



IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH ®

DATED THIS THE 26TH DAY OF FEBRUARY, 2016

PRESENT

THE HON'BLE MR.JUSTICE H.BILLAPPA

AND

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

ITAs No.100111-100120/2015

c/w

ITAs No.100012/2016, 100013/2016, 100014/2016,
100015/2016, 100016/2016 & 100017/2016

In ITAs No.100111-100120/2015:

BETWEEN

RYATAR SAHAKARI SAKKARE KARKHANE
NIYAMIT, RANNA NAGAR
TIMMAPUR - 587 122
MUDHOL TALUK
BAGALKOT DISTRICT

REPRESENTED BY MANAGING
DIRECTOR - SRI ASHOK V MORAB

... APPELLANT

(By Sri MANOJ D PUKALE, ADV., & Sri H.R.KAMBIYAVAR, ADV.,)

AND

I. ASST. COMMISSIONER OF
INCOME TAX C-I
PRESENT ADDRESS: DEVOOR
BUILDING, BEHIND GODAVARI HOTEL
ATHANI ROAD, BIJAPUR-586 101

: 2 :

2. JOINT COMMISSIONER OF INCOME TAX C-1
PRESENT ADDRESS:
DEVOOR BUILDING, BEHIND GODAVARI HOTEL
ATHANI ROAD, BIJAPUR-586 101
3. INCOME TAX OFFICER W-1
AAYAKAR BHAVAN, SECTOR NO.24
NAVANAGAR, BAGALKOT-587 103
4. INCOME TAX OFFICER, TDS WARD
FEROZ KHIMJIBHAI COMPLEX-I,
OPP. CIVIL HOSPITAL
Dr. AMBEDKAR ROAD
BELAGAVI-590 001 ... RESPONDENTS

(By Sri Y.V. RAVIRAJ, ADV.,)

THESE ITAs ARE FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE, ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH-GOA DTD:04.08.2015 VIDE ITA NOS. 152 TO 161/PNJ/2015 TO THE EXTENT URGED IN THIS APPEAL AND PASS SUCH OTHER SUITABLE ORDERS AS THIS HON'BLE HIGH COURT DEEMS FIT TO GRANT RELIEF ON THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUITY.

In ITA No.100012/2016 :

BETWEEN

1. THE PRINCIPAL COMMISSIONER OF INCOME TAX
Dr. AMBEDKAR ROAD, OPP: CIVIL HOSPITAL
BELAGAVI
2. THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-1, VIJAYAPURA ... APPELLANTS

(By Sri Y V RAVIRAJ, ADV.,)

AND

RYATAR SAHAKARI SAKKARE KARKHANE NIYAMIT
RANNA NAGAR, TIMMAPUR

587 122, MUDHOL TALUK
BAGALKOT DISTRICT, KARNATAKA
PAN:AAAAR0428E

... RESPONDENT

(By Sri MANOJ D PUKALE, ADV., & Sri H.R.KAMBIYAVAR, ADV.,)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE, ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH in ITA NO.152/PNJ/2015 DATED:4.8.2015 AND CONFIRM THE ORDER OF THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-1, BIJAPUR.

In ITA No.100013/2016 :

BETWEEN

1. THE PRINCIPAL COMMISSIONER OF INCOME TAX
Dr. AMBEDKAR ROAD, OPP: CIVIL HOSPITAL
BELAGAVI
2. THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE-1, VIJAYAPURA ... APPELLANTS

(By Sri Y V RAVIRAJ, ADV.,)

AND

RYATAR SAHAKARI SAKKARE KARKHANE NIYAMIT
RANNA NAGAR, TIMMAPUR
587 122, MUDHOL TALUK
BAGALKOT DISTRICT, KARNATAKA
PAN:AAAAR0428E

... RESPONDENT

(By Sri MANOJ D PUKALE, ADV., & Sri H.R.KAMBIYAVAR, ADV.,)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION 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.153/PNJ/2015, DTD:04.08.2015 AND CONFIRM THE ORDER OF THE ASSIST COMMISSIONER OF INCOME TAX, CIRCLE-1, BIJAPUR.

In ITA No.100014/2016 :

BETWEEN

1. THE PRINCIPAL COMMISSIONER OF INCOME TAX
Dr. AMBEDKAR ROAD, OPP: CIVIL HOSPITAL
BELAGAVI
2. THE JOINT COMMISSIONER OF INCOME TAX
CIRCLE-1, VIJAYAPURA ... APPELLANTS

(By Sri Y V RAVIRAJ, ADV.,)

AND

RYATAR SAHAKARI SAKKARE KARKHANE NIYAMIT
RANNA NAGAR, TIMMIAPUR
587 122, MUDHOL TALUK
BAGALKOT DISTRICT, KARNATAKA
PAN:AAAAR0428E ... RESPONDENT

(By Sri MANOJ D PUKALE, ADV., & Sri H.R.KAMBIYAVAR, ADV.,)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT,
1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION 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.154/PNJ/2015, DTD:04.08.2015
AND CONFIRM THE ORDER OF THE ASSIST COMMISSIONER OF
INCOME TAX, CIRCLE-1, BIJAPUR.

