

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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 No.1987/Mds/2015

निर्धारण वर्ष / Assessment Year : 2006-07

The Income Tax Officer,  
Ward – 2,  
Tirunelveli.

v. Shri S. Kalaiarasan,  
83, Main Road, Koodankulam,  
Tirunelveli – 627 106.

(अपीलार्थी/Appellant)

PAN : AHFPA 0383 E

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. P. Radhakrishnan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. S. Kalaiarasan, assessee

सुनवाई की तारीख/Date of Hearing : 11.02.2016

घोषणा की तारीख/Date of Pronouncement : 04.03.2016

### **आदेश /ORDER**

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-3, Madurai, dated 26.06.2015 and pertains to assessment year 2006-07.

2. The only issue arises for consideration is with regard to disallowance made by the Assessing Officer under Section 40(a)(ia)

of the Income-tax Act, 1961 (in short 'the Act') in respect of lorry hire charges.

3. When the appeal was taken up for hearing, Shri S. Kalaiarasan, the assessee himself was present before us. He filed an application saying that he is a pauper and person of without means, therefore, he prayed that the appeal may be heard and disposed of on merit.

4. In view of the above, we heard Ld. Departmental Representative on merit.

5. Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the assessee hired lorries and paid hire charges. According to the Ld. D.R., the assessee is a sub-contractor and for carrying out the work as sub-contractor, he paid the hire charges. Therefore, the sub-contractor is liable for deducting tax in respect of the payment made to lorry owners. On a query from the Bench, the Ld. D.R. clarified that on sub-contract, the assessee has to deduct tax. The Ld. D.R. has also further clarified that the lorry was hired by the assessee for carrying out his sub-contract work.

6. We have heard the Ld. Departmental Representative and perused the relevant material available on record. The assessee was given sub-contract. The assessee appears to have taken the work on sub-contract which involved mining / overhead removal and transportation of the mined material from another company and received payment as a sub-contractor. Therefore, the assessee has not given any sub-contract to anyone. The assessee has taken up the work from a contractor for carrying out his work. For carrying out the work assigned to him, the assessee hired lorry and paid hire charges. Therefore, the main contractor who assigned work to the assessee is liable for taking tax at source under Section 194C of the Act. As far as the assessee is concerned, the provisions of Section 194C of the Act is not applicable in respect of the payment made to lorry owners. The material available on record clearly establishes that the assessee has not given any work to anyone either on sub-contract or otherwise. While carrying out the sub-contract work, the assessee hired lorry and paid lorry hire charges. Therefore, this Tribunal is of the considered opinion that the provisions of Section 194C is not applicable at all.

7. Now the question arises for consideration is whether the hire charges would attract deduction of tax? Section 194-I of the Act requires the assessee to deduct tax in respect of hire charges. However, Section 194-I is not applicable during the year under consideration. Therefore, during the year under consideration, the assessee is not liable to deduct tax in respect of hire charges paid to lorry owners for hiring lorries.

8. In view of the above, we do not find any reason to interfere with the order of the lower authority and accordingly, the same is confirmed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 4<sup>th</sup> March, 2016 at Chennai.

sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 4<sup>th</sup> March, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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