



IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 5<sup>TH</sup> DAY OF SEPTEMBER, 2012

PRESENT

THE HON'BLE MR. JUSTICE K.SREEDHAR RAO

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

**I.T.A. No. 1425 OF 2006**

**C/W.**

**I.T.A. Nos.1426, 1427, 1428 & 1429/2006**

**I.T.A. No. 1425 OF 2006:-**

**BETWEEN:-**

1. The Commissioner of Income Tax,  
C.R. Building,  
Queens Road,  
Bangalore.
2. The Income Tax Officer (TDS),  
Ward - 16(3),  
Bangalore.

Appellants

(By Sri Indrakumar, Sr. Counsel for G. Kamaladhar, Adv.)

**AND:-**

The Bangalore District Cooperative Milk  
Producers Societies Union Ltd.,  
Dr. M.H. Marigowda Road,  
Bangalore.

Respondent

(By Sri S.Parthasarathi and Vijay Kumar Punna, Advocates)

This I.T.A. is filed U/s.260-A of I.T. Act, 1961 arising out of order dated 19.05.2006 passed in I.T.A.No.350/Bang/2006 for the Assessment Year 2004-05, praying that this Hon'ble Court may be pleased to (i) formulate the substantial questions of law stated therein and (ii) allow the appeal and set-aside the Order of the ITAT, Bangalore in ITA No.350/Bang/2006 dated 19.05.2006 & confirm the order of the Appellate Commissioner confirming the order of Income Tax Officer (TDS), Ward -16(3), Bangalore, in the interest of justice and equity.

**I.T.A. No. 1428 OF 2006:-**

**BETWEEN:-**

1. The Commissioner of Income Tax,  
C.R. Building,  
Queens Road,  
Bangalore.
2. The Income Tax Officer (TDS),  
Ward - 16(3),  
Bangalore.

Appellants

(By Sri Indrakumar, Sr. Counsel for G. Kamaladhar, Adv.)

**AND:-**

The Bangalore District Cooperative Milk  
Producers Societies Union Ltd.,  
Dr. M.H. Marigowda Road,  
Bangalore.

Respondent

(By Sri S.Parthasarathi and Vijay Kumar Punna, Advocates)

This I.T.A. is filed U/s.260-A of I.T. Act, 1961 arising out of order dated 19.05.2006 passed in I.T.A.No.353/Bang/2006 for the Assessment Year 2002-03, praying that this Hon'ble Court may be pleased to (i) formulate the substantial questions of law stated therein

and (ii) allow the appeal and set-aside the Order of the ITAT, Bangalore in ITA No.353/Bang/2006 dated 19.05.2006 & confirm the order of the Appellate Commissioner confirming the order of Income Tax Officer (TDS), Ward -16(3), Bangalore, in the interest of justice and equity.

**I.T.A. No. 1427 OF 2006:-**

**BETWEEN:-**

1. The Commissioner of Income Tax,  
C.R. Building,  
Queens Road,  
Bangalore.
2. The Income Tax Officer (TDS),  
Ward - 16(3),  
Bangalore

Appellants

(By Sri Indrakumar, Sr. Counsel for G. Kamaladhar, Adv.)

**AND:-**

The Bangalore District Cooperative Milk  
Producers Societies Union Ltd.,  
Dr. M.H. Marigowda Road,  
Bangalore.

Respondent

(By Sri S.Parthasarathi and Vijay Kumar Punna, Advocates)

This I.T.A. is filed U/s.260-A of I.T. Act, 1961 arising out of order dated 19.05.2006 passed in I.T.A.No.352/Bang/2006 for the Assessment Year 2001-02, praying that this Hon'ble Court may be pleased to (i) formulate the substantial questions of law stated therein and (ii) allow the appeal and set-aside the Order of the ITAT, Bangalore in ITA No.352/Bang/2006 dated 19.05.2006 & confirm the order of the Appellate Commissioner confirming the order of Income Tax Officer (TDS), Ward -16(3), Bangalore, in the interest of justice and equity.

