earlier. In other words, if there is neither the credit of income to the account of the payee nor payment thereof, the provisions of section 194-I cannot apply. Once the provisions of section 194-I are held to be not applicable, the question of disallowance u/s 40(a)(ia) is also ruled out. A copy of account of SML is placed on pages 4 to 13 of the paper book. Page no.14 of the paper book is the analysis of the ledger account of SML in the books of account of the assessee. From these pages it can be seen that the opening balance payable to SML as on 01.04.2006 was ₹1.60 crore. The charter hire charges for the period 01.04.2006 to 12.07.2006 amounted to ₹2.26 crore thereby making total liability at ₹3.87 crore. The assessee made payments totaling ₹3.66 crore from 03.04.2006 to 31.10.2006. The charter hire charges for the period 13.07.2006 to 02.11.2006 totaling ₹2.48 crore were credited on or after 03.11.2006 and charter hire charges for the period from 03.11.2006 to 31.03.2007 amounting to ₹3.27 crore were also credited during the respective period. From 04.11.2006 to 30.03.2007, the assessee made payment to the tune of ₹3.22 crore. The above analysis of the account indicates that insofar as the charter hire charges for the period 13.07.2006 to 02.11.2006 are concerned, the same were neither credited to the account of SML during the said period nor were paid. Both the credit to the account as well as payment took place after 03.11.2006, being the date from which the assessee got certificate u/s 197 for deduction of tax at source at Nil rate. The order passed by the Mumbai Bench of the Tribunal in the case of Pranik Shipping & Services Limited has dealt with similar issue in which it has been categorically held that once there is no liability to deduct tax at source under the respective section on account of the amount being neither credited nor paid, there can be no disallowance u/s 40(a)(ia). The facts of the instant case are on all fours with the case of Pranik Shipping & Services Limited (supra). Here also the assessee neither credited the account of SML nor paid

any amount during the period. Both the credits as well as payment to SML took place after the receipt of certificate u/s 197. Since the credit to the account of SML and payment did not take place during the period 13.07.2006 to 02.11.2006, no liability u/s 194-I was attracted. If that is the position, then there can be no difficulty in holding that section 40(a)(ia) cannot be applied.

8. There is another reason to hold that no disallowance can be made u/s 40(a)(ia). It is seen from the account of SML that the charter hire charges for the period 13.07.2006 to 02.11.2006 amounting to ₹2.48 crore was fully paid up to 30.03.2007. Recently the Special bench of the Tribunal in case of *M/s.Merilyn Shipping & Transports VS. ACIT (ITAT Vishakhapatnam)(SB)* has held that disallowance section 40(a)(ia) applies only to amounts “payable” as at the close of the year and not to amounts already “paid” during the year”. Since the amount of charter hire charges for the period 13.07.2006 to 02.11.2006 were paid during the year and no amount was payable at the end of the year, the disallowance u/s 40(a)(ia) cannot be sustained. We, therefore, overturn the impugned order to the extent it sustained disallowance u/s 40(a)(ia) in respect of charter hire charges for the period 13.07.2006 to 02.11.2006.

9. परिणामतः निर्धारिती की अपीलें स्वीकृत एवं राजस्व की अपीलें खारिज की जाती है । In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

Order pronounced in the open Court on 06th July, 2012.

आदेश की घोषणा खुले न्यायालय में दिनांक: को की गई ।

Sd/-

(Amit Shukla)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(R.S.Syal)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 06th July, 2012.

Devdas*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
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 (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**