In ITA No.100015/2016 :

BETWEEN

1. THE PRINCIPAL COMMISSIONER OF INCOME TAX
Dr. AMBEDKAR ROAD, OPP: CIVIL HOSPITAL
BELAGAVI
3. THE INCOME TAX OFFICER
WARD-1, BAGALKOT ... APPELLANTS

(By Sri Y V RAVIRAJ, ADV.,)

AND

RYATAR SAHAKARI SAKKARE KARKHANE NIYAMIT
RANNA NAGAR, TIMMAPUR
587 122, MUDHOL TALUK
BAGALKOT DISTRICT, KARNATAKA
PAN:AAAAR0428E

... RESPONDENT

(By Sri MANOJ D PUKALE, ADV., & Sri H.R.KAMBIYAVAR, ADV.,)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION 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.155/PNJ/2015, DTD:04.08.2015 AND CONFIRM THE ORDER OF THE INCOME TAX OFFICER, WARD-1, BAGALKOT.

In ITA No.100016/2016 :

BETWEEN

1. THE PRINCIPAL COMMISSIONER OF INCOME TAX
Dr. AMBEDKAR ROAD, OPP: CIVIL HOSPITAL
BELAGAVI

2. THE INCOME TAX OFFICER
WARD-1, BAGALKOT

... APPELLANTS

(By Sri Y V RAVIRAJ, ADV.,)

AND

RYATAR SAHAKARI SAKKARE KARKHANE NIYAMIT
RANNA NAGAR, TIMMAPUR
587 122, MUDHOL TALUK
BAGALKOT DISTRICT, KARNATAKA
PAN:AAAAR0428E

... RESPONDENT

(By Sri MANOJ D PUKALE, ADV., & Sri H.R.KAMBIYAVAR, ADV.,)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION 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.156/PNJ/2015, DTD:04.08.2015

AND CONFIRM THE ORDER OF THE INCOME TAX OFFICER, WARD-1, BAGALKOT.

In ITA No.100017/2016 :

BETWEEN

1. THE PRINCIPAL COMMISSIONER OF INCOME TAX
Dr. AMBEDKAR ROAD, OPP: CIVIL HOSPITAL
BELAGAVI
2. THE INCOME TAX OFFICER
WARD-1, BAGALKOT ... APPELLANTS

(By Sri Y V RAVIRAJ, ADV.,)

AND

RYATAR SAHAKARI SAKKARE KARKHANE NIYAMIT
RANNA NAGAR, TIMMAPUR
587 122, MUDHOL TALUK
BAGALKOT DISTRICT, KARNATAKA
PAN:AAAAR0428E ... RESPONDENT

(By Sri MANOJ D PUKALE, ADV., & Sri H.R.KAMBIYAVAR, ADV.,)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION 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.157/PNJ/2015, DTD:04.08.2015 AND CONFIRM THE ORDER OF THE INCOME TAX OFFICER, WARD-1, BAGALKOT.

THESE ITAs HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, THIS DAY, *P.S.DINESh KUMAR. J.*, PRONOUNCED THE FOLLOWING:-

JUDGMENT

Though these appeals are listed for admission, with consent of learned Counsel for the assessee and the Revenue, they are taken up for final disposal.

2. I.T.As.No.100111-100120/2015 are filed by the assessee challenging the common order dated 4.8.2015 in ITAs No.152 to 161/PNJ/2015 and connected appeals passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji, ('ITAT' for short).

3. I.T.A.No.100012/16 to I.T.A.No.100017/16 are filed by the Revenue challenging the very same order dated 4.8.2015 passed by the ITAT.

4. Assessee has raised following questions of law in its appeals:

- i. *Whether the Tribunal was justified to rest its decision upon the case of Vector Shipping in the facts and circumstances of Appellant's case as against the CBDT Circular No.6/2007 dated 11/10/2007?*
- ii. *Whether the Bond Agreement/s (produced in this Appeal as Annexure 'B' and 'C') for appointing Harvesters / Transporters by the Appellant as an Agent on behalf of the Farmers constituted a CONTRACT as per the Indian Contract Act, 1872?*
- iii. *Whether the Tribunal was right in not determining the issue relating to the existence of a CONTRACT between the Harvesters/Transporters and Appellant as per the Bond Agreement/s?*
- iv. *Whether the Tribunal was justified in directing the Appellant to furnish details to the Assessing Officer for verifying whether or not the recipients of Harvesting, Transportation and Legal Consultancy payments have been respectively offered for taxation so as to determining the levy of interest in the case of the Appellant?"*

5. Revenue has raised following questions of law in its appeals:-

- "1. *Whether on the facts and the circumstances of the case and in law the Tribunal is correct in interpreting the language of section 40(a)(ia) to mean that the consequence of disallowance is attracted only in respect of amounts which remain payable on the last day of the financial year?*
2. *Whether on the facts and circumstances of the case and in law, the Tribunal erred in not appreciating the fact that section 40(a)(ia) cannot be interpreted to mean that it applies only to amounts "payable" and not to those which have been "paid", as held by the Hon'ble High Court of Kerala in the case of Thomas George Muthoot Vs. CIT in ITA No.278 of 2014?*
3. *Whether the Tribunal erred in placing reliance on the decision of Hon'ble Allahabad High Court in CIT Vs. Vector Shipping Services (P) Ltd., (2013) 357 ITR 642 (All), that the provisions of Section 40(a)(ia) are applicable only in respect of amounts which remain payable on the last day of financial year ignoring the language*

used in the statutory provisions which makes it clear that the consequences of disallowance is attracted when a person liable to deduct tax on any interest payable to a resident, on which tax is deductible at source, commits a default? "

6. Heard Sri Manoj D. Pukale, learned Counsel for the assessee and Sri Y.V.Raviraj, learned Standing Counsel for the Income Tax Department.

7. Brief facts of the case:

Assessee is a Co-operative Sugar Factory. The returns filed by the assessee for the assessment years 2005-06, 2006-07 & 2008-09 to 2011-12 were taken up for scrutiny and notices under Section 143(2) of the Income Tax Act (for short 'the Act') were issued. Assessee was represented by its authorised representative. During the scrutiny, the Assessing Authority noticed that the assessee was engaging services of contractor/s for harvesting, cutting and transporting Sugarcane from the Farmers' fields to it's

factory. The amount paid to those contractors was bifurcated under different heads namely cane cutting charges, harvesters' bonus, transportation charges and transportation commission. Payments made on those amounts were booked as expenditure. Assessing Authority held that the said payments made to the harvesters and transporters were pursuant to a 'Contract' within the meaning of Section 194C of the Act and therefore the assessee was liable to deduct tax at source. During the enquiry, the authority noticed that the assessee had not deducted any tax at source and held that the same were not allowable as expenditure under Section 40(a)(ia) of the Act and accordingly, added the said amounts to the total income.

8. The assessee was called upon to produce details regarding harvesting charges and transportation charges paid in excess of Rs.20,000/- in each case and in aggregate exceeding Rs.50,000/- paid to various persons. Based on records and the information furnished

by the assessee, it was observed by the Assessing Authority that TDS was not deducted by the assessee in respect of following payments:

For the assessment year 2005-06:

Sl.No.		Amount
1.	Harvesting charges paid above Rs.20,000/-	Rs.60,75,515/-
2.	Transportation charges paid above Rs.20,000/-	Rs.49,74,309/-
3	Legal charges	Rs.4,27,626/-
TOTAL		Rs.1,14,77,450/-

For the assessment year 2006-07:

Sl.No.		Amount
1.	Harvesting charges paid above Rs.20,000/-	Rs.1,27,36,055/-
2.	Transportation charges paid above Rs.20,000/-	Rs.65,52,299/-
3.	Harvester's commission	Rs.4,61,000/-
TOTAL		Rs.1,97,49,354/-

For the assessment year 2008-09:

Sl.No.		Amount
1.	Harvesting charges paid above Rs.20,000/-	Rs.2,79,07,609/-
2.	Transportation charges paid above Rs.20,000/-	Rs.3,32,18,255/-
3.	Harvester's commission	Rs.31,37,220/-
4.	Vehicle rents	Rs.2,32,100/-
TOTAL		Rs.6,44,95,184/-

For the assessment year 2009-10:

Sl.No.		Amount
1.	Harvesting charges paid above Rs.20,000/-	Rs. 1,91,22,674/-
2.	Harvester's commission	Rs.15,42,086/-
3.	Transportation	Rs.2,33,70,855/-
4.	Cart Bill	Rs.20,75,841/-
5.	Transporter commission	Rs.49,60,196/-
6.	Hire charges	Rs.1,30,350/-
7.	Advocate fee	Rs.1,55,000/-
8.	Donation to 55 th National Co-operative week	Rs.1,00,000/-
9.	Donation to Chalukya Utsav	Rs.10,000/-
TOTAL		Rs.5,14,67,002/-

For the assessment year 2010-11:

Sl.No.		Amount
1.	Harvester	Rs.30,86,504/-
2.	Vehicle Hire	Rs.2,86,674/-
3.	Legal fee	Rs.2,03,272/-
TOTAL		Rs.35,73,450/-

For the assessment year 2011-12:

Sl.No.		Amount
1.	Transport contractor	Rs.2,09,90,671/-
2.	Flooring work	Rs.6,71,919/-
3.	Rents and professional charges to advocate	Rs.3,52,717/-
TOTAL		Rs.2,23,85,157/-

9. Having observed that the assessee had not deducted tax at source, the assessing authority in it's

orders passed under Sections 201(1) and 201(1A) of the Act held that the appellant was '*deemed to be an assessee in default*' under Section 201(1) of the Act. It further held that the assessee was liable to pay interest under Section 201(1A) of the Act. Orders under the said provisions of law were passed demanding a sum of Rs.7,50,009/- for the assessment year 2009-10, Rs.96,762/- for the assessment year 2010-11, Rs.13,39,441/- for the assessment year 2011-12 and Rs.11,77,551/- for the assessment year 2012-13.

10. The aforementioned orders passed by the Assessing Authority holding that the assessee was in default for not deducting TDS under Sections 194C, 194I and 194J of the Act as also orders passed under Sections 201(a) and 201(1A) were unsuccessfully challenged before CIT (Appeals), Belagavi.

11. The orders passed by the CIT (Appeals), Belagavi were further challenged before ITAT, Panaji

Bench, Panaji. The Tribunal, by its common order dated 04.08.2015, set aside the orders passed by the CIT (Appeals) and remitted the matters to the Assessing Authority for re-adjudication on the ground that it was not proved before the Tribunal as to whether the amounts were paid before the year end. The assessee was directed to prove before the Assessing Authority that no amount had remained payable as on the year end and that all the amounts claimed on which the provisions of Sections 194C and 194J were invoked stood fully paid by the year end. It was further held that if the assessee proved that there was no outstanding and all the amounts had been paid in full then, in the light of the judgment in the case of *Commissioner of Income-tax, Muzaffarnagar v. Vector Shipping Services (P.) Ltd.*, reported in [2013]38 taxmann.com 77 (Allahabad) the Assessing Authority shall not invoke the provisions of Section 40(a)(ia) of the Act. Hence, these appeals.

12. Shri M.D.Pukale, learned counsel for the assessee urged the following contentions:

- (a) The agreement between the assessee and the harvester cannot be construed as legally enforceable contract because the 'farmer' in whose land the harvester works and harvests the sugarcane is not a party to the contract nor there is evidence to prove that the farmer has ratified the contract *inter se* between the assessee and the harvester.
- (b) The farmer is paid full price of sugarcane as notified by the National Federation of the Co-operative Sugar Factory Limited, which is called as 'Field Price' in the sugar industry parlance. The field price includes the cost of harvesting and transportation of sugarcane till the sugar factory. However, in order to ensure proper and timely procurement of sugarcane, the appellant engages the services of

harvester and transporter. Engagement of contractor for harvesting and transportation of sugarcane has been recognized by the Central Board of Direct Taxes and the Board has issued Circular No.6/2007, dated 11.10.2007 in this behalf.

(c) In the light of the Circular No.6/2007, dated 11.10.2007 issued by the CBDT, the ITAT was not justified in placing reliance on the judgment in the case of *Vector Shipping*.

(d) The assessee's factory is situated in a remote area and it did not have the benefit of proper tax consultants.

(e) Assessee is a co-operative mill and the profits accruing enure to the benefit of its members.

(f) Therefore, the view taken by the Assessing Authority that the assessee failed to deduct tax at source adversely affects profit/dividend to the

members of the co-operative society defeating the purpose of establishment of co-operative sugar factories.

- (g) The impugned orders passed by the ITAT are unsustainable in the absence of recording a definite finding with regard to the existence of a valid contract between the harvester and the assessee.

13. In sum and substance, it is the case of the appellant that it is a co-operative sugar factory established for the benefit of its members. Though the full price of sugar inclusive of transportation charges is paid to the farmer, to ensure uninterrupted supply, assessee enters into agreements with harvesters and transporters. Farmer is not a party to the said agreement. Therefore, the said document cannot be construed as a lawful contract to attract the provisions of Section 194C of the Act. Further, the assessee being situated in a remote area does not have the benefit of

Expert Legal Consultants to advice with regard to statutory compliance. If it is held that non-deduction of tax at source by the assessee as a violation and the payments made to the contractors are brought to tax by invoking Section 40(a)(ia) of the Act, the same shall adversely affect the profit/dividend to the members of the society.

14. The learned Counsel for the assessee also submitted that an identical matter is pending consideration before the Hon'ble High Court of Gujarat in Tax Appeal No.2397/2009. Therefore, the questions raised are substantial in nature and require consideration by this Court.

15. With the above contentions, it was urged on behalf of the assessee to allow its appeals and to dismiss the appeals filed by the Revenue.

16. Per contra, Sri.Y.V.Raviraj, learned standing counsel for the Revenue opposing the appeals filed by

the assessee and in support of appeals filed by the Revenue contended that Section 194C of the Act mandates that an assessee responsible to pay any sum to carry out any work in pursuance of contract is required to deduct tax at source. As a consequences of failure to comply with Section 194C of the Act, any payment made without deduction of tax at source shall be brought to tax under Section 40(a)(ia) of the Act.

17. Shri Y.V.Raviraj further submitted that the pleadings and arguments on behalf of the assessee that the agreement between the assessee and the harvester/transporter is not a legally enforceable contract on the ground that the farmer is not a party to the said agreement nor has he ratified the same is wholly untenable because it is the specific case of the assessee that it has engaged the services of harvester and contractor to ensure uninterrupted supply of sugarcane. Further, a copy of agreement has been produced by the assessee in these appeals. No

harvesting can be done nor sugarcane produce be transported without due approval of the farmer. To top it all, it is the specific case of the assessee that payments have been made to the harvesters pursuant to the said agreement. Therefore, it is imperative to construe that the entire exercise of harvesting and transpiration has taken place with the approval and consent of the farmer. In such circumstances, the argument advanced on behalf of the assessee that the farmer has not ratified the agreement is fallacious.

13. In reply to the contention of the assessee that the factory is situated in a remote area and the assessee did not have the benefit of proper legal advice, it is contended by Sri Y.V. Raviraj that the assessee has claimed to have paid large sums of money to the lawyers and booked it as an expenditure. No deduction of tax at source has been made even in respect of payments made to the lawyers. The very fact that the assessee has spent large sums of money as fee and consultation

charges to lawyers negates the ground urged on behalf of the assessee that it did not have proper legal assistance. In addition, assessee has violated Section 194J by not deducting tax at source while making payment to the lawyers.

19. Contesting the assessee's ground that, the view of Assessing Authority shall adversely affect the quantum of profit to the members, he submitted that this ground is devoid of merit because non compliance of statutory provisions shall always lead to resultant consequences and assessee is no exception.

20. Supporting the appeals filed on behalf of the Revenue, Shri Y.V.Raviraj, learned Counsel submitted that the Tribunal erred in not relying upon the judgment of the Hon'ble High Court of Calcutta in the case of *CIT Kolkatta v. Cresent Export Syndicate* reported in (2013) 33 *Taxman.com* 250 Calcutta and *CITIV v. Sikandarkhan N. Tunvar* reported (2013) 33 *Taxman.com* 133 Gujarat,

wherein, it is categorically held that the provisions of Section 40(a)(ia) would not only cover the amounts which are payable at the end of the previous year but also which are payable at any time during the year.

21. He further submitted that the ITAT erred in relying on the decision in the case of *Vector Shipping Pvt. Ltd.*,¹ when the declaration of law was clear in the cases of *Crescent Export Syndicate*¹ and *Sikandarkhan N.Tunvar & Ors*².

22. He next argued that CBDT in its Circular No.10/DB/2013 (F No.179/Misc/M61/2012-ITJ(Vol.II) dated 16.12.2013 has clarified that the provisions of Section 40(a)(ia) would cover not only the amounts which are payable as on 31st March of the previous year but also the amounts which are payable during the years.

¹ [2013]38 taxmann.com 77(Allahabad)

¹ (2013) 33 Taxman.com 250 Cal

² (2013) 33 Taxman.com 133 Guj

23. In sum and substance, the case of the Revenue is that assessee runs a sugar factory and spends Crores of rupees towards harvesting and transportation charges. It has also booked large sums of expenditure towards payments made to lawyers and consultants. Admittedly, tax has not been deducted at source in compliance of the provisions of Section 194C, 194I and 194J of the Act. Ignorance of law cannot be an excuse. Thus, the orders passed by the Assessing Authority and the First Appellate Authority were just and proper and did not call for any interference. However, the ITAT by placing reliance on the judgment in the case of *Vector Shipping Pvt. Ltd.*,¹ has remitted the matter back to the Assessing Authority. Therefore, the impugned orders passed by the ITAT are unsustainable in the light of the substantial questions of law raised by the Revenue in its appeals. Accordingly, he prays for

¹ [2013]38 taxmann.com 77(Allahabad)

allowing the appeals filed by the Revenue and to dismiss the appeals filed by the assessee.

24. We have carefully considered the rival contentions urged on behalf of the assessee and the Revenue and perused the records.

25. Following are the incontrovertible facts in these appeals:

- Assessee runs a sugar factory and manufactures sugar and its bye products;
- Assessee's specific case is that the farmer is paid full value of sugarcane inclusive of harvesting and transportation charges, which is known in the sugar industry parlance as 'field price' as notified by the National Federation of Co-operative Sugar Factories Ltd., New Delhi;
- Yet, in order to ensure uninterrupted supply of sugarcane, the assessee engages the services of 'Bond Harvester/transporter';

- Assessee enters into agreements with the harvester/transporter in an uniform manner as described in the proforma copy of such agreement, which is annexed to the memorandum of assessee's appeals as Annexures-B and C;
- Assessee, has 'in fact' not deducted tax deductible at source in respect of payments made to the contractors, towards rents and professional charges as mandated in Sections 194C, 194I and 194J of the Act.

26. In the backdrop of aforementioned undisputed facts, the case of the assessee for various years was taken for scrutiny. Opportunity was given to the assessee to present its case. Records before the Assessing Authority clearly disclose that the assessee had entered into agreements with the harvesters/transporters and paid money to such harvesters/transporters in terms of such agreement/s.

Records also disclose that the assessee had paid money towards rents and professional charges. Consequently, Assessing Authority as also the First Appellate Authority namely CIT (Appeals) rightly held that assessee was liable to comply with the provisions of Sections 194C, 194I and 194J of the Act and accordingly added back the income under Section 40(a)(ia) of the Act. However, the ITAT, placing reliance on the judgment of the Hon'ble Allahabad High Court in the case of *Vector Shipping Services Pvt. Ltd.*,¹ held that it was not proved before the ITAT whether the amounts were paid before the year end and accordingly, set aside the assessment orders and remitted the matter for re-adjudication before the Assessing Authority. Assessee was directed to prove that no amount was left payable at the year end and all amounts claimed on which the provisions of Section 194C, 194I and 194J of the Act were invoked had been fully paid by the year end.

¹ [2013]38 taxmann.com 77(Allahabad)

27. We have carefully gone through the judgment in the case of *Vector Shipping Services Pvt. Ltd.*,¹ . In the said case, Hon'ble High Court of Allahabad was considering an issue with regard to non-compliance of provisions of Section 194C by the assessee therein. The said company had advanced a contention that work was carried out by one M/s. Mercator Lines Ltd., on behalf of *Vector Shipping Services Pvt. Ltd.*, and M/s. Mercator Lines Ltd., had deducted TDS in the salary of its employees and fully complied with the provisions relating to deduction of tax at source. It was also contended that no amount had remained payable at the year end. Thus, it was in the facts and circumstance of that case, the Hon'ble High Court of Allahabad had rendered the said decision. In contrast, in the instant case, it is an admitted position as borne out on records that the assessee has not deducted tax at source as required under Section 194C, 194I and 194J of the Act. However,

¹ [2013]38 taxmann.com 77 (Allahabad)

non-compliance of the said provisions is sought to be justified on the ground that the agreement *inter se* between the assessee and the harvester is not a valid contract in as much as the farmer is not a party to the said agreement upon whose land the harvester works and whose produce is purchased by the assessee. It is also argued that the said agreement is not ratified by the farmer. In our considered view, the said argument advanced on behalf of the assessee is fallacious and is noted only to be rejected. We say so because, there is no dispute with regard to the fact that the assessee has entered into specific agreement/s for harvesting and transportation of sugarcane and the harvester has been admittedly paid harvesting and transportation charges by the assessee. This leads to an irresistible inference that the produce namely the sugarcane has been harvested and transported by the contractor. Harvesting and transportation can be effected only with consent of the owner of the sugarcane namely farmer.

28. One other ground pressed into service by the assessee in support of its case is that, assessee is a co-operative sugar factory established for the benefit of its members and therefore, the view taken by the Assessing Authority would adversely effect the profit margin to the members of the society as the society will have to pay tax, interest and penalty for non-compliance of section 194C, 194I and 194J of the Act. This would create additional burden of tax, penalty and interest and the same would run counter to the interest of co-operative movement.

