

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI ABRAHAM P. GEORGE, AM & GEORGE GEORGE K., JM

I.T.A. No. 325/Coch/2010
Assessment Year : 2006-07

Shri T.T. Kuruvilla, Alleppey Parcel Service, Vaxhicherry Junction, Alappuzha. [PAN : ABDPT 4582E]	Vs.	The Deputy Commissioner of Income-tax, Circle-1, Alappuzha.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	None
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of hearing	06/06/2017
Date of pronouncement	07 th /06/2017

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This case was restored by the Hon'ble High Court of Kerala vide its judgment dated 30/06/2016 in I.T.A. No. 58 of 2013. The Hon'ble High Court allowed the appeal of the Revenue and set aside the order of the Tribunal in I.T.A. No. 325/Coch/2010 dated 20/07/2012.

2. Briefly stated the facts of the case are as follows:

The assessee is the proprietor of M/s. Alleppey Parcel Services. The proprietary concern is engaged in the business of transportation of goods by carrier to various destinations. The Assessing Officer completed the assessment by disallowing certain expenditure. The Assessing Officer held that assessee ought to have deducted tax at source and since tax was not deducted, expenses claimed in P&L is to be disallowed by invoking provisions of section 40(a)(ia) of the Act. The details of the expenses disallowed u/s. 40(a)(ia) of the Act read as follows:

- a) Godown rent at Palarivattom : Rs.4,41,400/-
- b) Godown rent at T.D. Road, Ernakulam : Rs.3,28,100/-
- c) Commission to agent : Rs.2,42,27,428/-

3. The CIT(A) confirmed the disallowance made by the Assessing Officer.

4. On further appeal, the ITAT allowed the appeal of the assessee. The Tribunal relying on the order of the Special Bench of the Tribunal in the case of Merilyn Shipping & Transport vs. Addl. CIT (2012) 70 DTR 81 held that section 40(a)(ia) of the Act does not have application since the expenses claimed were already paid prior to the end of the financial year.

5. Aggrieved by the order of the ITAT, the Revenue preferred an appeal before the Hon'ble High Court. The Hon'ble High Court vide its judgment dated 30/06/2016 in I.T.A. No. 58/2013 set aside the Tribunal order dated 20/07/2012. The Hon'ble High Court restored the issue to the ITAT for the limited purpose of examination of the provisions of section 194C(3) of the Act. The relevant finding of the Hon'ble High Court reads as follows:-

"6. The assessee placed reliance on Section 194(C)(3) as it stood prior to its substitution by Finance Act 2 of 2009 and according to the assesses, going by the said provision they had no liability to deduct tax. However, we find that such a contention was not raised or considered by the Tribunal and, therefore, we are not inclined to consider the contention now urged before us.

7. According to us, having regard to the judgment of the Gujarat High Court in Marilyn Shipping & Transport case (supra) and the judgment of this court in I.T.A. No. 278/14, the order of the Tribunal has to be set aside and the matter has to be remitted to the Tribunal for fresh considerations. It is also clarified that if the assesses so desire, it would be open to them to claim the benefit of Section 194(C)(3) as it stood prior to its substitution by Finance act 2009 before the Tribunal, if necessary by producing additional materials also. It is also ordered that on consideration of the said contention, if the Tribunal finds that factual adjudication is necessary, it would be open to the Tribunal to remit the matter to the Assessing Officer for reconsideration.

8. Accordingly, setting aside the orders passed by the Tribunal in I.T.A. Nos. 325/10, 400/11 and 401/11 and answering the question of law raised in favour of the Revenue, these appeals are disposed of remitting the matter to the Tribunal for fresh consideration. The Tribunal shall consider the matter in the light of the aforesaid observations and pass fresh orders."

6. Pursuant to the Hon'ble High Court judgment, the above case was taken up for hearing on 06/06/2017. None was present on behalf of the assessee.

However, we proceed to dispose of the matter after hearing the Ld. DR. The Ld. DR supported the orders of the Assessing Officer and the CIT(A).

7. We have heard the Ld. DR and perused the material on record. The Hon'ble Kerala High Court directed the Tribunal to consider the applicability of section 194C(3) as it stood prior to its substitution by Finance Act, 2009. Section 194C(3) as it stood prior to substitution by Finance Act, 2009 reads as follows:

'(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, sub-section (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 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 co-operative society.

Explanation For the purposes of clause (i), goods carriage shall have the same meaning as in the Explanation to sub-section (7) of section 44AE''.

8. On perusal of the grounds raised before the Tribunal, we find the primary contention of the assessee is that payments of commission made to various persons are not liable for deduction of tax at source for the reason that such payments are below the limit liable for TDS. On perusal of the records, we find that details of persons to whom commission have been paid, the amounts paid etc. are not readily available. Therefore, for proper adjudication of issue, the matter is restored to the Assessing Officer. The assessee shall be at liberty to produce evidence to show that aggregate commission payments to a person is below the limit liable for TDS. The Assessing Officer shall consider whether the

provisions of section 194C(3) prior to its substitution by Finance Act, 2009 has application to the facts of the instant case. The assessee shall produce the necessary evidence for expeditious disposal of the matter and shall not seek unnecessary adjournment. It is ordered accordingly.

9. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Pronounced in the open court on 07th-06-2017.

sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 07th June, 2017

GJ

Copy to:

1. Shri T.T. Kuruvilla, Alleppey Parcel Service, Vaxhicherry Junction, Alappuzha.
2. The Deputy Commissioner of Income-tax, Circle-1, Alappuzha.
3. The Commissioner of Income-tax(Appeals)-IV, Kochi.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin