

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 13TH DAY OF JANUARY 2017

PRESENT

THE HON'BLE MR. JUSTICE RAGHVENDRA S. CHAUHAN

AND

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

I.T.A. NO. 100026/2015

BETWEEN :

1. THE COMMISSIONER OF INCOME TAX,
DR. B.R.AMBEDKAR ROAD,
BELAGAVI.
2. THE INCOME TAX OFFICER,
WARD-2(1), BELAGAVI.

... APPELLANTS

(BY SRI Y V RAVIRAJ, ADVOCATE)

AND :

SHRIDHAR SHANTINATH PATRAVALI,
PROPRIETOR : ARIHANT TRANSPORT,
NO.1012/A, 9TH CROSS,
BHAGYA NAGAR, BELAGAVI.
PAN: AIZPP0322K.

... RESPONDENT

(BY SRIYUTHS ASHOK A. KULKARNI & H. R.KAMBIYAVAR,
ADVOCATES)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE; ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI IN ITA.NO.399/PNJ/2013, DATED:19.11.2014 AND CONFIRM THE

ORDER PASSED BY THE INCOME TAX OFFICER, WARD-2(1), BELAGAVI.

THIS APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, **RAGHVENDRA S. CHAUHAN J.**, DELIVERED THE FOLLOWING:

JUDGMENT

Aggrieved by the order dated 19.11.2014 passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji, whereby the learned Tribunal has set aside the order of the Commissioner of Income Tax (Appeals) ('CIT', for short) and has upheld the disallowance claimed by the assessee, the Revenue has approached this Court.

2. The Revenue has raised the following substantial questions of law before this Court :

- i. Whether on facts and in law the Tribunal is right in ignoring the provisions of second and third provisos to section 194C(3), as per which the assessee respondent was under obligation to furnish particulars of the declaration filed by the sub-contractors in Form No.15-I within due date i.e., 30.06.2008, in the manner prescribed i.e., Form No. 15J, to the prescribed authority and failure to do so, attracts violation of provisions of Section 194C(3) viz., disallowance under Section 40(a)(ia)?

- ii. Whether on facts and in law the Tribunal is right in not considering the decision of Hon'ble Rajasthan High Court in the case of Chhogmal Chiranji Lal vs. CIT (2002) 257 ITR 51 (Raj), relied upon by the CIT (Appeals), wherein, it has been held that if law provides for doing a thing in a particular manner, then it has to be done in that manner alone?

3. Briefly the facts of the case are that the assessee, Mr. Shridhar S. Patravali, the Proprietor of Arihant Transport, is engaged in the business of hiring/plying of trucks for transporting the goods. For the assessment year 2008-09, the assessment was completed under Section 143(3) of the Income Tax Act, 1961 ('the Act', for short). However, subsequently, the Commissioner of Income Tax initiated the proceedings against the assessee under Section 263 of the Act, ostensibly on the ground that the assessment order passed by the Assessing Officer was found to be erroneous as well as prejudicial in the interest of Revenue. Since the assessee had paid truck hire charges of Rs.30,35,515/- to one Mr. Shantinath B. Patravali, and had also paid Rs.17,80,639/- to Smt. Savita S. Patravali, the

assessee was required to submit Form No.15J before the appropriate Authority. However, as the assessee had failed to submit the said Forms before the appropriate Authority, it was felt that the payment made to these two persons was in violation of Section 194C(3) of the Act.

4. After the issuance of notice, the assessment was completed under Section 143(3) read with Section 263 of the Act by determining the revised income at Rs.57,56,290/- , along with other additions, an addition of Rs.48,61,154/- was also made to the total income of the assessee. The latter amount is the amount of disallowance under Section 40(a)(ia) of the Act. By order dated 21.01.2013, the Assessing Authority observed that since the assessee had failed to file the Form No.15J, the requirement of Section 194C(3) of the Act had not been fulfilled. Therefore, the said amount was disallowed under Section 40(a)(ia) of the Act.

5. Since the assessee was aggrieved by the assessing order, dated 21.01.2013, he had filed an Appeal before the CAT. By order dated 09.10.2013, the learned CAT dismissed the appeal filed by the assessee.

6. Therefore, the assessee further filed an appeal before the learned Tribunal. By the impugned order, dated 19.11.2014, the learned Tribunal has permitted the disallowance as claimed by the assessee. Hence, the present appeal before this Court.

