

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITA No.330 of 2013(O&M)
Date of Decision: 30.01.2024

Commissioner of Income Tax-II ChandigarhAppellant

Vs

Satish Kumar # 3201 Sector 45-D, ChandigarhRespondent

CORAM: *HON'BLE MR. JUSTICE G.S. SANDHAWALIA*
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Ms. Pridhi Jaswinder Sandhu, Jr. Standing Counsel
for the appellant.

Mr. Deepak Aggarwal, Advocate
for the respondent.

G.S.SANDHAWALIA, J.(Oral)

[1]. The present appeal under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') is directed against the order dated 29.05.2013 (Annexure A-3) of the Income Tax Appellate Tribunal, Chandigarh, wherein the appeal filed by the Revenue against the order dated 31.08.2012 (Anexure A-2) passed by Commissioner of Income Tax (Appeals), Chandigarh was dismissed for the assessment year 2006-07.

[2]. The reasoning as such for dismissing the appeal was that the applicability of the provisions of Section 40(a)(ia) of the Act regarding to the non-deduction of tax at source to the labour charges was a debatable

issue. Reliance was placed upon the decision of the majority view of the Special Bench of Vishakhapatnam Tribunal in *ACIT Vs. Marilyn Shipping and Transports, (2012) 16 ITR 1*, which thereafter had been set aside by the Gurjarat High Court in *CIT Vs. Sikanderkhan N. Tunvar and others, (2013) 357 ITR 312* and Calcutta High Court in *CIT Vs. Crescent Export Syndicate, 2013(1) ITR OL1*. Reference was also made to the judgment of the Apex Court in *Mepco Industries Ltd. Vs. CIT, 319 ITR 208* recording that the issue being debatable, recourse to rectification under Section 154 of the Act to change the opinion, could not be undertaken.

[3]. It is not disputed that the tax effect in the present appeal is only of Rs.22,73,715/- and that was the amount which was demanded by way of order of the Income Tax Officer by passing the rectification order and raising the said demand. The same was on account of the fact that while noticing the return, the assessment which had been framed on 22.05.2008 under Section 143(3) of the Act at an income of Rs.3,43,790/-, the records had shown that the assessee had claimed an amount of Rs.47,81,505/- in the profit and loss account on account of labour charges. The Assessing Officer thus had come to the conclusion that no TDS has been deducted on this amount and therefore, the same was not allowable.

[4]. The Commissioner of Income Tax had come to the conclusion that whether the appellant was required to deduct tax or not and non-deduction of tax at source cannot be treated as a mistake apparent from the record and the matter was debatable and accordingly partly allowed the appeal.

[5]. It has been brought to our notice that the Coordinate Bench of

this Court in which one of us (G.S.Sandhawalia J. is a Member) in *ITA No.716 of 2009* titled as *PMS Diesels Vs. Commissioner of Income Tax* decided on 29.04.2015, has also discussed the judgment of Special Bench of Tribunal and other two judgments of the Gujarat and Calcutta High Court, which have also found mentioned above while deciding the principle whether the term 'payable' is descriptive of payments which attract the liability to deduct tax at source. The question of law thus was decided in favour of the revenue while discussing the various judgments which cover the field and how the law as such varied over a period of time.

[6]. In such circumstances, we are of the considered opinion that keeping in view the the observations of the Apex Court made in **Mepco Industries Ltd. Case (supra)** pertaining to the power under Section 154 and the fact that the rectification was not permissible on a debatable issue, the concurrent findings which have been recorded as such are not liable to be disturbed. It is also to be noticed that initially the appeal was dismissed on 18.07.2018 on the ground that the it is covered by the circular No.03/2018 dated 11.07.2018 and in view of low tax effect. Revenue thereafter, filed the application and got the appeal restored on 27.09.2019, claiming that the case would fall under the exceptions in para No.10 of the Circular No.3/2018 dated 11.07.2018.

[7]. In such circumstances, the matter is again been heard on merits. Keeping in view the above discussions, we are of the considered opinion that the view which has been taken by the Tribunal is a plausible view in view of provisions of Section 40(a)(ia) of the Act being a subject matter of debate as such regarding the deduction. In such circumstances, the attempt

made by the revenue to submit that the substantial question of law arises is misplaced. Accordingly, the appeal is dismissed.

(G.S. SANDHAWALIA)
JUDGE

(LAPITA BANERJI)
JUDGE

30.01.2024
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No