

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13<sup>TH</sup> DAY OF APRIL, 2015**

**PRESENT**

**THE HON'BLE MR. JUSTICE VINEET SARAN**

**AND**

**THE HON'BLE MRS. JUSTICE S.SUJATHA**

**ITA NO.553/2013**

**BETWEEN**

1. THE COMMISSIONER OF INCOME TAX  
PARK VIEW BUILDING,  
NO.284/1, 4TH MAIN,  
P J EXTENSION,  
DAVANAGERE-577 002

2. THE ASSISTANT COMMISSIONER  
OF INCOME TAX, CIRLCE-1  
PARK VIEW BUILDING,  
NO.284/1, 4TH MAIN,  
P J EXTENSION,  
DAVANAGERE-577 002

... APPELLANTS

(BY SRI. K V ARAVIND, ADV.,)

**AND**

M/S. SRI MARIKAMBA  
TRANSPORT COMPANY,  
C/O JAGANNATHA & CO.,  
VEERABADRESHWARA COMPLEX,  
VASAVI MAHAL ROAD,  
CHITRADURGA.

... RESPONDENT

(BY SRIYUTHS. A SHANKAR & M LAVA, ADVS.,)

This ITA is filed Under Sec.260-A of Income Tax Act 1961, arising out of order dated 26/07/2013 passed in ITA No.1062/Bang/2012, for the Assessment Year 2009-2010 praying to:

1. Formulate the substantial questions of law stated above.
2. Allow the appeal and set aside the orders passed by the ITAT, Bangalore in ITA No.1062/Bang/2012 dated:26/07/2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Assistant Commissioner of Income Tax, Circle-1, Davanagere.

THIS ITA COMING ON FOR ADMISSION THIS DAY,  
*SUJATHA J.* DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal is filed by the revenue challenging the order passed by the Income Tax Appellate Tribunal, Bangalore Bench 'B, Bangalore, dated 26.07.2013 for the Assessment Year 2009-10.

2. The brief facts of the case are that the assessee has filed the return of income for the Assessment Year 2009-10 declaring the total income of Rs.19,07,890/-. Scrutiny assessment was completed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act' for short) on 28.12.2011 by computing the total income of Rs.17,82,64,920/- and while doing the said assessment, the Assessing Officer had added payments made to sub-contractors towards freight charges of Rs.17,63,57,030/- under Section 40(a)(ia) of the Act. Aggrieved

by the same, the assessee carried the matter in appeal before the Commissioner of Income Tax (A), Hubli, which was allowed by the Appellate Authority, against which, the revenue preferred an appeal before the ITAT, Bangalore. The Tribunal following the Judgment of Ahmedabad Bench in the case of *Valibhai Khanbai Mankad -vs- DCIT (OSD)* reported in ITA No.2228/Ahd/2009 dated 29.04.2011, dismissed the appeal filed by the revenue. Aggrieved by the same, the Revenue is in appeal before this Court under Section 260A of the Act.

3. We have heard Sri K.V.Aravind, learned counsel appearing for the Revenue as well as Sri A.Shankar, learned counsel appearing for the assessee. After hearing the parties and perusing the records, the only question that arises for our consideration is:

*“Whether non-filing of Form No.15-I/J within the prescribed time is only a technical default or the Provisions of Section 40(a)(ia) of the Act are attracted?”*

Section 40 (a)(ia) and Section 194C(3) of the Act reads thus:

**“Section 40(a)(ia) :** *Any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section(i) of Section 139”.*

**Section 194C(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-s.(1) or as the case may be sub-s.(2) shall be liable to deduct income-tax under this section:*

**Provided further** that no deduction shall be made under sub-s.(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 IT authority or the person authorized 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 1<sup>st</sup> day of June, 1972;  
or

(iii) any sum credited or paid before the 1<sup>st</sup> 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.”

4. The combined reading of these two provisions make it clear that if there is any breach of requirements of Section 194C(3), the question of applicability of Section 40(a)(ia) arises. The exclusion provided in Sub-Section(3) of Section 194C from the liability to deduct tax at source under sub-section(2) would be complete, the moment the requirements contained therein are satisfied. Once, the declaration forms are filed by the sub-contractor, the liability of the assessee to deduct tax on the payments made to the sub-contractor would not arise. As we have examined, the sub-contractors have filed Form No.15I before the assessee. Such being the case, the assessee is not required to deduct tax under Section 194C(3) of the Act and to file Form No.15J. It is only a technical defect as pointed out by the Tribunal in not filing Form No.15J by the assessee. This matter was extensively considered by the ITAT, Ahmedabad Bench in *Valibhai Khandbai Mankad's* case (supra) and the said Judgment has been upheld by the High Court of Gujarat reported in *(2013) 216 Taxman 18 (Guj)* wherein it is held that once the

conditions of Section 194C(3) were satisfied, the liability of the payee to deduct tax at source would cease and accordingly, application of Section 40(a)(ia) would also not arise. The Tribunal, placing reliance on the judgment of the ITAT, Ahmedabad Bench, has dismissed the appeal filed by the Revenue. We agree with the said propositions and hold that filing of Form No.15I/J is only directory and not mandatory.

5. In the circumstances, no interference is warranted with the well considered order passed by the Tribunal. Accordingly, no substantial questions of law arises for our consideration and for the forgoing reasons, we *dismiss* the appeal filed by the Revenue.

Sd/-  
JUDGE

Sd/-  
JUDGE

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