Chief Justice's Court

Case :- INCOME TAX APPEAL No. - 57 of 2014

Appellant :- Commissioner Of Income Tax (Tds), Kanpur

Respondent :- M/S Fressscale Semiconductor India Pvt. Ltd.

Counsel for Appellant :- Dhananjay Awasthi, Sc

Counsel for Respondent :- Pushpendra Kumar

Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice

Hon'ble Dilip Gupta,J.

The appeal by the revenue under Section 260-A of the Income Tax Act, 1961[1] arises from a decision of the Income Tax Appellate Tribunal dated 31 July 2013. The assessment year to which the appeal relates is Assessment Year 2008-09. The appeal is admitted on the following questions of law:

> "(1) Whether the ITAT erred in law in holding that assessee was correct in deducting TDS U/s. 194-C @ 2% rather than amended Section 194-I @ 10% (w.e.f. 01.06.2007) completely ignoring the explanation to Section 194-I which defines rent as any payment under any lease, sublease, tenancy or any other arrangement for the use of inter alia (d) machinery, (e) plant, or (f) equipment and further ignoring that the buses/vehicles were hired for fixed tenure and exclusive usage by the assessee.
>
> (2) Whether the ITAT erred in law in not considering the definition of "plant" as provided under Section 43(3) read with Section 194-I as per which the plant/machinery has been mentioned in the explanation to

1 the Act

> Section 194-I for purposes of deducting TDS and which includes vehicles also.
>
> (3) Whether the ITAT erred in law in relying upon Board Circular No. 558 dated 20.03.1990 which was issued prior to the introduction of Section 194-I and only talks of part time hiring of vehicles and does not cover the case of exclusive hiring for fixed tenure."

The present appeal is part of a batch of appeals which have been placed for hearing before the Court in which the applicability of the provisions of Section 194-C of the Act or, as the case may be, Section 194-I has been in issue.

The learned counsel appearing on behalf of the contesting parties, including those in the present case, have been heard on the legal issues before the judgment was delivered in the main appeal today, Income Tax Appeal No. 314 of 2011 (Commissioner of Income Tax Vs. M/s Apeejay School Apeejay School Campus). The learned counsel appearing for the assessee and the learned counsel for the revenue have assisted the Court in perusing the contract between the assessee and the transporter in the present case. Both the learned counsel for the revenue and the learned counsel for the assessee agree that the contract in the present case is similar to the terms and conditions of the contract in the main appeal, noted above. Consequently, it is not in dispute that the issue raised in the present appeal will be governed by the judgment which has been rendered today in Income Tax Appeal No. 314 of 2011, noted above.

Hence, for the reasons given while disposing of the companion appeal, i.e. Income Tax Appeal No. 314 of 2011, the questions of law as framed are answered in the negative. In consequence, we clarify that the Tribunal was correct in holding that the provisions of Section 194-C of the Act and not Section 194-I were attracted in the present case to the deduction of tax at source.

The appeal is, accordingly, disposed of. There shall be no order as to costs.

Order Date :- 11.8.2014
AHA

(Dr. D.Y. Chandrachud, C.J.)

(Dilip Gupta, J.)