

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2014

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).No.879 of 2014

The Commissioner of Income Tax
Chennai.

.. Appellant

Vs.

U.Bhaskaran

.. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 9.9.2011 made in I.T.A.No.2128/Mds/2010 for the assessment year 2005-2006.

For Appellant : Mr.T.Ravi Kumar
Senior Standing Counsel

J U D G M E N T
(Delivered by *R.SUDHAKAR, J.*)

This appeal is filed by the Revenue challenging the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai, dated 9.9.2011 made in I.T.A.No.2128/Mds/2010 for the assessment year 2005-2006, raising the following questions of law:

(2)

- (i) Whether the Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals) who deleted the addition made under Section 40(a)(ia) of the Income Tax Act amounting to Rs.1,52,87,975/-?
- (ii) Whether the Tribunal was right in holding that the provisions of Section 194C of the Income Tax would not be applicable in the present case?
- (iii) Whether the Tribunal is right in not considering the provisions of Explanation II(c) to Section 194C(2) of the Income Tax Act?

2.1. The facts in a nutshell are as under: The assessee is carrying on transport business and has filed return of income for the assessment year 2005-2006 on 24.10.2005 disclosing an income of Rs.11,13,069/- and the return was processed under Section 143(1) of the Income Tax Act. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued and after hearing the assessee's representative, the assessment was completed by disallowing the payment to sub-contract business of hiring, plying goods carrier. The Assessing Officer disallowed Rs.1,52,87,975/- under Section 40(a)(ia) of the Act for non deduction of TDS under Section 194C of the Act.

2.2. Aggrieved by the said order, the assessee filed appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal of the

(3)

assessee and held that payment of Rs.1,52,87,975/- does not come under the ambit of Section 194C of the Act and hence, disallowance made under Section 40(a)(ia) of the Act was not proper and accordingly, deleted the addition made by the Assessing Officer.

2.3. Assailing the said order, the Revenue filed appeal before the Tribunal, which dismissed the appeal confirming the order passed by the Commissioner of Income Tax (Appeals).

2.4. Calling in question the said order, the Revenue has filed this appeal on the questions of law, referred supra.

3. We heard the learned Senior Standing Counsel appearing for the appellant and perused the order passed by the Tribunal and the authorities below.

4. A perusal of the order of the Tribunal shows that the Tribunal has primarily relied upon the decision of this Court in *Commissioner of Income Tax v. Poompuhar Shipping Corporation Ltd.*, (2006) 282 ITR 3 (Madras) and held as under:

“5. We have considered the rival submissions. A perusal of the order of the learned CIT(A) as also the Assessing Officer clearly shows that the assessee has categorically admitted that the assessee is taking on hire only the trucks. The agreement is not between the assessee and the truck

(4)

owners for the transportation or carriage of goods. Once it is noticed that the hiring is only of the trucks and the hire charges paid is not for the purpose of carriage of goods, the same falls out of the inclusive definition of 'work' as provided in the Explanation to Section 194C of the Act. This view of ours also finds support from the decision of the Hon'ble Madras high Court in the case of CIT v. Poompuhar Shipping Corporation, referred to supra, which is also the jurisdictional High Court decision. In the circumstances as it is noticed that the learned CIT(A) has only followed the principles laid down by the Hon'ble jurisdictional High Court in the case of CIT v. Poompuhar Shipping Corporation, referred to supra, for the purpose of deleting the addition, we are of the view that no interference with the order of the learned CIT(A) is called for. In the circumstances, the appeal filed by the Revenue stands dismissed."

5. This Court in *Poompuhar Shipping Corporation Ltd.* case, referred supra, clearly analysed the provision of Section 194C of the Act in a case of hiring of ships by the assessee therein for its own use for transport of coal on the basis of an agreement entered into between the assessee therein and the Tamil Nadu Electricity Board. In that decision, there was a clear finding that hiring of ships for the purpose of using the same by Poompuhar Shipping Corporation Limited would not amount to a contract for carrying out any work and accordingly, the Court held that payment of hire charges for taking temporary possession of the ships by the assessee would not fall within the provision of Section 194C of the Act.

