IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1.12.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE M.S.RAMESH

Tax Case (Appeal) Nos.15 to 17 of 2017

Sri.R.Venugopal ... Appellant

Vs.

Deputy Commissioner of Income Tax,
Circle I, D.P.Thottam Muthialpet,
Pondicherry 605 003. ... Respondent

Tax Case (Appeals) filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai, dated 15.7.2016 made in ITA Nos.2432/Mds/2014, 2808/Mds/2014 and 2809/Mds/2014.

For Appellant : Mr.J.Balachander

For Respondent : Mr.J.Narayanasamy,
Senior Standing Counsel

COMMON JUDGMENT
(Delivered by DR.VINEET KOTHARI,J)

The Assessee has filed these Appeals aggrieved by the order dated 15.7.2016 passed by the learned Income Tax Appellate Tribunal for the Assessment Year 2008-2009, 2008-2009 and 2009-2010 and Cross Appeal filed by the Revenue.

2. The relevant portion of the order passed by the learned Tribunal is quoted below for ready reference:-

"12. We have head both the parties and perused the orders of the Revenue Authorities as well as the relevant material placed before us. On perusal of the facts of the case, we find there is no dispute about the SNBT purchasing of the raw material for the assessee and however, the suppliers raised the invoices in the name of the assessee. Thus, the invoices were raised in the name of the assessee and the payments are made by the SNBT to the suppliers through the account payee cheques. Assessee made the cash payments to make up the balances with SNBT. Of course, assessee paid service charges to SNBT. We find, there is no confusion in our mind about the making of the payment in cash to SNBT for raw material purchases and SNBT making the said amount to the suppliers. The provisions of section 40A(3) of the Act are pressed in to action when "the assessee incurs any expenditure in respect of which, the payment is made in cash". The expression "in respect

of" has wide impart and it is not the requirement of law that the cash paid by the assessee to SNBT must reach the suppliers. Once the cash payment is aimed at the payments to suppliers, the condition specified in the law is met. Therefore, the Ld AR's argument that what is received by the suppliers of cement; steel; bricks etc is by cheque is, in our opinion, unsustainable in law. However, we did not find requisite clarity on the existence of 'principal and agent relationship' between the assessee and the SNBT. No material is placed before us or before the lower authorities to demonstrate the existence of the said 'principal and agent relationship' with SNBT. Further, the contents of Para 5.1.2 of the CIT (A)'s order does not make any reference to this aspect of 'principal and agent relationship' before granting relief to the assessee. It is not clear as to why assessee paid in cash to SNBT which is actually headed by assessee himself as we directed. The impugned order did not indicate as to how the provisions of conditions specified in clause-(k) of Rule 6DD of IT Rules, 1962 *are met. Therefore, we are of the opinion, unless the transactions fall within the exclusion / exemption of the said clause-k, the relief granted by the CIT (A) becomes premature. Order of the CIT (A) is deficient to that extent. In all fairness, in the interest of justice, we remand this aspect to the file of the CIT (A) for want of a speaking order and a reasoned order on the issue under consideration. Accordingly, CIT(A) is directed to pass a reasoned order in accordance with the provisions of section 250(6) of the Act. CIT(A) is further directed that while passing a speaking order after considering the said Revenue's arguments and our observations of the Tribunal.(sic) He shall also consider the relevance of the judgment of the Hon'ble Gujarat High Court in the case of Mrinalini V. Sarabai (supra) after comparing the facts of the case to that of the assessee under consideration. It is needless to mention that the assessee shall be provided with a reasonable opportunity of being heard as per the set principles of natural justice. Accordingly, grounds raised by the Revenue are allowed for statistical* *purposes.*

13. With regard to the issue of disallowance u/s 40(a)(ia) of the Act, which is raised in the assessee's appeal ITA No.2432/Mds/2014 (AY 2008-09), it is the argument of the Ld Counsel for the assessee that the same constitutes a case of 'reimbursement' where the payments are made by cheques to SNBT when there is no contract in any form within the meaning of section 194 of the Act. The provisions of section 194C read with section 40(a)(ia) cannot be invoked in the absence of any contract. He objected to the CIT(A)'s conclusions on the propositions of 'implied contract'. CIT (A)'s decision in accepting the evidences furnished by the assessee to the Revenue about the arrangements between the assessee and the SNBT is like displaying the impossibilities.

14. Per contra, the case of the Revenue is that this is the case where the assessee paid service charges to SNBT @ 0.5% for the services rendered by the assessee to the SNBT. When the assessee made the payments for services rendered by SNBT and when *the SNBT undisputedly rendered the services for consideration, the argument about the non-existence of contract, be it the oral or implied, is unsustainable. Therefore, there is an agreement between the two and in accordance with the contract, SNBT rendered the services for consideration. Therefore, the order of the CIT(A) on this issue should be sustained.*

15. During the rebuttal time, Ld Counsel for the assessee argued vehemently stating that the Revenue has not demonstrated about the existence of contract and consequently the applicability of the provisions of section 194C read with section 40(a)(ia) of the Act.

