IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 21048 of 2014 (E)

PETITIONER(S):
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1. **JINCE AUGUSTINE**
   S/O.K.A.AUGUSTINE, KAREEKUNNEL HOUSE, NARIANGANAM P.O. KOTTAYAM.

2. **BINITHA CHERIAN AGED 37 YEARS**
   W/O.BINESH CHACKO, UMBUKATTU HOUSE, VELLOOR P.O. PAMPADY, KOTTAYAM.

3. **ANU SHANKAR P. , AGED 31 YEARS**
   S/O.PURUSHOTHAMAN, THACHAYIL HOUSE, VALIZHEEKAL P.O. KAYAMKULAM, ALAPPUZHA.

   BY ADVS.SRI.JINU JOSEPH
   SRI.N.RAGHUNATH

RESPONDENT(S):
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1. **MAHATMA GANDHI UNIVERSITY**
   PRIYADARSHINI HILLS P.O.
   REPRESENTED BY THE REGISTRAR, M.G.UNIVERSITY
   KOTTAYAM. 686001

2. **THE DIRECTOR**
   SCHOOL OF MEDICAL EDUCATION
   MAHATMA GANDHI UNIVERSITY, GANDHINAGAR P.O.,
   KOTTAYAM. 686001

ADDL.RESPONDENT:

3.INCOME TAX DEPARTMENT,
REP. BY COMMISSIONER OF INCOME TAX (TDS),
CENTRAL REVENUE BUILDING, I.S.PRESS ROAD, KOCHI-18.

ADDL.RESPONDENT IS IMPLEADED AS PER ORDER DT.20.8.2012 IN I.A.NO.11140/14.

R3 BY ADV. SRI.JOSE JOSEPH,SC , INCOME TAX
R BY SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21048 of 2014 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE AGREEMENT DATED 19.02.2014 BETWEEN THE 1ST PETITIONER AND THE RESPONDENT UNIVERSITY.
EXHIBIT-P2: TRUE COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 24.02.2014.
EXHIBIT-P3: TRUE COPY OF THE PROCEEDINGS NO.1335/E-4/UCME/GNR/12 DATED 23.06.2014.
EXHIBIT-P4: TRUE COPY OF THE CIRCULAR 200/BILL SN. UCME GNR/2013-14 DATED 17.07.2014.

RESPONDENT(S)' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.21048 OF 2014 (E)

Dated this the 15th day of July, 2015

J U D G M E N T

The petitioners are persons who are working as Assistant Professors/Lecturers, on contract basis, in the Department of Physiotherapy under the 2nd respondent. In the writ petition, they are essentially aggrieved by Ext.P4 Circular that was issued by the University, whereby, it was informed that as per Section 194C of the Income Tax Act [hereinafter referred to as the 'IT Act'], an amount of 1% from the monthly remuneration paid to them, would be deducted from July, 2014 onwards towards tax deducted at source in terms of Section 194C of the IT Act. The challenge in the writ petition is premised primarily on the contention that, for the purposes of Section 194C of the IT Act, the petitioners cannot be treated as contractors inasmuch as they are rendering a teaching service in the respondent University. It is also the contention of the petitioners that inasmuch as what they have paid by the respondent University is a salary, they will not come within the ambit of Section 194C of the IT Act. It is also pointed out that the petitioners are not assessees to Income Tax since their total annual income is less than the threshold limit for tax liability under the IT Act. The petitioners therefore assail Ext.P4 Circular on the ground that, effecting the deduction in terms of the said Circular, would visit them with serious consequences inasmuch as they would be deprived of 1% of the income that they would have otherwise obtained from the respondent University.

2. A statement ha been filed by the Standing counsel on behalf of the 3rd respondent. In the said statement, it is averred that the term “any work” under Section 194C of the IT Act will take within its fold any work pursuant to a contract which would include even the services of teaching which is rendered under a contract. In the alternative, it is stated that if it it is the case of the petitioners that they do not come within the threshold limit of taxation under the IT Act, then it would always open to them to approach the Income Tax authorities for a certificate under Section 197 of the IT Act, for non-deduction of tax at source. Lastly, it is stated that the obligation to deduct tax at source under the IT Act is on the person making the payment, which, in this case, would be the respondent University.

3. I have heard the learned counsel for the petitioner, learned Standing counsel for the Income Tax Department as also the learned Standing counsel for the respondent University.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, in Ext.P1 contract, pursuant to which the petitioners had taken up the teaching responsibility under the respondent University, the petitioners are appointed for a period on contract basis and are paid a monthly consolidated remuneration. There is nothing in the contract that would indicate that the petitioners have been appointed on regular basis, pursuant to which alone the petitioners would be entitled to receive salary from the respondent University. The provisions of Section 194C of the IT Act are specific when they state that any person responsible for paying any sum to any resident (hereinafter 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 the specified person shall, 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 one per cent where the payment is being made or credit is being given to an individual or a Hindu undivided family. In the instant case, it is not in dispute that the petitioners are residents who are carrying out work in pursuance of a contract entered into with the respondent University. There is, therefore, nothing in Section 194 C that would suggest that they are excluded from the ambit of the said section for the purposes of deduction of tax at source from amounts that are paid to them by the respondent University. As a matter of fact, the obligation to deduct tax at source under Section 194 C is essentially one of the respondent University, for if they do not deduct tax at source as contemplated under Section 194 C, then they would be treated as an assessee in default for the purposes of the IT Act. I also note that, in terms of Section 197 of the IT Act, if the petitioners have a case that they do not come within the threshold limit of taxability, for the purposes of IT Act, they can approach the Income Tax authorities, and if the latter are satisfied that the total income of the petitioners justifies no deduction of income tax or deduction of income tax at a lower rate, then they can issue an appropriate certificate to the petitioners. Even otherwise, the mere deduction of tax at source from the payments made to the petitioners cannot, in any manner, prejudice the petitioners since any such amount that is deducted from payments due to them is always credited to their account with the Income Tax Department. Consequently, if and when they file a return, including a nil return, with the Income Tax authorities, then they will get credit of these deducted amounts, in their personal assessments completed under the IT Act. I therefore do not find any reason to quash Ext.P4 Circular that has been impugned in the writ petition. Resultantly, the writ petition fails, and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp