

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/35/2020
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS.
M/S. L.G.W. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : AUGUST 12, 2022

Appearance :
Ms. Smita Das De, Adv.
....for appellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. Ananda Sen, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order of the Income Tax Appellate Tribunal "C" Bench, Kolkata (Tribunal) dated 5th October, 2018 in I.T.A. No.1786/Kol/2016 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration: -

- a) Whether on the facts and in the circumstances of the case, the tribunal has misinterpreted section 194C, more particularly 194C (7) of the Income Tax Act, 1961 read with Rule 31A of the Income

Tax Rules, 1962 in holding that the assessee is not liable to deduct TDS from the payments made to transporters ?

- b) Whether on the facts and in the circumstances of the case, the tribunal has incorrectly interpreted Rule 31A of the Income Tax Rules, 1961 while dealing with the issue as to whether the assessing officer had rightly disallowed the freight expenses on application of the said rule read with section 194C (7) of the said Act ?

We have heard Ms. Smita Das De, learned standing Counsel for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Counsel assisted by Mr. Ananda Sen, learned counsel for the respondent/assessee.

The question involved in the instant case is whether non-filing of the statutory form as required under Section 194C(7) can deny the benefit provided to the assessee under Section 194C(6) upon the assessee filing the PAN number of the transport contractors.

The undisputed fact is that during the course of assessment proceedings Form 26Q in terms of Rule 31A of the Income tax Rules, 1962 was available on the file of the Assessing Officer. The Assessing Officer was of the view that the said statutory form was belatedly filed. It is the submission of the learned Counsel appearing for the respondent/assessee that initially a Form 26Q was filed and subsequently an amended form was filed reporting all the details and the Assessing Officer does not dispute the correctness of the details furnished in the said statutory form and therefore, the Tribunal considered all the aspects

and affirmed the view taken by the first Appellate Authority. The Tribunal while deciding the case in favour of the assessee had taken note of several decisions. At this juncture it would be beneficial to refer to the decision in the case of Commissioner of Income Tax, Madurai vs. Sri Parameswari Spinning Mills (P.) Ltd. In the said case, an identical question arose for consideration and the Court pointed out that Sub-section (6) of Section 194C is the provision which grants benefit to the assessee and Sub-section (7) of Section 194C is the procedure to be followed. In the said case the assessee contended that Section 194C(6) and (7) are independent of each other and cannot be read together to attract disallowance under Section 48(a)(ia) read with Section 194C of the Act.

The above decision was referred to in the case of Dilip Kumar vs. Assistant Commissioner of Income-tax, Non-Corporate Circle-II, Chennai, (2019) 111 taxmann.com 52 (Madras), wherein it was held as follows :-

“13. This very issue was considered by us in the decision in the case of CIT v. Sri Parameswari Spinning Mills (P.) Ltd. [2019] 108 taxmann.com 386 (Mad.) and we rejected such a contention raised by the Revenue in the following terms :

“6. We find Sub-section (6) of Section 194C is the provision which grants benefit to the assessee. This benefit comes with the condition of compliance of Sub-section (7) of Section 194C, which is the procedure to be followed. The question would be as to whether if the procedure under Section 194C(7) has not been adhered to by the assessee would it be fatal and thereby disentitle the assessee to the benefit under sub-Section 6 of Section 194C.

7. It is a submission of Mr.A.S.Sriraman, learned counsel for the appellant/assessee that Section 31A deals with statement of deduction of tax under Sub-section (3) of Section 200 referring to Section 31(A) (4)(vi). It is submitted that the deductor at the time of preparing statement of tax, deductor shall furnish particulars of amount paid or credited on which tax was not deducted in view of the compliance of provision of Sub-Section (6) of Section 194C by the payee. Section 234(E) was relied to state that if the statement is not filed, a fee of Rs.200/- for every day, during which the failure continues, has to be paid by the assessee. Therefore, it is the submission that the non filing of a statement in terms of Sub-Section (7) of Section 194C cannot take away the benefit which will accrue to the assessee under Sub-Section (6) of Section 194.

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10. Mr.A.S.Sriraman, learned counsel for the assessee referred to the decision of the ITAT Jaipur in the case of ACIT v. Arihant Trading Co. reported in [176 ITD 397 (Jaipur-Tri.)]. In the said decision it has been held that Section 194C(6) & (7) are independent of each other and cannot read together to attract disallowance under Section 40(a)(ia) read with Section 194C of the Act.”

