आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.315 & 443/Mds/2016**
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Naresh Kumar Yadav, 344, Walltax Road, Chennai - 600 079. PAN : ABAPY 9894 P	v.	The Assistant Commissioner of Income Tax, Business Circle – XI, Chennai - 600 006.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. N. Devanathan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Sh. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 09.06.2016
घोषणा की तारीख/Date of Pronouncement : 15.07.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals are filed by the assessee. When I.T.A. No.443/Mds/2016 is directed against the order of the Commissioner of Income Tax (Appeals) – IV, Chennai, dated 28.11.2011, I.T.A. No.315/Mds/2016 is directed against the order of the Commissioner of Income Tax (Appeals) – 5, Chennai, dated 28.01.2016. Since common issue arises for consideration in both the appeals, we

heard both the appeals together and disposing of by this common order.

2. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that during the assessment year 2008-09, the assessee paid hire charges for hiring lorries. According to the Ld. counsel, the assessee is engaged in the business of contract work. For contract work, the assessee hired lorries from others and paid hire charges. Since the recipients of the hire charges filed Form 15-I declaring that their income is not taxable, the assessee paid their hire charges without making any deduction. According to the Ld. counsel, hiring of lorry for using the same in the assessee's work cannot be construed as works contract under Section 194C of the Income-tax Act, 1961 (in short 'the Act'). Therefore, according to the Ld. counsel, the provisions of Section 194C of the Act is not applicable at all wherever the assessee hired lorries and paid only hire charges. The Ld.counsel further pointed out that no part of work was allotted to the lorry owners to carry out. Therefore, when the work was not given on sub-contract to any one, mere payment of hire charges cannot be construed as sub-contract. Therefore, the payment of hire charges cannot be construed as payment for sub-

contract under Section 194C of the Act. Since the recipients of hire charges filed Form 15-I, according to the Ld. counsel, the Assessing Officer is not justified in disallowing the claim of the assessee.

3. Referring to the order of the CIT(Appeals), the Ld.counsel submitted that the CIT(Appeals), in fact, accepted the claim of the assessee and found that when the recipients of the hire charges filed Form 15-I, the assessee is not liable to deduct tax at the time of payment. However, the CIT(Appeals) forced the representative of the assessee to file a petition stating that the assessee is willing to surrender an extra amount of ₹11,53,890/- and the assessee will forego the entire refund of claim. According to the Ld. counsel, the assessee never instructed the representative, who appeared before the CIT(Appeals), to give such a kind of letter when the assessee is not liable to deduct tax. According to the Ld. counsel, it is not known why the representative filed a letter stating that the assessee will not claim the refund and also willing to surrender the extra amount of ₹11,53,890/-. Since the letter was filed by the representative independently without consulting the assessee, according to the Ld. counsel, the letter said to be given by the representative is not binding on the assessee. The Ld.counsel

placed his reliance on the judgment of Apex Court in Himalayan Cooperative Group Housing Society v. Balwan Singh in Civil Appeal Nos.4360-4361 of 2015 dated 29.04.02015 and submitted that when the representative of the assessee filed letter before the CIT(Appeals) without the instructions of the assessee, the same is not binding on the assessee. According to the Ld. counsel, such a kind of letter was extracted from the representative of the assessee without any authority by the CIT(Appeals) just to withhold the refund of tax. Therefore, it is not binding on the assessee. The Ld.counsel has also placed his reliance on the judgment of Karnataka High Court in CIT v. Sri Marikamba Transport Company (2015) 379 ITR 129 and submitted that when the payment was after receiving Form 15-I, the assessee is not liable to deduct tax.

4. Referring to I.T.A. No.315/Mds/2016, the Ld.counsel for the assessee submitted that this appeal is arising out of consequential order passed by the Assessing Officer under Section 154 / 155 of the Act.

5. On the contrary, Shri Sahadevan, the Ld. Departmental Representative, submitted that the assessee paid hire charges without deducting tax as required under Section 194-I of the Act.

