

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.8400 and 8463 of 2016
Date:03.11.2017

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Between.

M/s GVR Infra Projects Ltd.,
Hyderabad, repto by its Authorised
Signatory-K.V.R.S.S.Sarma

..... Petitioner

And.

Union of India, repto by its
Joint Secretary, Ministry
of Finance, New Delhi and two others.

.....Respondents

Counsel for the petitioner: Mr. C.Raghu

Counsel for the respondents: Ms. K.Mamatha Choudary

The Court made the following:

COMMON ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

These two Writ Petitions raise common issue, *viz.*, whether the assessments made by respondent No.3 for the assessment years 2012-13 and 2013-14 by imposing differential tax liability, ignoring the payments allegedly made to the Sub-contractors by the petitioner, is proper and correct.

The admitted facts are that the petitioner-a principal Contractor entrusted certain works of sub-contract to third parties. During survey operations under Section-133(A) of the Income Tax Act, 1961 (for short 'the Act'), it came to light that the petitioner has not furnished the Permanent Account Numbers (PANs) of certain payees and the tax deducted was only @ 1% or 2%, as the case may be, applicable to individuals and firms, respectively. Based on the said fact, the Assessing Officer (AO) has levied the tax on the petitioner.

It is the pleaded case of the petitioner that after the assessment orders were passed, he has submitted the PAN Nos of the payees and filed applications under Section-154 of the Act for rectification of the mistake. The AO has rejected the said applications. Feeling aggrieved by the said orders, the petitioner had initially filed the Appeals before respondent No.2. However,

after withdrawing the said Appeals, it filed Revision Petitions before the same functionary under Section-264 of the Act.

Respondent No.2-revisional authority after considering the said Revisions on merits dismissed the same. Feeling aggrieved by the said orders, the petitioner filed these two Writ Petitions pertaining to the assessment years 2012-13 and 2013-14.

Mr. C.Raghu, learned counsel for the petitioner, strenuously, submitted that the AO as well as respondent No.2 have committed serious error in not considering the material filed by the petitioner after the assessment orders are passed. He has further submitted that Section-154 of the Act permits the AO to correct the mistakes and that the scope of the said provision being wide, he ought to have considered the PAN Nos of the third parties furnished by the petitioner *albeit* after making of the assessments; that under Section-264 of the Act, the power of the revisional authority is very wide; and that there was absolutely no reason for him not to consider the fresh material filed by the petitioner for revising the assessments.

Ms. K.Mamata Choudary, learned senior Standing Counsel for Income Tax Department, opposed the above submissions and stated that respondent No.2 has assigned cogent reasons for

refusing to revise the assessments for the years 2012-13 and 2013-14.

We have carefully considered the respective submissions of learned counsel for both the parties with reference to the record.

The admitted fact in these two cases remains that the petitioner failed to furnish PAN Nos of the third parties to whom payments were allegedly made by him. It is also not in dispute that the assessee is liable to tax deduction at source under Section-194C(1) of the Act. With reference to these provisions, respondent No.2 in his order observed as under:

“I have examined the facts of the case and the submissions of the AR. The assessee was liable to deduct tax at source under Section-194(C) and 194(1) of the Act. Both these sections specify the point of time at which deduction should be made as follows:

“... at the time of credit of such sum to the account of the contractor/payee or at the time of payment thereof by cash or by issue of a cheque or draft or by any other mode whichever is earlier.”

In other words, the point of time at which deduction must be made is fixed by law. There is no discretion available to the assessee to choose the time at which such deduction must be effected. The act of deduction is neither permitted by the Act to be postponed nor is it the assessee's case that it was actually postponed. The decision regarding the rate at which the deduction must be made is an integral

part of the act of deduction itself and it follows that this decision also cannot be postponed.”

No doubt, no limits have been placed on the jurisdiction of respondent No.2 in considering the Revision. However, the revisional powers must always be exercised within the confines of the provisions of the Act. When the Act prescribes the point of time at which the deduction must be made, the revisional authority cannot grant a relief contrary to the statutory provision. Therefore, as rightly observed by respondent No.2, the assessee is not vested with the discretion to choose the time at which such deduction must be effected.

In this view of the matter, we do not find any illegality in the orders passed by respondent No.2, which are impugned in these Writ Petitions.

The Writ Petitions are, accordingly, dismissed.

As a sequel, interim orders, dated 16.3.2016, in WPMP.Nos.10644 and 10726 of 2016 are vacated and the said WPMPs are dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE CHALLA KODANDA RAM

03rd November 2017

DR