6. We find that in the present case also the respondent/assessee had hired trucks for his own use, as observed by the Commissioner of Income Tax (Appeals) as well as the Tribunal. When the assessee has hired trucks on payment of hire charges for utilizing the same in its business, such payment of hire charges would not fall within the provisions of Section 194C of the Act. We find the facts are identical to the case of Poompuhar Shipping Corporation Limited case, referred supra. For better clarity, the relevant portion of the decision in *Poompuhar Shipping Corporation Limited case*, referred supra, is extracted hereunder:

"4. We heard the arguments of learned counsel. Under section 194C, the tax is to be deducted when a contract was entered into for carrying out any work in pursuance of a contract between the contractor and the entities mentioned in sub-section (1) of section 194C. In the present case, there was no contract between the assessee and the shipping companies to carry out any work. On the other hand, the assessee-company hired the ships belonging to other shipping companies for a fixed period on payment of hire charges. The hired ships were utilised by the assessee in the business of carrying the goods from one place to another in pursuance of an agreement entered into between the assessee and the Tamil Nadu Electricity Board. There was no agreement for carrying out any work or transport any goods from one place to another between the assessee and the other shipping

companies. The assessee-company simply hired the ships on payment of hire charges and it was utilised in the business of the assessee at their own discretion.

It is not the case of the Revenue that the assessee entered into the said contract with the shipping company for transport of coal from one place to another. The hiring of ships for the purpose of using the same in the assessee's business would not amount to a contract for carrying out any work as contemplated in section 194C. The term 'hire' is not defined in the Income-tax Act. So, we have to take the normal meaning of the word 'hire'. Normal hire is a contract by which one gives to another temporary possession and use of the property other than money for payment of compensation and the latter agrees to return the property after the expiry of the agreed period. Therefore, in our view, when the assessee entered into a contract for the purpose of taking temporary possession of ships in the shipping company it could not be construed as if the assessee entered into any contract for carrying out any work, and when the contract is not for carrying out any work, the Revenue cannot insist the assessee ought to have deducted tax at source under section 194C of the Act. Further, the other argument of counsel was, section 194C was amended with effect from July 1, 1995, incorporating the Explanation and the said Explanation clarifies the existing provision of section 194C of the Act. Hence, it would be applicable

(7)

retrospectively. We are concerned with the assessment year 1994-95. In a recent judgment, the Supreme Court in the case of Sedco Forex International Drill Inc. v. CIT [2005] 279 ITR 310, considering the scope of the Explanation, held that there is no principle of interpretation which would justify reading the Explanation as operating retrospectively, when the Explanation comes into force with effect from a future date. In this case, the Explanation introduced is with effect from July 1, 1995. Hence it will be applicable only for the future assessment orders and it will not be applicable to the assessment year in consideration. The Tribunal also considered the fact that the shipping companies which received the hire charges are also income-tax assesseees and they had shown the hire charges in their respective income-tax returns and paid the taxes on the same. The said fact was also not disputed by the Revenue. So, we are of the view that the payment of hire charges for taking temporary possession of the ships by the assessee-company would not fall within the provision of section 194C and hence no tax is required to be deducted, and there is no error or infirmity in the order of the lower authorities. Hence, no substantial question of law arises for consideration of this court. Hence, we dismiss the above tax case."

(emphasis supplied)

In the said decision, though this Court had in detail discussed the provision of

Section 194C of the Act, the appeal was dismissed at admission stage stating that no question of law arises for consideration.

7. The learned Senior Standing Counsel for the Revenue tried to persuade us by pleading that the issue should be reconsidered in the light of the remand order of the Supreme Court in *Commissioner of Income Tax v. Sirmour Truck Operators Union*, (2009) 313 ITR 26 (SC). In the said decision, the Supreme Court has held that the question whether the assessee was liable to deduct tax at source on payments to the truck operators was a question of law and accordingly remitted the matter to the Himachal Pradesh High Court for consideration in accordance with law.

8. However, we find that this Court in *Poompuhar Shipping Corporation Limited* case, referred supra, has already decided the applicability of Section 194C of the Act with regard to freight paid to truck owners. The learned Standing Counsel for the Revenue is not able to point out as to whether any appeal has been filed against the decision of this Court.

9. In such view of the matter, we find no reason to differ with

(9)

the view taken in *Poompuhar Shipping Corporation Limited case*, referred supra, since the facts in the present case are identical to the facts in the said decision.

For the foregoing reasons, we find no question of law, much less substantial question of law, arising for our consideration in this appeal and accordingly, the same is dismissed.

(R.S.J.) (R.K.J.)
19.11.2014

Index : Yes
Internet : Yes

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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "B", Chennai.
2. The Secretary, Central Board
of Direct Taxes, New Delhi.
3. The Commissioner of Income Tax
(Appeal)-IX, Chennai – 34.
4. The Deputy Commissioner of Income Tax
Business Circle – VIII, Chennai-6.

(10)

R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

(sasi)

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