

(2016) 06 CAL CK 0034

In the Calcutta High Court

Case No : G.A. No. 240 of 2011, I.T.A.T. No. 17 of 2011 and I.T.A.T. No. 78 of 2011

Commissioner of Income Tax-X, Kolkata

APPELLANT

Vs

M/s. Vikas Coal Co.

RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Income Tax Act, 1961 — Section 194C

Citation : (2016) 385 ITR 536

Hon'ble Judges : Girish Chandra Gupta and Tapash Mookherjee, JJ.

Bench : Division Bench

Advocate : Mr. J.P. Khaitan, Sr. Advocate, Mr. Sanjay Bhowmik, Mr. Siddharth Das and Mr. C.S. Das, Advocates, for the Appellant; Ms. Smita Das De, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. The appeal is directed against a judgment and order dated 3rd September, 2010 passed by Income Tax Appellate Tribunal, ?B? Bench, Kolkata in ITA No. 1754/Kol/2009 pertaining to the assessment year 2006-07 by which an appeal preferred by the assessee was allowed. The question was whether due to omission on the part of the assessee to deduct tax at source at the time of payment of freight in cash or by cheque, at the prescribed rate, should have entailed disallowance of the expenditure under Section 40(a)(ia). The case of the assessee was that he did not deduct tax because forms bearing no. 15 I were submitted by the truck owners. The forms submitted by the assessee were rejected by the Assessing officer because of the deficiencies pointed out by him. CIT upheld the order of the Assessing Officer. In an appeal before the learned Tribunal the Tribunal has given a clean chit to the assessee holding that "hiring of the trucks as well as payments made to them by the assessee was not as a result of any written or oral contracts. Even if the said parties are considered as transporters, the Revenue having not brought any material on record to establish that the hiring of vehicle from them and the payments thereof were in

consequence of any written or oral agreement, the observation of the Ld. CIT(A) that the oral agreement can be ascertained from the accounts and the conduct of the parties is not sustainable (vide ITA No. 247/CTK/09 decided by the Cuttack Bench of the ITAT on 04.12.09). In this case, since the assessee has established the fact that there is no contract either oral or written in execution of the said transport work with the transporters, we are of the view that the observation made by the Ld. CIT(A) is not based on the facts of the case. Therefore, we set aside the orders of the revenue authorities on this issue and direct the AO to delete the addition of Rs. 5,26,014/- sustained by the Ld. CIT(A)."

2. The learned Tribunal recorded the aforesaid finding in para 8.2 of its impugned judgment whereas the learned Tribunal in paragraph 6 of its judgment held as follows :

"At the time of hearing before us, the Ld. Counsel, appearing on behalf of the assessee, has reiterated his submissions made before the revenue authorities, mainly on the issue of dis-allowance of Rs. 3,22,34,713/-, by submitting that provisions of Section 194C for deduction of TDS will apply only when there is a written contract or agreement between the payer and payee. This argument can be not accepted. Section 194C clearly mentions that the person responsible for paying any sum to a contractor/sub-contractor for carrying out any work in pursuance of a contract between the contractor/subcontractor and that person should deduct TDS at the time of crediting that sum to the account of the contractor/subcontractor or payment of that sum whichever is earlier. In case of the assessee firm the transporters who are transporting goods are doing the work of "carriage of goods" which is very much included in the expression ? work? as per Explanation III provided below clauses (1) and (2) of Section 194C. When the transporter does the transportation for the assessee there is very much a contract between him and the assessee in which various terms about the type of work to be done and charges to be paid for the same are decided. For this there need not be any written contract or agreement. The oral informal agreement is enough for being covered under section 194C. The mere fact that the transporters were engaged randomly from the roadside does not make the dealing between the assessee and the transporters non-contractual. Further, the mere fact that the assessee has deducted TDS in case of some transporters and has attempted to obtain Forms 15I for others shows that the assessee was aware about its responsibility to deduct TDS under section 194C. The above plea is now being taken only to wriggle out of the addition made by the Assessing Officer."

3. Upon comparison of what was held by the learned Tribunal in paragraph 8.2 and what was held in paragraph 6 what is discernible is that the learned Tribunal has expressed conflicting opinions. The conflicting opinions expressed by the same members in the same judgment is a pointer to show that in the discharge of judicial function there was lack of sincerity to say the least. The Revenue has come up in appeal and the following question of law was formulated on 1st February, 2011 :

"Whether the learned Tribunal below was justified in deleting the addition of Rs. 3,18,00,351.00 on the ground that there was no contract between the assessee firm and the transporter despite the fact that the assessee filed 15-I bogus form indicating that the transaction was in the nature of contract ?"

4. We have no hesitation in holding that the deletion of the addition of a sum of rupees more than 3 crores was made without applying mind and in a most slipshod manner. We hope and trust that this judgment shall bring the learned members back to their senses and they shall be more careful. They are reminded that the persons discharging judicial function are the priests of justice and they should do the honour of their job sincerely and gravely. We hope we shall not have any occasion in future to repeat this warning. The appeal is allowed and the matter is remanded to the learned Tribunal for rehearing of the appeal in accordance with law.