**I.T.A. No. 1429 OF 2006:-****BETWEEN:-**

1. The Commissioner of Income Tax,  
C.R. Building,  
Queens Road,  
Bangalore.
2. The Income Tax Officer (TDS),  
Ward – 16(3),  
Bangalore.

Appellants

(By Sri Indrakumar, Sr. Counsel for G. Kamaladhar, Adv.)

**AND:-**

The Bangalore District Cooperative Milk  
Producers Societies Union Ltd.,  
Dr. M.H. Marigowda Road,  
Bangalore.

Respondent

(By Sri S.Parthasarathi and Vijay Kumar Punna, Advocates)

This I.T.A. is filed U/s.260-A of I.T. Act, 1961 arising out of order dated 19.05.2006 passed in I.T.A.No.354/Bang/2006 for the Assessment Year 2003-04, praying that this Hon'ble Court may be pleased to (i) formulate the substantial questions of law stated therein and (ii) allow the appeal and set-aside the Order of the ITAT, Bangalore in ITA No.354/Bang/2006 dated 19.05.2006 & confirm the order of the Appellate Commissioner confirming the order of Income Tax Officer (TDS), Ward -16(3), Bangalore, in the interest of justice and equity.

**I.T.A. No. 1426 OF 2006:-****BETWEEN:-**

1. The Commissioner of Income Tax,  
C.R. Building,

Queens Road,  
Bangalore.

2. The Income Tax Officer (TDS),  
Ward – 16(3),  
Bangalore.

Appellants

(By Sri Indrakumar, Sr. Counsel for G. Kamaladhar, Adv.)

AND:-

The Bangalore District Cooperative Milk  
Producers Societies Union Ltd.,  
Dr. M.H. Marigowda Road,  
Bangalore.

Respondent

(By Sri S.Parthasarathi and Vijay Kumar Punna, Advocates)

This I.T.A. is filed U/s.260-A of I.T. Act, 1961 arising out of order dated 19.05.2006 passed in I.T.A.No.351/Bang/2006 for the Assessment Year 2000-01, praying that this Hon'ble Court may be pleased to (i) formulate the substantial questions of law stated therein and (ii) allow the appeal and set-aside the Order of the ITAT, Bangalore in ITA No.351/Bang/2006 dated 19.05.2006 & confirm the order of the Appellate Commissioner confirming the order of Income Tax Officer (TDS), Ward –16(3), Bangalore, in the interest of justice and equity.

These appeals are coming on for hearing this day, **SREEDHAR RAO, J.**, delivered the following:

### **J U D G M E N T**

The respondent – assessee is a milk producers society.

The respondent invited tenders for supply of sachets of specification to the effect that sachets should have emblem,

logo, name, quantity and price etc., printed on the sachets. The successful tenderers supplied sachets according to the specifications. The assessee has filed the return for the assessment years 1999-2000 to 2004-05 in respect of which the present appeals have arisen.

2. The A.O has found that the supply of sachets by the successful tenderers was in the nature of "works contract" and TDS should have been deducted. Thus, called upon the assessee to pay the TDS amount. The Commissioner of Income Tax, (Appeals) confirmed the order of the A.O. The Appellate Tribunal held that the transaction is not "works contract" and purchase of materials and hence deduction of TDS does not arise. The Revenue aggrieved by the said orders, has filed these appeals.

3. Sri Indira Kumar, learned counsel for the appellants relied upon the decision of the Supreme Court in the case of STATE OF TAMILNADU Vs. ANANDAM VISWANATHAN 73 STC 1 In pages 13 and 14, the following observations are

made to bring home the point as to whether the transaction amounts to 'works contract' or 'sale'.

4. The counsel for the appellants also referred to Circular No.715 dated 8<sup>th</sup> August, 1995 issued by the Central Board of Direct Taxes (CBDT) wherein the question No.15 is answered which reads as follows:-

“Question 15: Whether section 194C would apply in respect of supply of printed material as per prescribed specifications?

Answer: Yes.”