29. We are afraid, we may not be able to persuade ourselves to accept the aforesaid argument seeking concession or waiver from compliance of statutory obligations on the part of a co-operative entity. In our view, it is hardly any legal ground for consideration. Non-compliance of statutory obligations shall always have their own consequences to flow.

Therefore, the instant ground does not advance the case of the assessee any further.

30. Adverting to yet another ground urged on behalf of the assessee suggesting that it did not have the benefit of proper legal advice due to its locational disadvantage, we are of the view that this argument is too feeble to countenance. While canvassing this ground, it is argued by the learned Counsel for the assessee that since the factory is situated in a remote area, it did not have access to competent consultants. Admittedly, assessee was represented by a Chartered Accountant Shri Praveen Ghali before the Tax Authority. In addition, books of the assessee are audited as required under Section 44AB of the Act. Deduction of tax at source under Section 194C, 194I and 194J are elementary aspects and shall be within the knowledge of all practicing Chartered Accountants. We notice that the assessee has spent large sums of money towards legal advice. Assessee has not complied with Section 194J

even while making payments towards professional charges to the advocates. It is fairly well settled that ignorance of law is no excuse. We hasten to add that we are conscious of the fact that the Doctrine '*ignorantia juris neminem excusat*', has been interpreted by the Hon'ble Supreme Court and English Courts in several cases. There cannot be an universal, strict and straight jacket application of this doctrine. It may be useful to refer to the pronouncement of the Hon'ble Supreme Court in the case of *M/s. Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and others* reported in (1979)2 SCC 409, wherein, it is held as follows:-

"6. Secondly, it is difficult to see how, on the facts, the plea of waiver could be said to have been made out by the State Government. Waiver means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be "an intentional act with knowledge". Per Lord Chelmsford, L.C. in Earl of Darnley v. London, Chatham and Dover Rly. Co. [(1867) LR 3 HL 43, 57 : 16 LT 217] There can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. It is pointed out in Halsbury's Laws of England (4th Edn.) Volume 16 in para 1472 at p. 994 that for a "waiver to be effectual it is essential that the person granting it should be fully informed as to his rights" and Isaacs, J. delivering the judgment of the High Court of Australia in Craine v. Colonial

*Mutual Fire Insurance Co. Ltd. [(1920) 28 CLR 305 (Aus)] has also emphasised that waiver “must be with knowledge, an essential supported by many authorities”. Now in the present case there is nothing to show that at the date when the appellant addressed the letter dated June 25, 1970, it had full knowledge of its right to exemption under the assurance given by Respondent 4 and that it intentionally abandoned such right. It is difficult to speculate what was the reason why the appellant addressed the letter dated June 25, 1970 stating that it would avail of the concessional rates of Sales Tax granted under the letter dated January 20, 1970. It is possible that the appellant might have thought that since no notification exempting the appellant from Sales Tax had been issued by the State Government under Section 4-A, the appellant was legally not entitled to exemption and that is why the appellant might have chosen to accept whatever concession was being granted by the State Government. The claim of the appellant to exemption could be sustained only on the doctrine of promissory estoppel and this doctrine could not be said to be so well defined in its scope and ambit and so free from uncertainty in its application that we should be compelled to hold that the appellant must have had knowledge of its right to exemption on the basis of promissory estoppel at the time when it addressed the letter dated June 25, 1970. In fact, in the petition as originally filed, the right to claim total exemption from Sales Tax was not based on the plea of promissory estoppel which was introduced only by way of amendment. Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in *Martindale v. Falkner* [(1846) 2 CB 706 : 135 ER 1124] :*

“There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so.”

Scrutton, L.J., also once said:

“It is impossible to know all the statutory law, and not very possible to know all the common law.”

But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in Evans v. Bartlam [(1937) AC 473, 479 : (1937) 2 All ER 646] :

“... the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.”

It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by addressing the letter dated June 25, 1970. We accordingly reject the plea of waiver raised on behalf of the State Government.

So far as strict application of the maxim *ignorantia juris neminem excusat* is concerned, the Hon'ble Supreme Court in the case of *M/s. Pankaj Jain Agencies v. Union of India and others* reported in (1994)5 SCC 198 while repelling an argument that the petitioner did not have knowledge of an enactment held that a publication in a gazette is a sufficient notice. Precisely, the Hon'ble Supreme Court has held as follows:-

14. *In Lim Chin Aik v. Reginam [(1963) 1 All ER 223, 226 : 1963 AC 160 : (1963) 2 WLR 42 (PC)] , the Privy Council also observed:*

“It was said on the respondent's part that the order made by the minister under the powers conferred by Section 9 of the Ordinance was an instance of the exercise of delegated legislation and therefore that the order, once made, became part of the law of Singapore of which ignorance could provide

no excuse on a charge of contravention of the section. Their Lordships are unable to accept this contention. In their Lordships' opinion, even if the making of the order by the minister be regarded as an exercise of the legislative as distinct from the executive or administrative function (as they do not concede), the maxim cannot apply to such a case as the present where it appears that there is in the State of Singapore no provision, corresponding, for example, to that contained in Section 3(2) of the English Statutory Instruments Act, 1946, for the publication in any form of an order of the kind made in the present case or any other provision designed to enable a man by appropriate inquiry to find out what 'the law' is."

