IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

I.T.A. NO.535 OF 2016

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
TDS, NO.59, HMT BHAVAN
4TH FLOOR, BALLARI ROAD
GANGANAGAR, BENGALURU-560032.

2. THE ASST. COMMISSIONER OF INCOME-TAX
TDS, CIRCLE-1(1), NO.59
HMT BHAVAN, 4TH FLOOR
BALLARI ROAD, GANGANAGAR
BENGALURU-560032.

... APPELLANTS

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

AND:

THE DIRECTOR OF TECHNICAL EDUCATION
TECHNICAL EDUCATION BUILDING
OPP. MAHARANI COLLEGE
PALACE ROAD, BENGALURU-560001
PAN: BLRDO 2314E.

... RESPONDENT

(BY SRI. VIKRAM HUILGOL, ADV.)

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THIS I.T.A. IS FILED UNDER SEC. 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 20.05.2016 PASSED IN ITA NO.1124/BANG/2015 FOR THE ASSESSMENT YEAR 2011-12, PRAYING TO:

(i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.

(ii) ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BENGALURU IN ITA NO.1124/BANG/2015 DATED 20.05.2016 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST. COMMISSIONER OF INCOME TAX, TDS, CIRCLE-1(1), BENGALURU.

(iii) PASS SUCH OTHER SUITABLE ORDERS AS THIS HON'BLE COURT DEEMS FIT TO GRANT IN THE FACTS AND CIRCUMSTANCES OF THE CASE IN THE INTEREST OF JUSTICE AND EQUIYT.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.,** DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2011-12. The appeal was admitted by a Bench of this Court vide order dated 31.10.2017 on the following substantial question of law:

> *"Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the assessee is not liable to deduct tax on payments made to M/s. Karnataka Board and M/s. Rites Ltd for rendering of services in connection*

with construction of Engineering and Polytechnic college Buildings in the State of Karnataka even when the nature of the relationship between assessee and said parties are in nature of contractor/contractee as per agreement of DTE with KHB & Rites, the work entrusted by them is not merely consultancy but overall responsibility of construction of the building right from design to completion of work which attracted provision 194c and 194J of the Act and as such the assessee was liable to deduct tax on payment made to said parties?".

2. Facts leading to filing of this appeal briefly stated are that the assessee is Technical Education Department of Government of Karnataka which is incharge of academic and administrative functions of controlling technical education in the State of Karnataka. As part of its activities, the construction of engineering and polytechnic college buildings was required. The assessee, therefore, entered into construction

agreements with Karnataka Housing Board and with M/s. RITES Ltd. for construction of engineering and polytechnic college building construction work which was entrusted to them. There was an information to the effect that the assessee has not deducted tax as required under Section 194C of the Act in respect of the payments made under the contracts with Karnataka Housing Board and RITES Ltd. Therefore, an enquiry was conducted on 13.08.2013 and the assessee furnished the details. As per the details furnished by the assessee, tax was not deducted in respect of the payments made under the agreement. Since the assessee had failed to deduct the tax as required under Section 194C of the Act, the provisions of Section 201(1) of the Act were attracted and a show cause notice dated 16.08.2013 was served on the assessee. The assessee filed a response to the same. The Deputy Commissioner of Income-tax passed an order under Section 201(1) of the Act and held that since the assessee had failed to deduct the tax as required under Section 194C of the Act, the assessee was treated as an assessee in default and it was held that the assessee is liable to pay Rs.1,79,76,000/-. The demand notice was issued accordingly.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals), who by an order dated 28.10.2014, allowed the appeal preferred by the assessee. The aforesaid order was challenged by the revenue before the Tribunal. The Tribunal, by an order dated 20.05.2016, dismissed the appeal preferred by the revenue. In the aforesaid factual background, the revenue has filed this appeal.

4. Learned counsel for the revenue submitted that the Commissioner of Income Tax (Appeals) as well as the Tribunal ought to have appreciated that the relationship between the assessee and RITES and Karnataka Housing Board was principal and agent and

therefore, the provisions of Section 194C of the Act were attracted to the fact situation of the case and the assessee was therefore an assessee in default and accordingly, the Assessing Officer has rightly raised the demand. However, the aforesaid aspect of the matter has neither been appreciated by the Commissioner of Income Tax (Appeals) nor by the Tribunal.

5. On the other hand, learned counsel for the assessee submitted that whether the provisions of Section 194C of the Act would apply to the fact situation of the case, is a finding of fact. It is further submitted that the concurrent finding of fact has been recorded in favour of the assessee by the Commissioner of Income Tax (Appeals) as well as the Tribunal and both the authorities under the Act have correctly held that the provisions of 194J of the Act are applicable to the fact situation of the case. The aforesaid finding of fact, in any stretch of imagination, cannot be said to be

perverse warranting interference under Section 260A of the Act.

6. We have considered the submissions made on both sides and have perused the record. The Commissioner of Income Tax (Appeals) in its order dated 28.10.2014 inter alia held that the assessee is a wing of Government of Karnataka carrying out the constitutionally mandate function of imparting education to the students int eh state of Karnataka. It was further held that appellant controls the technical education being provided in around 195 Engineering Colleges, 291 Polytechnic Colleges, 12 Junior Technical Schools and 76 fine Arts College. It has further been held that the government of Karnataka directed the assessee to appoint a particular agency like M/s Rites Ltd. Or M/s Karnataka Housing Board for every new building. The agency is remunerated by providing a specific percentage usually around 7% to 10% of the project cost for each building in the form of service charges. It

has further been held in paragraph 8.10, the Commissioner of Income Tax (Appeals) has gone into details of memorandum of understanding entered into with M/s Rites Ltd. or M/s Karnataka Housing Board and has held that the provisions of Section 194C are not applicable to the facts of the case. The aforesaid finding of fact has been affirmed by the tribunal. In the peculiar facts of this case, we are not inclined to interfere with the concurrent findings of fact, in the absence of any perversity being demonstrated before us. Therefore, the substantial question of law is answered against the revenue and in favour of the assessee.

In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

RV/ss