IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.479 of 2012

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Assisstnt Commissioner Of Income Tax, Tds Circle, 6th Floor, Cr Bldg, B.C. Patel Path, Patna.

.... Appellant/s

Versus

Deputy Manager (Finance) Ioc, Patna, Lpg Bottling Plant, Gidha Arrah, Bhojpur

.... Respondent/s

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with

Miscellaneous Appeal No.480 of 2012

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Assisstnt Commissioner Of Income Tax, Tds Circle, 6th Floor, Cr Bldg, B.C. Patel Path, Patna.

.... Appellant/s

Versus

Deputy Manager (Finance) Ioc, Patna, Lpg Bottling Plant, Gidha Arrah, Bhojpur

.... Respondent/s

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with

Miscellaneous Appeal No.482 of 2012

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Assisstnt Commissioner Of Income Tax, Tds Circle, 6th Floor, Cr (Annexe) Bldg, B.C. Patel Path Patna.

.... Appellant/s

Versus

Deputy Manager (Finance) Ioc, Patna, Lpg Bottling Plant, Gidha, Arrah, Bhojpur.

.... Respondent/s

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Appearance :

(In MA No.479 of 2012)

For the Appellant/s : Mrs. Archana Sinha, Sr. Standing Counsel I..T. Deptt.
Mr. Alok Kumar, Advocate
Ms. Shalini Bihari, Advocate

For the Respondent/s : Mr.

(In MA No.480 of 2012)

For the Appellant/s : Mrs. Archana Sinha, Sr/ S.C. (I.T. Deptt.)

For the Respondent/s : Mr.
(In MA No.482 of 2012)
For the Appellant/s : Mrs. Archana Sinha, Sr. S.C. (I.T. Deptt.)
For the Respondent/s : Mr.
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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

6 17-02-2016 Since all the three appeals, which relate to different assessment years of 2009-10, 2010-11 and 2011-12, raise the same issue, they have been heard together and are being disposed of by this common order

All the three appeals have been filed against the order dated 24.02.2012 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna in ITA No.106/ Pat/2011 for the assessment years 2009-10, 2010-11 and 2011-12.

The only issue involved in the present matter is as to whether the tax deduction at source is to be made under Section 194C or 194I of the Income Tax Act (hereinafter referred to as the 'Act') which provide for different rates of deduction of tax. Evidently, according to the Revenue, it should have been deducted under Section 194I of the Act which provides for rate of deduction of 10% whereas the deductions were being made by the assessee under Section 194C of the Act at the rate of 2%. The Assistant Commissioner of Income Tax, TDS Circle, Patna, by his order dated 19.01.2011 under Section 201(1)/201(1A) of the Act held that the deduction ought to have been made by the assessee under Section 194I of the Act and accordingly directed further amounts of Rs.5,04,86,721/- to be deposited by the assessee including the amount of interest on short deduction of Rs.87,62,158/- and further initiated penalty proceeding under Section 271C of the Act for failure to deduct the whole or part of the tax at source.

Aggrieved by the same, the assessee Indian Oil Corporation went in appeal before the Commissioner of Income Tax (Appeals), Dhanbad (Camp Office, Patna) and he allowed the appeal directing the assessing Officer not to hold the appellant in default under Section 201(1) and 201(1A) of the Act. It was noticed by the CIT (Appeals) that the operators had simply provided the vehicles to the company for using the same as per its requirements. Thus, he was of the opinion that provision of Section 194I of the Act and not 194C of the Act was attracted in the case.

However, it was noted by the CIT (Appeals) that the entire dispute hinges on whether the agreement of the appellant with the transporters is in the nature of a contract for transportation as defined under section 194C of the Act or a hiring arrangement covered under section 194I of the Act. He further noted that actual transportation of the LPG is done by the employees of the transporters and that of the appellant and the payments to transporters were also made on per kilometer and per kilolitre basis depending on the usage whereas the most important feature of a hiring arrangement would be payment of a fixed charge for the specified duration irrespective of usage of the vehicle which was not the position in the present case. He also noted that the requirement of the vehicles to be kept for the exclusive use of the assessee was for the reason that the vehicle may remain fit for specialized use and also available to the appellant on demand as the product i.e., LPG, being handled by the appellant constitutes an essential commodity and its timely transportation and handling is to be ensured so that the public interest is not adversely affected. The CIT (Appeals) has also noted that the vehicle does not remain in complete control of the assessee and it is the employees of the transporters, who handle the transportation from one point to another when the product is being transported and the carrier is responsible for loss of men, materials or equipments during the process of transportation. The carrier is also responsible for loading and discharging of the vehicles.

The CIT (Appeals) also relied upon a decision of Guwahati High Court in the case of the company itself, although no further details of the said case are mentioned and no citation of the said case is given in the order which concluded that even though the trucks are used for the purpose of the assessee, they are used by the carrier for the assessee, and further that the payments are not for use of the vehicle but for the transportation work done by the carrier for the assessee.

For all the above reasons, the CIT (Appeals) allowed the appeal. The appeal by the Revenue before the Income Tax Appellate Tribunal was also dismissed.

Before us learned Standing Counsel for the Revenue has sought to argue the matter reiterating what was submitted before the lower appellate authorities. However, on a consideration of the order of the Tribunal and the order of the CIT (Appeals), we do not find that any substantial question of law remains to be decided by this Court and the conclusions reached by the Tribunal are completely in accordance with law.

The reliance placed by the Revenue regarding definition of 'plant' given under Section 194I of the Act can be of no avail as it is evident from the whole discussion of the contract, as noted in the order of the Assistant Commissioner of Income Tax, TDS Circle, Patna itself, that it is not a case of hiring out of any plant even though the vehicle could come under the definition of plant under section 43(3) of the Act and may be let out on rent as a plant within the definition given under Section 194I of the Act, but such is not the position in the facts of the present case.

The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

B.Kr./-Sudip

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