15. But then in State of Maharashtra v. Mayer Hans George [AIR 1965 SC 722, 742 : (1965) 1 Cri LJ 641 : (1965) 1 SCR 123] Rajagopalā Ayyangar, J. referred to the following comment of Prof. C.K. Allen on Johnson v. Sargent & Sons [(1918) 1 KB 101 : 87 LJ KB 122 : 118 LT 95] :

"This was a bold example of judgment-made law. There was no precedent for it, and indeed a decision, Jones v. Robson [(1901) 1 KB 673 : 70 LJ KB 419 : 84 LT 230] , which, though not on all fours, militated strongly against the judge's conclusion, was not cited; nor did the judge attempt to define how and when delegated legislation became known. Both arguments and judgment are very brief. The decision has always been regarded as very doubtful, but it never came under review by a higher court."

And observed:

"We see great force in the learned author's comment on the reasoning in Sargent case [(1918) 1 KB 101 : 87 LJ KB 122 : 118 LT 95] . Taking the present case, the question would immediately arise is it to be made known in India or throughout the world, for the argument on behalf of the respondent was that when the respondent left Geneva on November 27 he was not aware of the change in the content of the exemption granted by the Reserve Bank. In a sense the knowledge of the existence or content of a law by an individual would not always be relevant, save on the question of the sentence to be imposed for its violation. It is obvious that for an Indian law to operate and be effective in the

territory where it operates, viz., the territory of India it is not necessary that it should either be published or be made known outside the country. Even if, therefore, the view enunciated by Bailhache, J. is taken to be correct, it would be apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India. It was 'published' and made known in India by publication in the Gazette on the 24th November and the ignorance of it by the respondent who is a foreigner is, in our opinion, wholly irrelevant."

16. Again in *B.K. Srinivasan v. State of Karnataka* [(1987) 1 SCC 658, 672 : AIR 1987 SC 1059, 1067] it was observed: (SCC p. 672, para 15)

"There can be no doubt about the proposition that where a law, whether parliamentary or subordinate, demands compliance, those that are governed must be notified directly and reliably of the law and all changes and additions made to it by various processes. Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's 'unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made that it can be known. We know that delegated or subordinate legislation is all pervasive and that there is hardly any field of activity where governance by delegated or subordinate legislative powers is not as important if not more important, than governance by parliamentary legislation. But unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation."

17. In the present case indisputably the mode of publication prescribed by Section 25(1) was complied with. The notification was published in the Official Gazette on the 13-2-

1986. As to the effect of the publication in the Official Gazette, this Court held [Srinivasan case [(1987) 1 SCC 658, 672 : AIR 1987 SC 1059, 1067] AIR at p. 1067 : SCC pp. 672-73, para 15]:

“Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication.”

18. We, therefore, see no substance in the contention that notwithstanding the publication in the Official Gazette there was yet a failure to make the law known and that, therefore, the notification did not acquire the elements of operativeness and enforceability. This contention of Shri Ganesh is unacceptable.

(underlining is by us)

In the instant case, assessee is involved in manufacturing Sugar and it's byproducts in a large scale. Therefore, the assessee has no escape but to comply with various Fiscal Statues such as Income Tax, Sales Tax, Customs Act, Central Excise Act etc., and Labour Laws such as Factories Act, ESI Act, PF Act etc. Further, there is clear evidence on record to show that the assessee has paid large sums of fee to the Lawyers and

availed services of Chartered Accountant also. These two aspects namely, evidence of expenditure towards fee paid to the lawyers and engagement of services of Chartered Accountant are sufficient circumstances to hold that non deduction of tax at source is not due to ignorance of law. The pronouncements of the Hon'ble Supreme Court in the following two case are aptly applicable in the instant case.

Swadeshi Cotton Mills Co. Ltd. v. Govt. of U.P., reported in (1975) 4 SCC 378 at page 379, wherein it is held as follows:

3. *We do not think that in this case it is necessary for us to consider whether Article 226 can be used for challenging the validity of the orders passed prior to January 26, 1950. But we are in agreement with the High Court on the other two grounds. As mentioned earlier, the impugned assessments were made in 1949. The writ petition was filed in 1956. The explanation given by the petitioner for this long delay is that he did not know the correct legal position and he came to know about the same after the decision of the Allahabad High Court in the Commissioner of Sales Tax, U.P. v. Modi Food Products Ltd. [(1955) 6 STC 287]. Every individual is deemed to know the law of the land. The courts merely interpret the law and do not make law. Ignorance of law is not an excuse for not taking appropriate steps within limitation. Therefore the argument that the appellant did not know the true legal position is not one that can be accepted in law. That apart, even after the High Court rendered its*

decision in ModiFood Products' case [(1955) 6 STC 287] the petitioner did not move the High Court for over several months. There is no satisfactory explanation for that delay. That being so, the High Court was fully justified in refusing to exercise its discretion under Article 226 of the Constitution in favour of the appellant.

(underlining is by us)

State of A.P. v. Twin City Jewellers Assn., (2005)

13 SCC 552 at page 554, wherein it is held as follows:

“8. It could not be denied that GO No. 303 dated 15-4-1997 was published in the Official Gazette on 23-4-1997. It is settled law that once publication in the Official Gazette takes place, it is deemed to be known to all. Ignorance of law can be no excuse. Once the GO was published, from the date it was published, it became effective. As it became effective from that date, the tax was leviable at the rate of 4%. If some assessing officers, due to their own ignorance or laxity accepted returns at the rate of 2% it did not permit the High Court to ignore the law and continue such laxity to prevail. It must be remembered that the assessing officer, who had assessed wrongly, could always reopen the assessment.

