

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

*
DATED THIS THE 2nd DAY OF SEPTEMBER, 2015

PRESENT

*Corrected vide
Chamber order
dated 28.09.2015
PS to Hon'ble ABJ

THE HONOURABLE MR.JUSTICE ANAND BYRAREDDY

AND

THE HONOURABLE MRS. JUSTICE S.SUJATHA

Income Tax Appeal No. 81 of 2014

C/W

Income Tax Appeal Nos. 82 of 2014, 83 of 2014, 87 of 2014, 90 of
2014,

Income Tax Appeal No. 81 of 2014:

Between:

1. The Commissioner of Income Tax,
Aayakar Bhavan,
Sedam Road,
Gulbarga-585 105.
2. The Deputy Commissioner of Income Tax(TDS),
Aayakar Bhavan,
Staff Road, Fort,
Bellary.

... Appellants

(By Mr. Y.V Raviraj, Advocate)

And :

The Executive Engineer,
O & M Division, (GESCOM),
HOSPET.

... Respondent

(By Shri Shashank Hegde, Advocate for Shri A.Shankar,
Advocate)

This Income Tax Appeal is filed under Section 260-A of Income Tax Act, 1961, for the assessment year 2008-09 praying to allow the appeal and set aside the orders passed by the Income Tax Appellate Tribunal, Bangalore in Income Tax Appeal No.768/Bang/2013 dated:30/09/2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Assistant Commissioner of Income Tax, TDS Circle, Bellary.

Income Tax Appeal No. 82 of 2014:

Between:

1. The Commissioner of Income Tax,
Aayakar Bhavan,
Sedam Road,
Gulbarga-585 105.
2. The Deputy Commissioner of Income Tax(TDS),
Aayakar Bhavan,
Staff Road, Fort,
Bellary.

... Appellants

(By Mr. Y.V Raviraj, Advocate)

And :

The Executive Engineer,
O & M Division, (GESCOM),
HOSPET.

... Respondent

(By Shri Shashank Hegde, Advocate for Shri A.Shankar,
Advocate)

This Income Tax Appeal is filed under Section 260-A of Income Tax Act, 1961, for the assessment year 2008-09 praying to allow the appeal and set aside the orders passed by the Income Tax Appellate Tribunal, Bangalore in Income Tax Appeal No.769/Bang/2013 dated:30/09/2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Assistant Commissioner of Income Tax, TDS Circle, Bellary.

Income Tax Appeal No. 83 of 2014:

Between:

1. The Commissioner of Income Tax,
Aayakar Bhavan,
Sedam Road,
Gulbarga-585 105.
2. The Deputy Commissioner of Income Tax(TDS),
Aayakar Bhavan,
Staff Road, Fort,
Bellary.

... Appellants

(By Mr. Y.V Raviraj, Advocate)

And :

The Executive Engineer,
O & M Division, (GESCOM),
HOSPET.

... Respondent

(By Shri Shashank Hegde, Advocate for Shri A.Shankar,
Advocate)

This Income Tax Appeal is filed under Section 260-A of Income Tax Act, 1961, for the assessment year 2008-09 praying to allow the appeal and set aside the orders passed by the Income Tax Appellate Tribunal, Bangalore in Income Tax Appeal No.770/Bang/2013 dated:30/09/2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Assistant Commissioner of Income Tax, TDS Circle, Bellary.

Income Tax Appeal No. 87 of 2014:

Between:

1. The Commissioner of Income Tax,
Aayakar Bhavan,
Sedam Road,
Gulbarga-585 105.
 2. The Deputy Commissioner of Income Tax(TDS),
Aayakar Bhavan,
Staff Road, Fort,
Bellary.
- ... Appellants

(By Mr. Y.V Raviraj, Advocate)

And :

The Executive Engineer,
O & M Division, (GESCOM),
HOSPET.

... Respondent

(By Shri Shashank Hegde, Advocate for Shri A.Shankar,
Advocate)

This Income Tax Appeal is filed under Section 260-A of Income Tax Act, 1961, for the assessment year 2008-09 praying to allow the appeal and set aside the orders passed by the Income Tax Appellate Tribunal, Bangalore in Income Tax Appeal No.519/Bang/2013 dated:30/09/2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Assistant Commissioner of Income Tax, TDS Circle, Bellary.

