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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A. Nos.30 and 31 of 2015

Commissioner of Income Tax,
Madurai.

... Appellant
in both appeals

Vs.

P.Sumathi
Prop. of Shri Manikandan Transport
No.21, Pereira Street,
Tuticorin.

... Respondent
in both appeals

Tax Case Appeals preferred under Section 260A of the Income Tax Act, 1961, against the common order, dated 25.04.2014, passed by the Income Tax Appellate Tribunal, Chennai, "C" Bench, in I.T.A.No.2229/Mds/2013 and C.O.No.6/Mds/2014 in I.T.A.No.2229/Mds/ 2013, for the Assessment Year 2009-10 filed against the O/o the Commissioner of Income Tax (Appeals). No.2, VP.Rathnasamy Nadar Road, Madurai-2, and made in ITA.No.85/11-22 dated 25/07/2013 and against the O/o Assistant Commissioner of Income Tax, Circle-1, Tuticorin, and made in P.A./GIR.No.AKXPS6101P dated 24.12.2011 of the Assessment year 2009-2010.

For Appellant : Mrs.S.Premalatha
Junior Standing Counsel
in both appeals

For Respondent : Mr.A.S.Sriraman
in both appeals



C O M M O N J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

These Tax Case Appeals filed by the Revenue under Section 260-A of the Income Tax Act, 1961 ("the Act" for brevity) are directed against the common order, dated 25.04.2014, passed by the Income Tax Appellate Tribunal, Chennai, "C" Bench, in I.T.A.No.2229/Mds/2013 and C.O.No.6/Mds/2014 in I.T.A.No.2229/Mds/2013, for the Assessment Year 2009-10.

2.The appeals were admitted on 23.02.2015 to decide the following substantial questions of law :

"1.Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the provision of Section 194C of the Income Tax Act will not be applicable in respect of the payment made by the assessee towards transport of goods by way of hiring the vehicle?

2.Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the provision of section 40(a)(ia) will not be applicable to the assessee case by holding that there is no contractual liability between the assessee and lorry owners/drivers?

3.Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that there is no contractual liability between the assessee and the lorry owners without considering that there is an implied contract?"

3.We have elaborately heard Mrs.S.Premalatha, learned Junior Standing Counsel for the appellant/Revenue and Mr.A.S.Sriram, learned counsel for the respondent/assessee.

4.The assessee is the Proprietor of a concern, namely, Shri Manikandan Transport, which is engaged in the transport of Salt and Gypsum from the Salt Pans in Tuticorin to Chettinad Cement Factory at Karaikal and Ariyalur. The assessee filed her return of income on 23.02.2010 for the Assessment Year under consideration, i.e., AY 2009-10, declaring an income of Rs.18,73,240/-. The return was initially processed under Section 143(1) of the Act and subsequently, the case was selected for scrutiny under Section 143(2). During the course of assessment,



the Assessing Officer observed that the assessee has shown certain amounts as lorry hire receipts and the assessee was called upon to explain as to whether lorry hire payments would attract the provisions of Section 194C of the Act and whether the assessee had deducted TDS as required under the said section, and if not, the provisions of Section 40(a)(ia) of the Act would stand attracted and the entire payment for hire of lorries would be disallowed. The assessee submitted her reply contending that the provisions of Section 40(a)(ia) of the Act would not be attracted to the assessee's case. Certain other factual aspects were also placed and more particularly to state that, there was no written contract nor any contract as presumed by the Department between the lorry owners/drivers and the assessee, and where ever it was feasible, TDS has been deducted, and only in cases where payments were made to the lorry owners, there is no feasibility of deducting any Tax at Source. The Assessing Officer was not convinced with the reply given by the assessee and accordingly, completed the assessment by order dated 24.12.2011, disallowing the payments with regard to lorry hire charges.

5. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Madurai ("CIT(A)" for brevity). The said appeal was partly allowed, i.e., to state that there was no written contract between the assessee and the lorry owners/drivers and the question of deducting Tax at Source would not arise. However, after making the said observation, the assessee was called upon to furnish the details of the amount exceeding Rs.50,000/- during the Assessment Year under consideration and on 13 such transactions having been disclosed, the disallowance under Section 40(a)(ia) was restricted to Rs.11,24,684/-, since the amount paid to the lorry drivers/owners exceeded the threshold limit of Rs.50,000/- per year.

6. Aggrieved by the order passed by the CIT(A), dated 25.07.2013, the Revenue filed an appeal before the Tribunal, in which, the assessee filed her Cross Objections as against the portion of the order passed by the CIT(A) restricting the disallowance to Rs.11,24,684/-. The appeal filed by the Revenue has been dismissed and the Cross Objection filed by the assessee has been allowed by common order, dated 25.04.2014, which is impugned in these appeals.



