

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 18TH DAY OF JULY 2016/27TH ASHADHA, 1938

I.T.No. 28 of 2015

AGAINST THE ORDER IN I.T.A.153/2014 of I.T.A.TRIBUNAL, COCHIN BENCH, DATED 8.8.14

APPELLANT/APPELLANT/ASSESSEE:

SMT.PRASANNA RADHA KRISHNAN, PROPRIETRIX
M/S. R.K.GAS AGENCY, CALICUT.

BY ADVS.SRI.PPARAMESWARAN NAIR
SRI.SOORAJ T.ELENJICKAL
SMT.V.A.HARITHA
SMT.SANDHYA R.NAIR
SMT.PM.MAZNA MANSOOR

RESPONDENT/RESPONDENT/REVENUE:

THE INCOME TAX OFFICER
WARD 1(2), CALICUT.

R BY SRI.P.K.R.MENON, SC, FOR INCOME TAX

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 18-07-2016, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1: TRUE COPY OF THE ORDER OF ASSESSMENT DATED 30.12.2011 FOR THE YEAR 2009-2010 ISSUED TO THE APPELLANT.

ANNEXURE 2: TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX DATED 21.11.2012.

ANNEXURE 3: TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH DATED 7.6.2013.

ANNEXURE 4: TRUE COPY OF THE REMAND REPORT OF THE RESPONDENT TO THE COMMISSIONER OF INCOME TAX (APPEALS), CALICUT.

ANNEXURE 5: TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 9.1.2014.

ANNEXURE 6: TRUE COPY OF THE ORDER DATED 8.8.2014 OF THE INCOME TAX APPELLATE TRIBUNAL.

// TRUE COPY //

P.A. TO JUDGE

ANTONY DOMINIC & DAMA SESHADRI NAIDU, JJ.

I.T.A.No.28 of 2015

Dated this the 18th day of July, 2016

JUDGMENT

Antony Dominic, J.

This appeal is filed by the assessee challenging the order passed by the Income Tax Appellate Tribunal, Cochin Bench in I.T.A.No.153/14. During the assessment year 2009-2010, on the ground of non compliance of Section 194C in respect of the payments made by the assessee to one Suresh, who was found to be a sub-contractor, the amounts paid were disallowed under Section 40(a)(ia) of the Income Tax Act. The assessee filed appeal and the Commissioner (Appeals) considered the contention of the assessee that Sri.Suresh was only an employee and not a sub-contractor for transportation of the Liquefied Petroleum Gas manufactured and marketed by Hindustan Petroleum Corporation Limited whose distributor is the assessee.

2. In his order, the Commissioner came to the factual finding that Sri.Suresh is a Sub Contractor of the assessee and that from out of the payments made to such a sub-contractor, deduction under Section 194C should have been made. The Commissioner, accordingly, found that since the assessee has not made deduction under Section 194C, disallowance under Section 40(a)(ia) of the Act is legal. This order was again challenged by the assessee before the Income Tax Appellate Tribunal by filing I.T.A.No. 153/14 and by the impugned order, the Tribunal dismissed the appeal. It is this order, which is under challenge before us.

3. We heard the counsel for the appellant and the learned Senior Standing Counsel appearing for the Revenue.

4. The question of law that is framed for our consideration is whether the Tribunal ought to have held that the appellant is not liable to deduct tax under Section 194C and whether the Tribunal should have deleted the addition of income on account of

disallowance under Section 40(a)(ia) of the Income Tax Act. Although the contention that Sri.Suresh being only an employee of the assessee and that, therefore, Section 194C is not attracted, is reiterated before us, we find that, on facts, the Tribunal came to a finding that Sri.Suresh is a sub-contractor of the assessee. This factual finding of the Tribunal is based on its findings that lump sum payments were made by the assessee to Suresh and that Suresh was entirely responsible for transportation without even accounting to the assessee the expenses incurred by him for discharge of the transportation work. Tribunal further found that if Suresh was her employee as contended by the assessee, Suresh would have furnished to the assessee the truck numbers, names and addresses of the truck owners, drivers and the payments made by him to each of the trucks engaged by him. Tribunal found that none of these details were furnished by the assessee at any stage of the proceedings either before the Assessing Officer or the 1st

Appellate Authority or the Tribunal. Such a finding of fact arrived at by the Tribunal that Sri.Suresh was a sub-contractor, is not perverse to be interfered in an appeal under Section 260A of the Income Tax Act. Once we accept the status of Sri.Suresh as a sub-contractor, the liability under Section 194C is automatically attracted. Admittedly, the assessee has not effected deduction under the said Section. Consequence thereof is disallowance under Section 40(a)(ia) of the Income Tax Act.

5. In such circumstances, the order passed by the Tribunal dismissing the appeal of the assessee does not merit interference. Therefore, answering the question of law framed in favour of the Revenue and against the assessee, this appeal is dismissed.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
DAMA SESHADRI NAIDU
JUDGE