5. On the basis of the said material, it is contended that the contract is a 'works contract' because the materials supplied by the tenderer could not have been sold to any others in the open market, the product being customised according to the specifications of the assessee, the contract amounts to 'works contract'. Therefore, the TDS is to be deducted. Per contra, the learned counsel for the respondent referred to Circular No.13/2006 dated 13.12.2006 of CBDT. In para 2 of the Circular, the following clarifications is given:

2. The matter has been examined by the Board and it is considered that exclusive reliance on Question/Answer No.15 of Circular No.715, without taking into account the principles laid down in Circular No.681 is not justified. Before taking a decision on the applicability of TDS under section 194C on a contract, it would have to be examined whether the contract in question is a 'contract for work' or a 'contract for sale' and TDS shall be applicable only where it is a 'contract for work'."

6. The counsel for the appellants further submitted that under Section 194C (7) (iv) of the I.T. Act defines the 'work' in the following manner:-

**"194C(7)(iv)** "work" shall include-

- (a) advertising;
- (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
- (c) carriage of goods or passengers by any mode of transport other than by railways;
- (d) catering;
- (e) manufacturing or supplying a product according to the requirement of specification of a customer by using material purchased from such customer,

but does not include manufacturing or supplying a product according to the requirement or specification of a customer by

using material purchased from a person, other than such customer.”

7. Section 194 (c) makes it mandatory on the person who make the payment to any resident for carrying out any works to deduct TDS. The definition of work U/s.194C excludes the liability of TDS when work involves the manufacture and supply of goods where the material is not supplied by the customers. The contractor secured the material from some other source. The TDS becomes enforceable when such material is supplied by the customer (assessee).

8 In the instant case, for purchase of sachets of particular specification, the tenders were called, the successful tenderers has supplied the sachets according to the specification which amounts to sale and does not come within the purview of the work as defined 194C (7) (iv) explanation L4 of the I.T. Act. The counsel also referred to the decision of this Court in the case of **Commissioner of Income Tax Vs Karnataka Power Transmission**

**Corporation Ltd. 21 TAXMANN.COM 473 (KAR).** In para

14, the following observations are made:-

“When the statute was amended to clarify the word “work” under Section 194C by introducing the aforesaid clause, it is obvious that the amendment is only clarifactory in nature and therefore it is retrospective. The Parliament did not intend to change the law because of conclusion which resulted in litigation. The Parliament though it fit to clarify by way of amendment so that the litigation could be avoided. In view of the aforesaid clarification and the statutory provision, it is clear that “work” did not include manufacturing or supplying a product according to requirement upon specification a customer by using raw-materials purchased from a person other than such customer, as such a contract is a contract for sale.”

9. It is strenuously contended by Sri Indira Kumar that explanation 4(e) was not in statute earlier to 1.6.08 and not applicable to the assessment years. Explanation 4(a) to (d) was alone part of the statute. The criteria to decide whether it amounts to works contract or sale would depend upon the nature of contract and legal incidences thereupon. In that view, argued that the decision of the Supreme Court in the case of STATE OF TAMILNADU Vs. ANANDAM

VISWANATGHAN 73 STC 1, would become relevant for consideration and it amounts to 'works contract'.

10. Upon thoughtful consideration of the submissions made at the Bar, we find this Court in KPTCL's case has held that amendment to definition of 'work' U/s 194C, (7)(iv) of the IT Act, is clarificatory in nature and retrospective. In the light of the said ratio, if the facts of this case are read, the assessee has not supplied any material. However, the tenderer has secured the material from other source and has supplied the same to the assessee. May be in the instant case, some of the features of works contract may overlap, but however, that should not have been taken as necessary criteria to determine the nature of work. The explanation 'Works Contract' has a definite legal connotation. What is stated in the Section 194C(1) is for "carrying out any works" between the contractor and specified person. The work is also defined to exclude the situation where the material is not supplied by the assessee. In view of the specific definition of work, it is to be held that contract amounts to

sale and not works contract. The fact that Clause (a) the definition of work was amended subsequently and not in the statutory book for the relevant years in question would not be of consequence because of the ratio laid down in KPTCL's case. The definition is clarificatory in nature. In that view, the question of law is answered against the revenue. The appeals are dismissed.

Sd/-  
JUDGE

Sd/-  
JUDGE

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