7. Firstly, the Assessing Officer, while considering the stand taken by the assessee, notes that the assessee is deducting TDS on lorry transport payments and the assessee has not deducted TDS while making payments to certain persons who are admittedly lorry drivers. Thus, the question would be as to whether the Assessing Officer was justified in inferring that there is deemed to have been a sub-contract between the assessee and the lorry drivers. Admittedly, there is no material available on record before the Assessing Officer to come to such a conclusion or even come to such a prima facie conclusion. The Assessing Officer proceeded to hold that there should have been an agreement between the assessee and the lorry drivers and it is not necessary to have any written agreement, because there was an agreement between the assessee and the Cement Company for transportation of Salt and Gypsum from Tuticorin. The correctness of the said stand was examined by the CIT(A) and it was found that there was no material on record to draw any such inference against the respondent/assessee. The correctness of the said finding was tested by the Tribunal and the Tribunal rejected the appeal filed by the Revenue.

8. Insofar as the order of the CIT(A) restricting the disallowance to Rs.11,24,684/- is concerned, the Tribunal, in our view, rightly interfered with the said order, because, no issue would be as to whether at all there is sub-contract agreement between the assessee and lorry drivers and in the absence of any such contract, the question of deducting Tax at Source would not arise and therefore, the restriction of disallowance to Rs.11,24,684/- was held to be erroneous. Further, the Assessing Officer failed to take note of a very important factor, which was placed before the Assessing Officer for consideration, stating that Section 194C of the Act was substituted in 2009 by Finance Act (2) of 2009 with effect from 01.10.2009, which has done away with TDS if PAN is furnished, in terms of Section 194C(6). It is seen that the Assessment Year under consideration, namely, AY 2009-10, was the last year when the unamended provisions were in vogue. Thus, considering the factual position, the Tribunal rightly affirmed the order passed by the CIT(A).

9. Mrs. S. Premalatha, learned Junior Standing Counsel, placed reliance on the decision of the High Court of Karnataka in J. Rama v. Commissioner of Income Tax [Income Tax Appeal No.418 of 2009 dated 19.07.2010]. In the said case, the contention of the assessee was that, there was no written contract and there is no



duty on the part of the assessee to deduct Tax at Source. Per contra, the Department/Revenue contended that the material on record clearly discloses that the vehicles are hired by the assessee from the various owners of the vehicles only to discharge the obligation under the contract between the assessee and other customers. On facts, the Court found that the assessee therein had entered into a contract to supply vehicles to M/s.Mahindra and many other companies under written contract on various dates and only to perform the obligation under the said contracts, he had hired vehicles from the sub-contractors under the written contract and the liability to deduct TDS arises under Section 194C(2) of the Act. Furthermore, while testing the correctness of the stand taken by the assessee, the Court considered the factual position that the assessee is providing vehicles to one of its customers, M/s.Mahindra Group, and in Clause-5 of the written agreement between the parties, a condition has been stipulated that provision of services would involve providing vehicles owned by the assessee or associates of assessee or agents, for transportation of the employees of Thomson Corporation, and further, on facts, it was found that the assessee is owning a fleet of vehicles, which is not sufficient to meet the agreement entered into between the assessee and such individual owners. Considering these facts, the Court held that there is no necessity for a written agreement between the parties. The facts before us are entirely different, as both the CIT(A) as well as the Tribunal have held on facts that the assessee hired vehicles from the drivers and there was nothing on record to infer any unwritten contract. Therefore, we are of the view that the decision in the case of J.Rama (supra) cannot be made applicable to the facts and circumstances of the case on hand.

10.For all the above reasons, we find that the Tribunal was right in dismissing the appeal filed by the Revenue and granting full relief to the assessee. In the result, these Tax Case Appeals are dismissed and the substantial questions of law are answered against the Revenue. No costs.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar



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1.The Income Tax Appellate Tribunal,
Chennai, "C" Bench.

2.The Commissioner of Income Tax,
Appeals, No.2 V.P Rathnasamy Nadar Road,
Madurai.

3. The Assistant Commissioner of Income Tax,
19-A, WGC, Road, (Circle-I), Tuticorin.

+1cc to M/s.S.Sridhar, Advocate, S.R.No.41569

+1cc to M/s.M.Swaminathan,for standing Counsel, S.R.No.41543

T.C.A. Nos.30 and 31 of 2015

RR(CO)
SB(21/09/2021)