IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 821 of 2010 (O&M)
Date of decision: 25.1.2016

Commissioner of Income Tax I, Ludhiana

……Appellant

M/s Truck Operator Union, Adda Jodhan Mandi, Ludhiana

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. *Whether 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?*

Present: Mr. Rajesh Katoch, Advocate for the appellant.
None for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 24.2.2010, Annexure A.III passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for brevity, "the Tribunal") in ITA No.761/CHD/2009 for the assessment year 2006-07 claiming following substantial question of law:-

i) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law in holding that the provisions of section 194CV are not applicable to the payments made by the assessee to the truck operators on account of transportation charges ignoring the fact that the payments were of sub contractual nature?

ii) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law in deleting the addition of ₹ 63,10,197/- made in view of the provisions of section 40(a)(ia) of the Income Tax Act, 1961 as no tax at source was deducted by the assessee on sub contractual payments, as required under section 194C of the Income tax Act, 1961?

iii) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law in holding that the assessee was not liable to deduct tax at source on payments made to truck operators as there was no liability to apply for TAN and also for furnishing Form No.15-I?"

2. Briefly, the facts as narrated in the appeal may be noticed. The respondent-assessee is a firm which derives income by taking tenders from various food agencies for transferring the bags of food-grains from their godowns to other palaces. It filed its return of income for the assessment year in question on 12.9.2006 declaring Income of ₹ 2,56,680/- which was processed under section 143(1) of the Act on 3.7.2007. During the relevant period as per profit and loss account, the assessee received ₹ 85,19,255/- as transportation charges. As per TDS certificates, the contractual receipts from various government agencies were shown at ₹ 84,92,855/-. According to the Assessing Officer, these payments were covered under Section 194C of the Act. Out of this payment, the assessee further debited ₹ 78,77,384/- as transportation expenses. Payment of ₹ 79,77,384/- was made to 174 transporters involved in the work carried out by the assessee. The Assessing Officer considered the payments made by the assessee to the truck operators

as sub contractual payments and thus provisions of Section 194C of the Act were held to be applicable. It was pleaded before the Assessing Officer that all the truck operators owned not more than two trucks and hence no tax was deductible. With regard to second proviso to sub section 3 of Section 194C of the Act, it was pleaded before the Assessing Officer that the assessee was not eligible for obtaining TAN and hence could not file Form 15-J before the Commissioner of Income Tax after obtaining 15-I Form from the truck operators. The assessee was eligible for obtaining TAN only when it had deducted tax as it could apply for the same within one month after deduction of tax as prescribed under section 203A read with Rule 114A(3) of the Income Tax Rules, 1962. After considering the reply submitted by the assessee, the Assessing Officer concluded that the assessee was required to deduct tax at source as per the provisions of section 194C of the Act on sub contractual payments made to the truck operators which it failed and therefore, the entire sub contractual payments in excess of ₹ 50,000/- which worked out to ₹ 63,10,197/- were disallowed in view of the provisions of section 40(a)(ia) of the Act. Thus, an addition of ₹ 63,10,197/- was made to the income of the assessee. Assessment was completed under section 143(3) of he Act vide order dated 11.11.2008, Annexure A.1 at income of ₹ 65,66,877/-. An addition of ₹ 63,10,197/- was made by the Assessing Officer under section 40(a)(ia) of the Act by disallowing the payments made to the Truck operators in excess of ₹ 50,000/- treating these payments as sub contractual payments on which no tax was deducted at source by the assessee as required under Section 194C of the Act. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)], who vide order dated

11.5.2009, Annexure A.II allowed the appeal holding that provisions of section 194C of the Act were not applicable to the payments made by the assessee to the truck operators and deleted the disallowance of ₹ 63,10,197/- made under section 40(a)(ia) of the Act. Dissatisfied with the order passed by the CIT(A), the revenue filed appeal before the Tribunal. Vide order dated 24.2.2010, Annexure A.III, the Tribunal dismissed the appeal and confirmed the order passed by the CIT(A). Hence the instant appeal by the revenue.

3. We have heard learned counsel for the appellant-revenue. No one has appeared on behalf of the respondent.

4. It is not disputed by learned counsel for the appellant-revenue that the issue has already been decided against the revenue by this Court in ITA No.120 of 2012 (***Commissioner of Income Tax I, Ludhiana vs. M/s Truck Operator Union, Adda Jodhan Mandi, Ludhiana)*** vide order dated 7.8.2012 wherein it was recorded thus:-

> "3.Learned counsel for the revenue has very fairly accepted that similar issue involved in respect of the same assessee for the earlier assessment year has been decided against the revenue by this Court in ***Commissioner of Income Tax v. Truck Operators' Union***, (2011) 339 ITR 532, wherein it was held as under:-
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> > "5. Learned counsel for the Revenue fairly states and we are also of the same view that section 194C(2) of the Act had no application in the circumstances of the case when the union was merely acting in representative capacity and there was no separate contract between the union and its members for performance of the work as required for applicability of section 194C(2) of the Act. In such circumstances, section 40(a)(ia) of the Act was not

applicable, as rightly held by the CIT(A) and the Tribunal. Learned counsel for the Revenue also points out that same view has been taken by the High Court of Himachal Pradesh in its order dated 20th October 2009 in IT Appeal No.30 of 2005 CIT v. Ambuja Darla Kashlog Mangu Transport Co. Op. Society and others, (2009) 31 DTR (HP) 49 against which SLP was dismissed by the Hon'ble Supreme Court on 17th January 2011 being SLP (Civil.../2011 CC 259 of 2011 CIT v. Ambuja D.Mangu Transport Cooperative Society."

4. In view of the above, no substantial question of law arises.

5. The appeal is dismissed."

5. In view of the above, the substantial questions of law are answered against the revenue and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

January 25, 2016
'gs'

(Raj Rahul Garg)
Judge