14. Even assuming that the assessee had not furnished the particulars as required under Sub-Section (7) of Section 194C of the Act in the prescribed form, the maximum that could be done is to impose a fine of Rs.200/- for every day of such non compliance. Therefore, this procedural law, as prescribed under Sub-Section (7) of Section 194C of the Act cannot take away the benefit, which will accrue to the assessee under Sub-Section (7) of Section 194C of the Act. For the above reasons, we are inclined to remand the matter to the Assessing Officer for a fresh consideration.”

Further, in the case of Principal Commissioner of Income-tax-1 vs. Asian Mills (P.) Ltd., (2022) 285 Taxman 422 (Gujarat), identical issue was decided in favour of the assessee and taking note of the decision in the case of Commissioner of Income-tax-I vs. Valibhai Khanbhai Mankad [2012] 28 taxmann.com 119 (Gujarat), the issue was answered in favour of the assessee.

The operative portion of the decision reads as follows :-

"8. The issue is covered by the decision of this Court rendered in the case of [Commission of Income-tax-I vs. Valibhai Khanbhai Mankad](#), [2012] 28 taxman.com 119(Gujarat), where the issue was again with regard to payment to the contractor and requirement of deduction of TDS. Relevant paragraphs are reproduced as under:

"3) We have heard the learned counsel for the Revenue as well as for the assessee. [Section 194C](#) of the Act, as is well known, pertains to payments to contractors. Sub-section (1) of [section 194C](#), as it stood at the relevant time, required that any person responsible for paying any sum to any resident, contractor for carrying out any work in pursuance of a contract between the contractor and the specified entities, shall credit specified sum as income tax on income comprised therein. Likewise, sub-section (2) of [section 194C](#) required a person responsible for paying any sum to resident-sub-contractor to deduct tax at source under given circumstances. It is not in dispute that ordinarily the C/TAXAP/244/2021 ORDER DATED: 26/10/2021 assessee was required to make such deduction on the payments made to the sub-contractors, unless he was covered under the exclusion clause contained in sub-section (3) of [section 194C](#) of the Act. Such provision, as it stood at the relevant time, read as under:-

"[Section 194C\(3\)](#):- No deduction shall be made under sub-section(1) or sub-section (2) from -

(i)the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) or, as the case may be, subsection (2) shall be liable to deduct income- tax under this section:

Provided further that no deduction shall be made under sub-section (2), from the amount of any sum credited or paid or likely to be credited or paid during the previous year to the account of the sub-contractor during the course of business

of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year:

Provided also that the person responsible for paying any sum as aforesaid to the sub- contractor referred to in the second proviso shall furnish to the prescribed income-tax authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may be prescribed; or

(ii) any sum credited or paid before the 1st day of June, 1972; or (iii) any sum credited or paid before the 1st day of June, 1973, in pursuance C/TAXAP/244/2021 ORDER DATED: 26/10/2021 of a contract between the contractor and a co- operative society or in pursuance of a contract between such contractor and the sub-contractor in relation to any work (including supply of labour for carrying out any work) undertaken by the contractor for the cooperative society. Explanation-For the purpose of clause(i), "goods carriage" shall have the same meaning as in the Explanation to sub-section (7) of [section 44AE](#)."

4) [Section 40\(a\)\(ia\)](#) of the Act, in turn, provides that certain amounts shall not be deducted in computing the income chargeable to tax under the head 'profits and gains of business or profession', namely, payments made towards interest, commission or brokerage etc., on which tax is deductible at source and such tax has not been deducted or, after deduction, the same has not been paid on or before the due date specified in sub-section (1) of [section 139](#) of the Act. [Section 40\(a\)\(ia\)](#) of the Act, insofar as it is relevant for our purpose, reads as under:-

"[Section 40\(a\)\(ia\)](#):- Any interest, commission or brokerage, [rent, royalty,] fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, [has not been paid on or before the due date specified in sub-section (1) of [section 139](#):]"

5) From the above statutory provisions, it can be seen that under [section 40\(a\)\(ia\)](#) of the Act, payments made towards interest, commission or brokerage etc. would be excluded for deduction in computing the income chargeable under the head 'profits and gains of business or profession', where though tax was required to be deducted at source, is not deducted or where after such deduction, the same has not been paid C/TAXAP/244/2021 ORDER DATED: 26/10/2021 on or before the due date. Thus for application of [section 40\(a\)\(ia\)](#) of the Act, the foremost requirement would be of tax deduction at source.