7. The learned counsel for the Revenue, Mr. Y. V. Raviraj has pleaded that since Section 194C(3) of the Act read with Rule 29D of the Income Tax Rules, 1962, prescribes the procedure and insist that Form No.15J has to be furnished before the appropriate Authority, the non-furnishing of the said Form before the authorised person would not permit the assessee to claim the disallowance of the amount paid by him to a sub-contractor. Since in the present case the assessee had admittedly not submitted Form No. 15J before the concerned Authority, the learned Tribunal was unjustified in upholding the disallowances. Therefore, the two substantial questions of law, mentioned above, clearly arise for consideration in the present appeal.

8. However, on the other hand, Mr. Ashok A. Kulkarni, the learned counsel for the assessee, submits that

according to Section 292B of the Act, no return of income, assessment would be invalid merely because of any mistake in such return of income or assessment as long as in substance and in effect the return is in conformity with or according to the intent and purpose of this Act. Admittedly, the assessee had submitted Form No.15J prior to the cut-off date of 30.06.2008. However, on 09.05.2008, inadvertently, the said Form was submitted, in Bangalore, at an address which was opposite of the Office of Income Tax, where the Form actually needed to be submitted. Thus, merely an irregularity had been committed by the assessee and that too inadvertently.

9. Secondly, when the initial assessment was made by order dated 24.12.2010, the Assessing Officer had noted this fact and had even mentioned that the copies of Form No.15J have been submitted by the assessee and are being kept in the record. Therefore, merely because an inadvertent mistake had cropped up, the Revenue is not justified in claiming that the essential requirements of Section 194C(3) of the Act have not been fulfilled by the assessee. Relying on the case of **Commissioner of Income Tax v. Gurvinder**

Transport (Tax Appeal No.345 of 2013 decided by the Hon'ble High Court of Gujarat on 01.05.2013), the learned counsel pleads that in a similar case, arising out of identical facts, the Hon'ble Gujarat High Court opined that the Tribunal had committed an error in holding that disallowance under Section 40(a)(ia) of the Act was not justified. Therefore, the learned Tribunal has rightly upheld the disallowance. Hence, the learned counsel submits that no substantial questions of law arise in the present case, which needs to be answered by this Court.

10. Heard the learned counsel for the parties and perused the impugned order.

11. A bare perusal of the impugned order clearly reveals that the assessee had paid the truck hire charges both to Mr. Shantinath Patravali and Smt. Savita Patravali. As mentioned above, from both these sub-contractors he had received Form No.15-I. The assessee was required to submit the Form No.15J before the Commissioner of Income Tax (TDS) at Bangalore. However, as the Office of Income Tax, and the Office of Commissioner of Income Tax (TDS) were

opposite each other, on the same floor of the building, inadvertently the Form No.15J was submitted before the Income Tax Officer, instead of Commissioner of Income Tax (TDS). Thus, a human error had occurred in submitting the Form No.15J before the concerned Authority.

12. The fact that the Form No.15J had been submitted before the incorrect Authority, was noticed even by the Assessing Officer in the Assessment Order dated 24.12.2010. According to the said order, copies of Form No.15J had been received by him, and were kept in the record. Therefore, merely a human error had occurred. Hence, clearly the case is covered by the provisions of Section 292B of the Act.

13. Moreover, in the impugned order passed by the learned Tribunal, the learned Tribunal has noticed that under Section 40(a)(ia) of the Act, payment made towards interest, commission or brokerage, etc., are to be disallowed while computing the total income of the assessee under the head "Profits and gains of business or profession", where the tax required to be deducted is not deducted or whereafter

such deduction, the same has not been paid on or before due date of filing of the Income Tax return. Thus, the addition under Section 40(a)(ia) of the Act can be made only if there is default in deducting tax at source under Section 194C(3) of the Act. However, the assessee is not required to deduct the tax if the sub-contractors produces the necessary declaration in the prescribed Form and the sub-contractor does not own more than two goods carriages during the previous year.

14. Admittedly, the sub-contractors in the present case did not own more than two goods carriages during the previous year. Thus, the assessee was not required to deduct the tax at source. Merely because the Form No.15J was not filed before the concerned Authority, that too due to human mistake, the disallowance could not be denied to the assessee. The present case is clearly covered by the decision of the High Court of Gujarat in the case of **Gurvinder Transport** (*supra*).

15. Since cogent and convincing reasons have been given by the learned Tribunal, the substantial questions of

law canvassed before this Court do not arise in the present case for our consideration. For the reasons stated above, this Court does not find any merit in the present appeal; it is, hereby, dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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