Income Tax Appeal No. 90 of 2014:

Between:

1 The Commissioner of Income Tax,
Aayakar Bhavan,
Sedam Road,
Gulbarga-585 105.

2. The Deputy Commissioner of Income Tax(TDS),
Aayakar Bhavan,
Staff Road, Fort,
Bellary.

... Appellants

(By Mr. Y.V Raviraj, Advocate)

And :

The Executive Engineer,
O & M Division, (GESCOM),
HOSPET.

... Respondent

(By Shri Shashank Hegde, Advocate for Shri A.Shankar,
Advocate)

This Income Tax Appeal is filed under Section 260-A of Income Tax Act, 1961, for the assessment year 2008-09 praying to allow the appeal and set aside the orders passed by the Income Tax Appellate Tribunal, Bangalore in Income Tax Appeal No.522/Bang/2013 dated:30/09/2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Assistant Commissioner of Income Tax, TDS Circle, Bellary.

These appeals coming on for Admission, ANAND BYRAREDDY J., delivered the following :-

JUDGMENT

These appeals coming on for admission, are considered for final disposal having regard to the issues raised in these appeals having been addressed in Income-Tax Appeal No.75/2014 and connected cases, disposed of by a judgment dated 11.8.2015.

2. These appeals filed by the revenue are against the orders of the Income-Tax Appellate Tribunal confirming the order passed by the Commissioner of Income-tax (Appeals), Hubli.

3. Gulbarga Electricity Supply Company Limited, the assessee had challenged demands of the jurisdictional Deputy Commissioner of Income-tax and thereafter appeals were filed before the Commissioner of Income-tax and the appeals had been partly allowed and the revenue had taken up the matter before the Income-Tax Appellate Tribunal, which was futile.

The first issue involved in those appeals was if on the payment made against the supply of materials included in composite contracts for executing Turn Key Projects, provisions under Section 194C of the Income-Tax Act, 1961 (for short, 'the Act') would attract or not.

The second issue was if payments made by the assessee to Bellary Computers and IT Solutions, Bellary, towards Bill Management Services were fees for professional and technical services and, therefore, comes within the purview of Section 194J

of the Act or payments made towards carrying out work comes within the ambit of Section 194C of the Act.

The Tribunal, in its detailed discussion, has held that the issue regarding non-deduction of tax deducted at source on payments made on supply part of contracts awarded for execution of Turn Key Projects, is a settled issue in the case of *Commissioner of Income-tax and others vs. Karnataka Power Transmission Corporation Limited*, in ITA 337 of 2011, decided on 15.3.2012. Therefore, the said decision was held binding in so far as the revenue was concerned. Therefore, this court had formed an opinion that the clauses of the contract particularly, clause 3.5 of the contract agreement, made it clear that there were three separate contracts entered into, but all the separate contracts were integral parts of a composite contract on single sale responsible basis. The invoices raised on the basis of the said composite contract separately mentioning the value of the material supplied, no deduction was permissible under Section 194C of the Act. The said provision could not be pressed into service to deduct tax at source. The

whole object of introduction of that Section was to deduct tax in respect of payments made for works contracts. No division was, therefore, permissible in respect of a contract for supply of materials for carrying out the work as in case of distinct contracts. The contract for supply of material being a separate and distinct contract, no division was permissible under Section 194C of the Act. Section 194C was amended with effect from October 1, 2009 and the provision is unambiguous. Therefore, it was concluded by this court that if a person executing the work, purchases the materials from a person other than the customer, the same would not fall within the definition of 'work' under Section 194C of the Act.

In so far as the second issue was concerned, this court has opined that the provisions of Section 194J or Section 194C would apply in respect of payments made by an assessee towards Bill Management Services. The services rendered by the agencies engaged by the assessee at several places are not professional services, and, therefore, Section 194J was not attracted. The

demand towards the alleged short deduction of tax deducted at source and interest, was hence improper and the contract was rightly held to be a service contract by the Tribunal. This court had affirmed that it was a contract, which should be covered under Section 194C of the Act.

Hence, it was held that the appeals did not involve any substantial question of law, which requires consideration and the appeals were dismissed.

The present appeals also face the same fate and are accordingly dismissed.

Sd/-
JUDGE

Sd/-
JUDGE