16. We have heard both the parties and perused the orders of the Revenue Authorities on this issue and perused the orders of the Revenue Authorities as well as the relevant material placed before us. We have also gone through the contents of the relevant para 5.2 of the impugned order and find the aspects relied heavily by the CIT(A) in confirming the addition are partly about the existence of contract. For the sake of completeness of this order, we extract the relevant *lines from the said para 5.2 of the impugned order as under:*

> *" 5.2 .... The contract between the appellant and the company M/s. Srinivas Buildtech Pvt Ltd (SNBT) was implied contract for supply of labour and also for doing the work of unloading. Otherwise, the appellant could have directly paid the amounts to the labourers. The factual evidence of payments towards labourers on behalf of the appellant by the company itself indicate that there was a contract between the appellant and the company for supply of labourers. There is no evidence to prove that this is a case of reimbursement of expenditure in respect of payment of Rs.62,71,782/-. No TDS was made by the appellant at the time of making payments towards supply of labour to the company. The provision of section 194C are attracted in the case of payment for, carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the parties. On the basis of the above facts, I am convinced that the provisions of section 194C are clearly attracted in respect of payment of Rs.62,71,782/- and I am also convinced that the disallowance made by the Assessing Officer by invoking the*

provisions of section 40(a)(ia) of the Act is legally correct. Therefore, the Assessing Officer is directed to restrict the disallowance to Rs.62,71,782/-instead of Rs.65,50,000/-."

17. Considering the above, we find, the CIT (A) correctly adjudicated the issue and discussed the matter at length before granting relief to the assessee. Therefore, we find, the decision taken by the CIT(A) is fair and reasonable and it does not call for any interference.

18. In the result, appeal of the assessee is dismissed and the appeal of the Revenue is allowed for statistical purposes.

ITA No. 2809/Mds/2014 (AY 2009-2010)
(By Revenue)

19. This appeal filed by the Revenue on 13.11.2014 is against the order of the CIT (A)-VI, Chennai dated 30.7.2014 for the assessment year 2009-2010.

20, In this appeal, Revenue raised 10 ground in toto and they revolve around the solitary issue relating to the invoking of the provisions of section 40A(3) of the Act. This issue is identical to that of the one raised by *the Revenue in its appeal for the AY 2008-09, which is adjudicated by us in the above paragraphs of this order. Considering the commonality of the issue raised in the present appeal with that of the one raised in the Revenue's appeal for the AY 2008-09, our decision given therein squarely applies to the present appeal too. Considering the same, grounds raised by the Revenue are allowed for statistical purposes."*

3. Having heard the learned counsel for the parties, we are of the opinion that since the matter stood remitted by the learned Tribunal with regard to Section 40A(3) of the Act, to first determine whether there was a contract of Agency Agreement between the Appellant/Assessee, an individual viz., Mr.R.Venugopal and the Company by name M/s.Srinivas Buildtech Pvt Ltd (SNBT) where the Assessee was the Managing Director, therefore, unless such contractual relationship is established, both the issues with regard to disallowance under Section 40A(3) of the Act for Assessee having made cash payments to the Company for the alleged purchases of raw materials and building materials and also applying Section 40(a)(ia) of the Act for Service Charges paid by the Assessee to the Company for such agency work of purchasing those materials without deduction of

Income Tax at Source cannot be determined.

4. Since both the issues are inter-related and since the matter stood remitted by the learned Tribunal vide para 12 aforequoted for Section 40A(3), the issue with regard Section 40(a)(ia) of the Act also ought to have been restored to the file of the CIT (A).

5. We do not find any substantial question of law to be arising in the present Appeals filed by the Assessee before this court. Hence, we dispose of the Appeals without answering the questions as raised in the Appeal.

6. With this observation, and with a direction to the Assessee to establish his case before the CIT (A) by adducing relevant evidence as directed by the learned Tribunal regarding Agency Agreement, etc., the Appeals are disposed of. The learned Commissioner of Income Tax (Appeals) shall decide both the issues under Section 40A(3) and Section 40(a)(ia) afresh in accordance with law. No costs.

(V.K.,J.) (M.S.R.,J.)
1.12.2020

Index : Yes/No
Internet : Yes/No
ssk/ds.
To
1. Income Tax Appellate Tribunal,
'D' Bench, Chennai.

2. Deputy Commissioner of Income Tax,
Circle I, D.P.Thottam Muthialpet, Pondicherry 605 003.

DR.VINEET KOTHARI, J.
and
M.S.RAMESH, J

ssk.

T.C.(A) Nos.15 to 17 of 2017

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