IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2016

C O R A M

THE HON'BLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal No.699 of 2016

Commissioner of Income Tax,
Ward 2, Tirunelveli. ... Appellant

Vs

Shri.S.Kalaiarasan ... Respondent

Prayer:- Appeal filed under Section 260A of the Income Tax, 1961, against the Order of the Income Tax Appellate Tribunal, Chennai A Bench, dated 4.3.2016, in I.T.A.No.1987/Mds/2015, against the Order of the Commissioner of Income Tax (Appeals) - 3, Madurai dated 26.06.2015 and made in I.T.A.No.0511/2014-15 for the Assessment Year 2006-07, against the Order of the Income Tax Officer, Ward I92), Tirunelveli, dated 24.03.2014 and made in P.A.No.AHFPA0383E for the Assessment year 2006-07.

For Appellant : Mr.M.Swaminathan

For Respondent : No appearance

J U D G M E N T
(Judgment of the Court was delivered by Dr.Anita Sumanth, J.,)

This is an appeal filed by the Department raising the following substantial questions of law:-

"1) Whether, on the facts and circumstances of the case in law, Tribunal was right in dismissing the appeal of the department without adjudicating the issue of jurisdiction?

2) Whether, on the facts and circumstances of the case in law, Tribunal was correct and justified in holding that assessee has not given any work to anyone when facts on record show that assessment was completed ex parte under section 144 and no evidence to this effect was produced by assessee before any authority?

3) Whether, on the facts and circumstances of the case in law, Tribunal erred in holding that assessee is a sub-contractor without any facts on record to that effect and without even mentioning the name of the contractor from whom assessee has

taken sub-contract and to that extent the order of the Tribunal is perverse?"

2. The assessee-respondent was served with notice on 14.10.2011, but, has, however, not chosen to appear before us. Therefore, we proceed to dispose of the appeal on merits after hearing the submissions of Mr.M.Swaminathan, learned counsel appearing for the appellant-Department.

3. The assessee is an individual. In respect of assessment year 2006-07, he filed a Return of income under the Income Tax Act ('Act' in short) admitting total income of an amount of Rs.3,15,800/-. An order of assessment under scrutiny was passed on 29.12.2008 and thereafter, a notice under section 148 was issued for re-assessment of income that had escaped tax. Despite service of several notices thereafter, the assessee did not appear before the assessing officer and the proceedings for re-assessment were completed ex parte to the best of the assessing officer's judgment, by order under section 144 of the Act, dated 24.3.2014. Inter alia, the assessing authority made a disallowance under section 40(a)(ia) of the Act to the tune of Rs.1,05,53,763/- on the ground that the amounts paid towards lorry freight, lorry hire charges and loader hire charges had not been subject to tax deduction in terms of Section 194C of the Act. A demand for Rs.62,05,053/- was raised.

4. In appeal before the Commissioner of Income Tax (Appeals), grounds were raised by the assessee with regard to jurisdiction as well as on merits. The Appellate Commissioner, by order dated 26.6.2015, allowed the appeal quashing the assessments on the ground of lack of jurisdiction, against which an appeal was filed by the Revenue before the Income Tax Appellate Tribunal. When the appeal before the Tribunal was taken up for hearing, the assessee appears to have made a representation that he was a pauper, praying for dismissal of the appeal on merits. The Tribunal proceeds to reject the Department's appeal holding that the assessee appears to be a sub-contractor, to whom, the provisions of Section 194C of the Act would not be applicable. In doing so, the Tribunal has observed that all the materials available on record clearly establish that the assessee has not sub-contracted the work to anyone.

5. The Tribunal observed that while carrying out the work assigned to him as a sub-contractor, the assessee had hired lorries, incurring hire and labour charges. On a careful examination of the record, we do not find any material produced either before the Assessing Officer or the Appellate Authorities to justify the aforesaid conclusion. We, therefore, remand the matter to be adjudicated afresh by the Commissioner of Income Tax (Appeals) on the applicability of Section 194C, after affording an opportunity to the assessee to furnish all materials in support of his claim.

The Tax Case (Appeal) stands allowed by way of remand. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Appellate Tribunal,
'A' Bench, Chennai.

2.The Commissioner of Income Tax(Appeals) - 3,
Madurai.

3.The Income Tax Officer,
Ward I(2), Tirunelveli.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.73069

T.C.A.No.699 of 2016

SV(CO)
CA(02/05/2017)