6) [Section 194C](#), as already noticed, makes provision where for certain payments, liability of the payee to deduct tax at source arises. Therefore, if there is any breach of such requirement, question of applicability of [section 40\(a\)\(ia\)](#) would arise. Despite such circumstances existing, sub-section (3) makes exclusion in

cases where such liability would not arise. We are concerned with the further proviso to sub-section (3), which provides that no deduction under sub-section (2) shall be made from the amount of any sum credited or paid or likely to be credited or paid to the sub- contractor during the course of business of plying, hiring or leasing goods carriages, on production of a declaration to the person concerned paying or crediting such sum in the prescribed form and verified it in the prescribed manner within the time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during the previous year.

7) The exclusion provided in sub-section (3) of [section 194C](#) from the liability to deduct tax at source under sub-section (2) would thus be complete the moment the requirements contained therein are satisfied. Such requirements, principally, are that the sub-contractor, recipient of the payment produces a necessary declaration in the prescribed format and further that such sub-contractor does not own more than two goods carriages during the entire previous year. The moment, such requirements are fulfilled, the liability of the assessee to deduct tax on the payments made or to be made to such sub-contractors would cease. In fact he would have no authority to make any such deduction.

8) The later portion of sub-section (3) which follow the further proviso is a requirement C/TAXAP/244/2021 ORDER DATED: 26/10/2021 which would arise at a much later point of time. Such requirement is that the person responsible for paying such sum to the sub-contractor has to furnish such particulars as prescribed. We may notice that under Rule 29D of the Rules, such declaration has to be made by the end of June of the next accounting year in question.

9) In our view, therefore, once the conditions of further proviso of [section 194C\(3\)](#) are satisfied, the liability of the payee to deduct tax at source would cease. The requirement of such payee to furnish details to the income tax authority in the prescribed form within prescribed time would arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable under sub-section (2) of [section 194C](#) of the Act. In our view, therefore, the Tribunal was perfectly justified in taking the view in the impugned judgment. It may be that failure to comply such requirement by the payee may result into some other adverse consequences if so provided under the Act. However, fulfillment of such requirement cannot be linked to the declaration of tax at source. Any such failure therefore cannot be visualized by adverse consequences provided under [section 40\(a\)\(ia\)](#) of the Act.

10) When on the basis of the record it is not disputed that the requirements of further proviso were fulfilled, the assessee was not required to make any deduction at source on the payments made to the subcontractors. If that be our conclusion, application of [section 40\(a\)\(ia\)](#) would not arise since, as already noticed, [section 40\(a\)\(ia\)](#) would apply when there is a requirement of deduction of tax at source and such requirement is either not fulfilled or having deducted tax at source is not deposited within prescribed time."

9. Yet another decision of the High Court of Madras is reported in the case of C/TAXAP/244/2021 ORDER DATED: 26/10/2021 [Commissioner of Income Tax, Madurai vs. Sri Parameshwari Spinning Mills\(P.\)Ltd.](#), [2019] 10 taxmann.com 386(Madras), where sub-section 6 of [section 194](#), which grants benefit to the assessee, is discussed along with sub-

section(7) of [section 194](#). The Court held that this benefit comes with the condition of compliance of sub-section (7) of [section 194\(c\)](#). This is a procedure required to be followed. The Court held that non-filing of the statement in terms of sub-section(7) of [section 194\(C\)](#) cannot take away the benefit, which will accrue to the assessee under sub-

section(6) of [section 194](#). Relevant paragraphs are reproduced as under:

"6. We find sub-Section 6 of Section 194C is the provision which grants benefit to the assessee. This benefit comes with the condition of compliance of Sub-Section (7) of [Section 194C](#), which is the procedure to be followed. The question would be as to whether if the procedure under [Section 194C\(7\)](#) has not been adhered to by the assessee would it be fatal and thereby disentitle the assessee to the benefit under sub-Section 6 of Section 194C.

7. It is a submission of Mr.A.S.Sriraman, C/TAXAP/244/2021 ORDER DATED: 26/10/2021 learned counsel for the appellant/assessee that [Section 31A](#) deals with statement of deduction of tax under sub-Section 3 of Section 200 referring to [Section 31\(A\)\(4\)\(vi\)](#). It is submitted that the deductor at the time of preparing statement of tax, deductor shall furnish particulars of amount paid or credited on which tax was not deducted in view of the compliance of provision of sub-Section 6 of Section 194C by the payee. [Section 234\(E\)](#) was relied to state that if the statement is not filed, a fee of Rs.200/-for every day, during which the failure continues, has to be paid by the assessee. Therefore, it is the submission that the nonfiling of a statement in terms of sub-Section 7 of Section 194C cannot take away the benefit which will accrue to the assessee under sub-Section 6 of Section 194.

8. We fail to understand as to what is the apprehension in the mind of the Revenue when the Tribunal has remanded the matter to the Assessing Officer to consider whether the assessee has filed form no. 26(Q) belatedly and to examine as to whether the fee has to be collected. We find that there is no ground to interfere with the order passed by the Tribunal.