9. All that the errata, issued on 4-5-1998, does is reduce the rate of tax from 4% to 3%. The High Court has therefore also erred in concluding that the rate of tax has been increased. The whole judgment proceeds on the basis that the rate of tax has been increased when in fact it has been reduced.

10. We are unable to accept the submission that as GO No. 304 is an errata, it necessarily means that GO No. 303 had never come into existence. The word errata, in our view, implies that there was something in existence which is being corrected. The fact that this was an errata itself showed that there was something in existence which was being corrected. This aspect has also been overlooked by the High Court.

11. It was also submitted that since there was a lot of confusion and that number of parties including assessing officers were not clear as to what was the rate of tax, this Court should not interfere with the judgment of the High Court

which has been passed on equitable basis. We see no substance in this submission. If the law is clear then it must be given effect to. Merely because the parties were unaware of the law does not mean that courts can ignore the law and provide to the contrary."

(underlining is by us)

31. The following judgments are relied upon by the Revenue in support of their case:

- (i) In the case of *Thomas George Muthoot v. Commissioner of Income Tax* reported in (2015)93 CCH 0151 KerHC.

It is held by the Hon'ble High Court of Karnataka that Section 40(a)(ia) makes it clear that the consequence of disallowance is attracted when an individual, who is liable to deduct tax on any interest payable to a resident on which tax deductible at source commit default.

- (ii) In the case of *Commissioner of Income Tax v. Sikandar Khan N. Tunvar* reported in (2013) 259 CTR 0057

It is held by the Hon'ble High Court of Gujarat that:

"The term used is interest, commission, brokerage etc. is payable to a resident or amounts payable to a contractor or sub-contractor for carrying out any work. The language used is not that such amount must continue to remain payable till the end of the accounting year. Any such interpretation would require reading words which the legislature has not used. No such interpretation would even otherwise be justified because in our opinion, the legislature could not have intended to bring about any such distinction nor the language used in the section brings about any such meaning. If the interpretation as advanced by the assessee is accepted, it would lead to a situation where the assessee who though was required to deduct the tax at source but no such deduction was made or more flagrantly deduction though made is not paid to the Government, would escape the consequence only because the amount was already paid over before the end of the year in contrast to another assessee who would otherwise be in similar situation but in whose case the amount remained payable till the end of the year. We simply do not see any logic why the legislature would have

desired to bring about such irreconcilable and diverse consequences. We hasten to add that this is not the prime basis on which we have adopted the interpretation which we have given. If the language used by the Parliament conveyed such a meaning, we would not have hesitated in adopting such an interpretation. We only highlight that we would not readily accept that the legislature desired to bring about an incongruous and seemingly irreconcilable consequences."

- (iii) In the case of *Commissioner of Income Tax v. Crescent Export Syndicate* reported (2013) 236 CTR 525

It is held by the Hon'ble High Court of Calcutta that:

"21. In view of above discussion, we answer the question as under:-

The provisions of section 40(a)(ia) of the Income Tax Act, 1961, are applicable not only to the amount which is shown as payable on the date of balance-sheet, but it is applicable to such expenditure, which become payable at any time

during the relevant previous year and was actually paid within the previous year. In the result the question is decided in favour of revenue and against the assessee."

32. While citing the aforesaid judgments, the learned Counsel for the Revenue also emphasized that the judgment in the case of *Vector Shipping Pvt. Ltd.*, is not applicable to the facts of this case. He submitted that in the light of the unambiguous and admitted facts non-compliance of statutory compliance of statutory provisions of Sections 194C, 194I and 194J of the Act stand proved. Therefore, in the light of the settled position of law the only consequence that flows is to invoke Section 40(a)(ia) of the Act as has been rightly held by the Assessing Authority and affirmed by the First Appellate Authority.

33. In view of the aforesaid discussion, we are of the considered view that the impugned order passed by the Tribunal is unsustainable in law. The judgment

rendered by the Hon'ble High Court of Allahabad in the case of *Vector Shipping Pvt. Ltd.*, is not applicable to the facts of these cases. Consequently, the first substantial question of law, raised by the Revenue merits consideration.

34. In the result, the appeals filed by the Revenue are *allowed* by answering the following substantial question of law in its favour and it is held that in the facts and circumstances of this case, the Tribunal was not correct in interpreting the language of section 40(a)(ia) to mean that the consequence of disallowance is attracted only in respect of amounts which remain payable on the last day of the financial year.

35. The other two questions of law raised by the Revenue are not applicable to the facts of these cases and hence, not considered. Having answered the first substantial question of law in favour of the Revenue, we hold that the questions of law raised by the assessee are

devoid of merit. Resultantly, the appeals filed by the assessee deserve to be *rejected*.

36. In the result, we pass the following:-

ORDER

- (i) The appeals filed by the Prl. CIT, Belagavi namely ITAs No.100012/2016, 100013/2016, 100014/2016, 100015/2016, 100016/2016 & 100017/2016 are *allowed* by answering the first substantial question of law in favour of the Revenue;
- (ii) The orders passed by the ITAT in ITA Nos.152, & 153/PNJ/2015, ITA No.154/PNJ/2015, ITA Nos.155-157/PNJ/2015 and ITA Nos.158-161/PNJ/2015 are set aside confirming the orders passed by the First Appellate Authority;
- (iii) ITAs No.100111-100120/2015 filed by the assessee are *dismissed*.

No costs.

Sd/-
JUDGE

Sd/-
JUDGE

cp*/vnp