IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 18 of 2010 (O&M)

Date of Decision: 5.12.2015

The Commissioner of Income Tax (TDS), Chandigarh
....Appellant.

Versus

General Manager, Haryana Roadways, Hisar
...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Yogesh Putney, Advocate for the appellant.

Mr. Rajiv Sharma, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing ITA Nos. 18 and 20 of 2010 as according to learned counsel for the parties, common questions of law and facts are involved in the appeals. For brevity, the facts are being extracted from ITA No. 18 of 2010.

2. ITA No. 18 of 2010 has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 27.5.2009 passed by the Income Tax Appellate Tribunal, Delhi Bench “A”, New Delhi (hereinafter referred to as “the Tribunal”) in ITA No. 869/Del/2009 for the assessment year 2006-07, claiming the following substantial questions of law:-

1) Whether on the facts and in the circumstances

of the case, the Ld. ITAT was right in law in upholding the order of the CIT(A), deleting the demand created by the A.O. u/s 201(1) and 201 (1A) of the Income Tax Act, 1961 as the assessee failed to deduct tax at source as per the provisions of section 194C of the Act?

2) Whether on the facts and in the circumstances of the case, the ld. ITAT is right in law in holding that contract was for supply of goods and not a case of executing works contract ignoring the provisions of section 194C of the Income Tax Act, 1961?

3. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. During the year in question, the Income Tax Officer (TDS) had noticed that the assessee had entered into a contract with Haryana Roadways Engineering Corporation Ltd. for fabrication of bodies of buses and had failed to deduct tax at source under Section 194C of the Act. The assessee had paid an amount of ₹ 1,96,03,989/- for the Financial Year 2005-06 relevant to the assessment year 2006-07 as fabrication charges without deducting tax at source at the rate of 2% plus cess under Section 194C of the Act. The Income Tax Officer (TDS) vide order dated 29.8.2008 (Annexure A-1) under Section 201(1)/201(1A) of the Act finding the assessee in default qua tax deductible, created a demand of ₹ 5,67,490/- for the financial year 2005-06 relevant to the assessment year 2006-07. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"]. The

CIT(A) vide order dated 11.12.2008 (Annexure A-2) allowed the appeal of the assessee following the decision of the Tribunal dated 22.7.2008 (ITA Nos. 1001 and 1002/CHD/2007) for the assessment years 2004-05 and 2005-06 and its own order dated 21.10.2008 (ITA Nos. 79 and 80/RTK/08-09) in the case of G.M. Haryana Roadways, Jhajjar. Against the order, Annexure A-2, the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 27.5.2009 (Annexure A-3) dismissed the appeal of the revenue following its own order dated 22.7.2008 (ITA Nos. 1001 and 1002/CHD/2007) for the assessment years 2004-05 and 2005-06. Hence, the present appeals by the revenue.

4. We have heard learned counsel for the parties.

5. The aforesaid issue in the case of the assessee itself came up before this Court **ITA No. 21 of 2010 (Commissioner of Income Tax (TDS), Chandigarh v. General Manager, Haryana Roadways, Hisar)** and other connected cases decided on 29.4.2010, wherein this Court had held that there was no question of any contract between Haryana Roadways through its Transport Commissioner and Haryana Roadways Engineering Corporation Limited when the Haryana Roadways had not purchased any bus chassis. The case being a simple case of supply of buses by the Haryana Roadways Engineering Corporation Limited to the Haryana Roadways, was liable to Sales Tax and VAT. This Court had recorded as under:-

> "Having heard learned counsel for the parties and perusing the paper books with their able assistance we are of the considered view that there is no merit in these appeals warranting their admission and the same are liable to be dismissed. From the categorical

findings, it is evident that Haryana Roadways did not purchase any bus chassis and, therefore, there was no question of any contract between Haryana Roadways through its Transport Commissioner and Haryana Roadways Engineering Corporation Limited. It is a simple case of supply of buses by the Haryana Roadways Engineering Corporation Limited to the Haryana Roadways. The supply of buses as such has been subjected to charge of Sales Tax and VAT.

We may examine Section 194C(1) of the Act, which envisages payment of any sum to any resident for carrying out any work in pursuance of a contract between the contractor and Central or State Government etc. In the present case there is no such contract for carrying out any contract nor the expression 'Contractor' could be imputed to any one of the parties. Therefore, no question of law much less a substantive question of law would arise for determination of this Court. These appeals are wholly without merit and the same are dismissed."

6. In view of the above, substantial questions of law as claimed in these appeals are answered accordingly. Consequently, finding no merit in both the appeals, the same are also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

December 5, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**