9. [Ms.V.Pushpa](#) placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Valibhai Khanbhai Mankad reported in [(2014) 51 Taxmann.com 385 (SC)] where the Hon'ble Supreme Court has granted leave to file appeal by the revenue against the order passed by the Gujrat High Court in CIT Vs. Valibhai Khanbhai Mankad reported in [(2012) 28 Taxmann.com 119]. In the said decision the High Court of Gujarat held that once conditions of proviso to [Section 194\(C\)\(7\)](#) are satisfied, liability of payer to deduct taxes at source would cease and consequently, disallowance of payment of sub- contractor under [Section 40\(a\)\(ia\)](#) could not be made on the ground that the assessee had not

furnished form no.15J as required under Rule 29D. We find that the said decision is of no assistance to the case of the Revenue.

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10. Mr.A.S.Sriraman, learned counsel for the assessee referred to the decision of the ITAT Jaipur in the case of ACIT Vs. Arihant Trading Co. reported in [176 ITD 397 (Jaipur-Tri)]. In the said decision it has been held that [Section 194C\(6\)](#) & (7) are independent of each other and cannot read together to attract disallowance under [Section 40\(a\)\(ia\)](#) read with [Section 194C](#) of the Act"

10. In the instant case also, as detailed above, the assessee company has not deducted the TDS of payment made to the transporters as per sub-section(6) of [section 194\(c\)](#).

However, the details of the transporters have been filled-in in the TDS return, wherein their PAN cards also have been duly submitted to the Income-tax authorities, as this is a sufficient compliance of sub-section (7) of section194(c). The Tribunal was absolutely correct in upholding the version of the assessee. It also rightly held that after obtaining the PAN Card from the transporters, assessee is needed to furnish the same in the prescribed form to C/TAXAP/244/2021 ORDER DATED: 26/10/2021 the prescribed authority within prescribed time. section194(C) (7) is reproduced as under:

"(7) The person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed."

11. The Tribunal held that there is no prescribed authority nominated under the provisions of law. Thus, in absence of such prescribed authority, no fault was attributed to the assessee obviously for not filing the details before such authority. The details filed by the respondent assessee along with Form No.26 naturally could be construed as sufficient compliance. No fault can be found with these detailed findings and the settled position of law."

The above decision would squarely apply in the case on hand. In the cases of Parameswari Spinning Mills (P.) Ltd. and Dilip Kumar, the matter was remanded to the Assessing Officer since the statutory form was not considered by the Assessing Officer. However, on facts in the instant case we find that the said form was available on the file of the Assessing Officer much before the completion of the assessment and the Assessing Officer has not rendered any

finding as to the correctness of the details furnished by the assessee in the said statutory form and in identical circumstances in the case of Asian Mills (P.) Ltd., the case of the assessee was accepted.

Thus, we are of the view that the correctness of the details in the statutory form having not been faulted by the Assessing Officer, the first Appellate Authority as well as the Tribunal were right in granting the relief in favour of the assessee.

Learned senior counsel appearing for the respondent/assessee pointed that in column 1(e) of Form 26Q the assessee is required to answer the question “Has any statement been filed earlier for this quarter (Yes/No)”. Clause 1(f) of the said Form states, “if answer of (e) is ‘Yes’, then Provisional Receipt No. of original statement”.

On seeing these questions which are to be answered by the assessee in the statutory Form 26Q, it gives an impression that the assessee is entitled to file more than one statement and probably for that reason a query was made to the assessee if he has filed any statement earlier for the said quarter. In any event, the Assessing Officer having not found fault with the contents of Form 26Q filed by the assessee, on a technical ground the relief cannot be denied to assessee and the Tribunal was right in dismissing the revenue’s appeal. The learned Tribunal had noted the decision of the Calcutta Tribunal in the case of Soma Rani Ghosh. It is submitted by the learned standing Counsel for the appellant that as against the said decision the revenue had filed appeal being ITAT 37 of

2017 (Principal Commissioner of Income Tax, Kolkata-17, Kolkata vs. Soma Rani Ghosh) and the appeal was admitted on 4th June, 2018. However, it is not disputed that subsequently the appeal was dismissed on the ground of low tax effect. Thus, as on date, the decision of the learned Tribunal in Soma Rani Ghosh remains intact and this decision also would enure in favour of the respondent/assessee.

Thus, for all the above reasons, we find there is no substantial question of law arising for consideration in this appeal.

Therefore, the appeal filed by the revenue is dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

