IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.8772 OF 2015
AND
MP.NO.1 OF 2015

R.Rathinasamy
S/o S.Ramasamy
No.190, L.K.A. Nagar,
Vellakoil,
Thiruppur District – 630 111. ... Petitioner

Vs

1. The Chairman
   Canara Bank, Head Office
   12, J.C.Road,
   Bangalore – 560 002.

2. The General Manager,
   Canara Bank
   Executor, Trustee & Taxation Section
   FM & S Wing, Head Office,
   Bangalore – 560 027. ...Respondents

Prayer:
Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for the records relating to the impugned circular of the second respondent in Circular No.112/2015 dated 07.03.2015 and quash the same.

For Petitioner : No Appearance

For Respondents : M/s.King and Partridge



ORDER

Today, there is no representation on behalf of the petitioner. The learned counsel for the respondent is present through video conference. On 18.02.2021, when the matter came up for hearing, I heard the arguments of the learned counsel for the petitioner.

2. This writ petition has been filed to challenge the impugned Circular dated 07.03.2015 bearing reference Circular No.112/2015 dated 07.03.2015 and to quash the same.

3. The case of the petitioner is that the petitioner was appointed as a valuer by the 2nd respondent bank and it was required to discharge the duties under the contract with the 2nd respondent bank by visiting the branches within the jurisdiction of the 2nd respondent bank. The Impugned circular issued by the 1st respondent is challenged in this Writ Petition.

4. Impugned circular reads as under:-

1.(A) TDS on charges paid to Jewel Appraiser:

As per the manual of instruction on loans against Gold jewellery updated till 31.10.2009, the jewel appraisers, among other thing, are required to execute an agreement in a stamped paper of requisite value and provide security deposit of required amount by way of KDR in his name.

As per the agreement, "-- the Bank has agreed to engage the services of the Jewel appraiser for the purposes and upon the terms and conditions set forth in the agreement"--- he will be governed by the terms and condition of the contracts or agreement and of such other contracts or agreements as may be executed between him and the Bank"-- "the jewel appraiser shall be remunerated for his work by way of commission only as determined by the Bank from time to time in its absolute discretion and he shall not be entitled to any other remuneration, reimbursement and other charges whatsoever".

In view of the above agreement and based on the opinion of the tax consultants, there is a privity of contract between the Bank and the Appraiser, on principal to principal basis. Therefore, it will attract TDS where ever applicable. Hence we advise as under:

i) TDS has to be deducted under section 194H at rates as per Cir 233/2013 dated 21.05.2013 from the commission paid to him. Hence Gross commission should be recovered from customer. TDS should be deducted @ 10% if PAN of the jewel appraiser is available and the Nt commission after deduction of TDS has to be credited to jewel appraiser's account. Branches need to obtain PAN of jewel appraiser for deducting the TDS and in case of non availability PAN, TDS should be deducted at 20%.

B) TDS on Fees paid to Valuers:

The procedures for empanelment of valuers, for valuation of current assets, fixed assets, etc., are detailed in HO Circular No.148/2009 ded 22.04.2009.

Suitable application is obtained from the enrolled empanelled valuers. The said application, amoung other things, contains that

".. I/We shall abide by all the terms and conditions stated here below as well as other terms and conditions prescribed by the Bank from time to time."
"4.The Remunaeration payable shall be as per policy of the Bank"

In view of the above, there is a contractual obligation on the part of Valuer with the Bank. Hence, the Branches are required to deduct TDS under section 194J at rate of 10% if the PAN is available as per Cir 233/2013 on the Bill amount. The Net of TDS is to be credited to the account of the valuer. Branches need to obtain PAN of Valuer for deducting the TDS and in case of no PAN, TDS should be deducted at 20%.

C) TDS on Fees/Legal charges paid to Advocates.
The Services of advocate are utilized in representing the Bank's casebefore Courts/Tribunals, giving legal opinions/LSR. Drafting of documents, enforcement of decrees/Recovery Certificates, etc.

The Branches are engaging the services of Advocates empanelled at Circle office. The guidelines for empanelment of Advocates are enumerated in the HO Circular No.217/2011 dated 16.07.201...

The branches are issuing letter of communication to the empanelled Advocates. The letter of empanelment, inter alia, confirms (i) .. the empanelment of advocate in the bank's panel (ii) .. shall be bound by the guidelines/policey of the Bank and iii) Fees and other charges ahll be per Banks Rules.

In view of the above, there is a conractual obligation on the part of empanelled Advocates with the Bank. Hence, the Branches are required to deduct TDS u/s 194J @ 10% if PAN is available, as per Cir 233/2013 on the Bill amount of the Advocates. The Net of TDS is to be credited to the account of the Advocates. Branches need to obtain PAN of Advocate for deducting the TDS and in case of non availability of PAN, TDS should be deducted at 20%.

TDS deducted in all the above cases shall be remitted to the Government account on due date and the entries related t the above are to be reported in quarterly eTDS return by entering the data in Web Based eTDS package.

2.Collection of Service Tax on the fees/charges paid to the above professionals.
(a) The service tax for the services of jewel appraiser and Valuers are covered uder Normal charge. Hence, the Service Tax if any claimed by them may be paid after obtaining invoice with service tax registration number from them.
(b) As per Cir 49/2014 the service tax portion is to be excluded for calculation of TDS to be deducted.
(c) In the case of fees/legal charges paid to advocate, Service Tax has to be borne by the bank under full reverse charge method.
(d) Service Tax has to be dicharged under Full Reverse Charge as per Cir 288/2012 dated 15.09.2012 and Cir 710/2014 dated 23.12.2014 on the fees paid to Advocate excluding Court Fees, DRT Fees and Stamp duty paid by debiting GC Service Tax 420085475 and credit the same to SL Service Tax 209271020. This amount should not be deducted from the amount paid to Advocate.

5. The challenge to the circular issued under Section 194H of the Income tax Act, 1961. According to the petitioner, the respondent cannot deduct tax as the petitioner is an individual and therefore the impugned circular was liable to be quashed as far the petitoner is concerned. It is further submitted that even as per proviso to clause 2(b)(i) of Section 194H which defines the expression Commission or brokerage, has specifically excluded professional services and that on a cumulative reading of the said expression, a Jewel Appraiser cannot be brought within the purview of Section 194H of the Income Tax Act. It is further submitted that deduction of tax at source on the amounts payable to the petitioner would result in undue loss to the petitioner and therefore violates under Article 19 and 21 of the Constitution of India.

6. I have considered the argument advanced by the learned counsel for the petitioner on 18.02.2021 and also the learned counsel for the respondent. I have also perused the impugned circular. The impugned circular merely informs all the banks including the bank within the jurisdiction of the 2nd respondent bank to deduct tax.

7. In my view, there is no case made out in quashing the impugned circular issued by the 2nd respondent. In any event, the petitioner has contract only with the bank in Karnataka. This writ petition has been filed without jurisdiction and is therefore liable to be dismissed and is accordingly dismissed. The petitioner is however given liberty to approach Karnataka High Court for the relief. No costs. Consequently, connected Miscellaneous Petitions is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman
   Canara Bank, Head Office
   12, J.C.Road,
   Bangalore - 560 002.

2. The General Manager,
   Canara Bank
   Executor, Trustee & Taxation Section
   FM & S Wing, Head Office,
   Bangalore - 560 027.

W.P.No.8772 of 2015
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SKY(CO)
CS/15/03/2021