(2014) 12 GUJ CK 0026

In the Gujarat High Court

Case No : Tax Appeal Nos. 211 and 440 of 2006

Chalthan Vibhag Khand APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:
Income Tax Act, 1961 — Section 194C, 201(1)

Citation : (2014) 12 GUJ CK 0026

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : J.P. Shah and Manish J. Shah, Advocate for the Appellant; Sudhir M. Mehta, Advocate for the Respondent

Judgement

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K.S. Jhaveri, J.—Since, the issue involved in both these appeals is common, they are heard together and disposed of by this common judgment.

2. Tax Appeal No. 211 of 2006 is filed by Shree Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd., seeking to challenge the order of the learned ITAT, Surat (for short, ''the Tribunal''), Dated: 31.08.2005, rendered in ITA No. 3691/Ahd/2004 for the A.Y. 2003-04, whereas, Tax Appeal No. 440 of 2006 is preferred by Shree Madhi Vibhag Khand Udyog Sahakari Mandli Ltd., seeking to challenge the order of the learned ITAT, Surat, Dated: 31.08.2005, rendered in ITA No. 3734/Ahd/2004 for the A.Y. 2003-04.

3. The brief facts of the case are that the appellants-assesses in both the appeals are the Cooperative Societies, which deal in the manufacture of sugar from the sugarcane supplied by the farmers and sell, thereof. According to the appellants, they used to purchase the sugarcane from the farmers on condition that the farmers will supply the same to the gate of the factory of the respective appellant. Later on, the Revenue issued notices to the appellants, holding them defaulter under Section 201(1) of the Income Tax Act, 1962 (''the Act'' for short).

The revenue also levied penalty on the appellants for committing breach of the aforesaid section. Hence, the appellants approached the learned CIT(A), which dismissed the appeals of the assesses. Being aggrieved thereby, the assesses carried the matter before the learned ITAT, which passed the impugned orders. Hence, the present appeals.

4. At the time of admitting these appeals, this Court framed the following question;

"Whether in the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was liable under Section 194C to deduct tax from the payments made by the farmer''s Samiti in respect of various expenses including labour charges, transport charges, insurance charges etc. on behalf of farmers?"

5. Mr. Shah, learned Advocate for the appellants, submitted that the Tribunal committed grave error in passing the impugned orders, as it failed to appreciate the material on record as well as the provisions of Section 194C of the Act in its proper perspective. Mr. Shah, submitted that the assesses purchased sugarcanes from the farmers, on condition that they shall supply the same at the factory gate and the same being a part of sale transaction, they are not required to deduct TDS.

6. In support of his submissions, Mr. Shah placed reliance on a decision of this Court in Commissioner of Income Tax (TDS) Vs. Krishak Bharati Co-Operative Ltd., .

7. As against this, Mr. Mehta, learned Advocate for the respondent-Revenue, supported the orders passed by the Tribunal and submitted that the supply of sugarcanes at the factory gate being a work contract, the Tribunal rightly passed the impugned order and the present appeals be dismissed.

8. In support of his submissions, Mr. Mehta relied on the following decisions;

(1) Shree Choudhary Transport Company Vs. Income Tax Officer, ;

(2) Palam Gas Service Vs. Commissioner of Income Tax, .

9. Heard, learned Counsels for the parties and perused the material on record as well as the orders passed by the learned CIT(A) and the Tribunal. It is an admitted position that in the case on hand the assesses-cooperative societies used to purchase the sugarcanes from the farmers, on condition that the farmers shall supply the same at the gate of their respective factory. Meaning thereby, here, the supply of sugarcane at the gate of the factories of the assesses is not a separate work contract, but, it is essentially the part of the sell transaction. In that view of the matter, here, it would be relevant to refer to the decision of this Court in "CIT (TDS) vs. Krishak Bharti Co-Operative Ltd." (Supra). In that case, the assessee was engaged in the manufacture of fertilizers and for the said purpose, it used to consume natural gas. The assessee, therein, was supplied

natural gas by different agencies through pipelines. In that case, according to the Revenue, while purchasing the gas from different agencies, the assessee had entered into a work contract for transportation of natural gas from the seller''s premises to the buyer''s consumption point, and therefore, they held that the assessee, therein, was required to deduct TDS. However, this Court, in that case, hold that to transport the gas was a part of sale transaction, and therefore, the assessee, therein, was not required to deduct TDS. In our view, therefore, the decision of the Apex Court in the case of "CIT (TDS) vs. Krishak Bharti Cooperative Ltd."(Supra) applies in full force to the facts of this case. The aforesaid provision would apply to the person, who had paid any sum, and the respondent has not paid any charges. The case of the assessee in Tax Appeal No. 211 of 2006 is identical, and hence, the authorities below grossly erred in interpreting the provisions of law, and therefore, the grounds urged by the appellant find favour with us.

10. In the case on hand, the supply of sugarcanes at the gates of factories of the respective assesses was a part of sale transaction, and therefore, we are of the opinion that the assesses are not liable to deduct TDS. In view of the above discussion, the decisions relied on by Mr. Mehta shall not apply to the facts of the present case. Hence, the present appeals deserve to be allowed.

11. In the result, both the appeals are ALLOWED. The orders of the Tribunals, Dated: 31.08.2005, are QUASHED and set aside. The question of law arising in these appeals is answered in favour of the appellant-assesses and against the respondent-Revenue. No order as to costs.