Even though Section 195C of the Act is for the purpose of payment made to sub-contractor, Section 194-I is squarely applicable in respect of payment of rent. Therefore, the assessee is liable to deduct tax wherever the hire charges are paid for hiring the lorries. Referring to Form 15-I, the Ld. D.R. submitted that no doubt, the assessee filed Form 15-I before the Assessing Officer. However, during the appellate proceeding before the CIT(Appeals), the Ld. representative of the assessee filed a letter saying that the assessee was willing to surrender an extra amount of ₹11,53,890/- and also to forego the entire refund before the Assessing Officer. On the basis of that undertaking given by the representative for the assessee, the CIT(Appeals) deleted the addition made by the Assessing Officer. Therefore, at this stage, according to the Ld. D.R., the assessee cannot claim that the undertaking was given without his instruction.

6. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee has paid hire charges without deducting tax. It is not in dispute that the assessee has received Form 15-I from the recipients of hire charges. This Tribunal is of the considered

opinion that Section 194-I of the Act is very much applicable for payment of hire / rent for hiring the lorries. Therefore, the assessee is liable to deduct tax whenever the hire charges are paid for hiring lorries. In the case before us, the assessee claims that the recipients of hire charges filed Form 15-I declaring that their income does not exceed taxable limit. Under the scheme of Income-tax Act, when the recipient of amount filed Form 15-I or 15-H, it is not required for the payer to deduct tax. In the case before us, the admitted case of the Revenue is that the recipients of the amount have filed Form 15-I, therefore, this Tribunal is of the considered opinion that the assessee is not liable to deduct tax. If at all the declaration filed by the recipient is wrong, it is open for the Revenue to proceed against those persons who filed Form 15-I. This Tribunal is of the considered opinion that the assessee cannot be blamed for non-deduction of tax. The assessee complied with the scheme of the tax after receiving Form 15-I from the recipients of the amount. This was exactly confirmed by the CIT(Appeals) at para 4c of his impugned order.

7. The CIT(Appeals) further observed that the Ld. representative for the assessee filed a letter dated 28.11.2011

stating that the assessee is willing to surrender an extra amount of ₹11,53,890/-. Now, the assessee claims that the representative who appeared before the CIT(Appeals) was not authorized to give such an undertaking. Admittedly, this letter / undertaking was not filed before the Assessing Officer. The letter was unilaterally filed by the representative before the CIT(Appeals). There is no material on record to indicate that the assessee instructed the representative to file such a kind of letter. Therefore, as held by the Apex Court in Himalayan Cooperative Group Housing Society (supra), the same is not binding on the assessee. Even otherwise, when the assessee received Form 15-I, there is no question of deducting tax under the scheme of Income-tax Act. Therefore, there cannot be any disallowance. When there cannot be any disallowance, it is not necessary for the assessee to offer any amount for taxation or to forego the refund. This Tribunal is of the considered opinion that since the recipients of the hire charges filed Form 15-I, the assessee is not liable to deduct tax, therefore, the addition made by the Assessing Officer cannot be sustained. Accordingly, the orders of the authorities below are set aside and the entire addition made by the Assessing Officer is deleted.

8. Now coming to the appeal filed by the assessee in I.T.A. No.315/Mds/2016, this appeal is filed against the order passed by the Assessing Officer under Section 154 of the Act. The Assessing Officer while giving effect to the order of the CIT(Appeals) passed under Section 155 read with Section 250 of the Act, he referred in the appeal proceeding as if the order was passed under Section 154 of the Act. From the order of the CIT(Appeals) it appears that the Assessing Officer has also passed order under Section 154 of the Act on 23.07.2012. This Tribunal is of the considered opinion that in view of the order of this Tribunal in I.T.A. No.443/Mds/2016, the appeal filed by the assessee in I.T.A. No.315/Mds/2016 becomes infructuous.

9. In the result, the appeal filed by the assessee in I.T.A. No.443/Mds/2016 is allowed. However, the appeal filed in I.T.A. No.315/Mds/2016 is dismissed.

Order pronounced on 15th July, 2016 at Chennai.

sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 15th July, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.