(2014) 08 KAR CK 0182

In the Karnataka High Court

Case No : Income Tax Appeals Nos. 26 to 31 and 184 to 186 of 2014

Karnataka Rural Infrastructure Development Ltd. APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 18-08-2014

Acts Referred:

Income Tax Act, 1961 — Section 133A, 194C

Citation : (2015) 370 ITR 222

Hon'ble Judges : Rathnakala, J;N. Kumar, J

Bench : Division Bench

Advocate : A. Shankar and M. Lava, Advocates for the Appellant; K.V. Aravind, Advocates for the Respondent

Judgement

N. Kumar, J.—These appeals are preferred by the common assessee against the common order passed by the Tribunal holding that the payment is made to group leaders, who are not employees of the company, they are outsides and, therefore, the provisions of section 194C of the Income-tax Act, 1961 (hereinafter referred to as "the Act") is attracted. The assessee is a State Government undertaking and it is an approved corporation of the Government of Karnataka for executing civil works-assigned by the various Government authorities/departments in the State of Karnataka. On November 23, 2011, a survey under section 133A of the Act was conducted in the premises of the assessee to verify the applicability of TDS provisions for the financial year 2008-09 to 2010-11. The assessee produced sample copies of the job work bill and JE bill/voucher against the advance payments to the engineers/task force committee (TFC). The statements of the assistant engineer was recorded on September 5, 2011. The assessing authority on considering the material on record held that the group leader acts as an agent between the contractor and labourers. The group leader receives the payment not only for his own work and also on behalf of the labourers, Therefore, the group leaders are none other than the contractors. The nature and activity of the contractor are similar to that of the group leaders and, therefore, the provisions of section 194C of the Act is attracted. Aggrieved by the said order, the assessee preferred an appeal to the Commissioner of Income-tax (Appeals). The Appellate Commissioner was of the view that the advances released to its employees by the assessee for labour/ wage payment cannot be formed and qualified as a sub-contractor payment in the absence of contract agreement or documentary evidence. Therefore, the Appellate Commissioner set aside the order passed by the assessing authority. Aggrieved by the said order, the Revenue preferred an appeal to the Tribunal. The Tribunal by the impugned order held that when the assessing authority in the course of proceedings before him, called upon the assessee to produce proof for the payment made towards the labour directly to individual workers, the asses-see pleaded his inability to produce such details as no such details were maintained by the assessee. In those circumstances, the assessing authority took the view that the group leaders are not employees of the company and are outsiders. They are paid on the basis of cubic meter, running meter and square meter on fixed price according to the SR rates of the PWD. There was no evidence for individual payments to workers individually and, therefore, the payment to the group leaders constituted payment for execution of work and, therefore, attracted the provisions of section 194C of the Act. Accordingly, the appeal was allowed. The order passed by the Appellate Commissioner was set aside and the order passed by the assessing authority was restored. Aggrieved by the said order, the assessee is in this appeal.

2. Learned counsel for the appellant-corporation assailing the impugned order submits that the advances paid to the engineers are in turn paid to the daily wage labourers through the group leaders and, therefore, the group leaders are not contractors. The group leaders are also one among the workers. In fact, according to the standing orders of the Karnataka Land Army Corporation Ltd., which is a Government of Karnataka undertaking, the receipts are obtained from the workers, who execute the work and the attendance of the workers is also maintained by the group leaders. If the amount is paid to the group leaders, there is no obligation on the part of the assessee to take receipts from the individual workers as well as the attendance. These aspects have not been considered by both the assessing authority as well as the Tribunal. He further submits that for the subsequent year, the Appellate Commissioner has remanded the matter back to the assessing authority to consider whether there is any agreement between the assessee and the labour heads or the group leaders with reference to the books of account maintained by the assessee after giving reasonable opportunity to the assessee. Based on the said finding, the applicability of section 194C of the Act could be considered. He submits that such a finding is a prerequisite before it could be held that section 194C of the Act is attracted to the facts of the case and, therefore, he submits that the order passed by the Tribunal be set aside and the matter may be remanded for fresh consideration in accordance with the directions already issued by the Appellate Commissioner for the subsequent year.

3. Per contra, learned counsel for the Revenue submits that the group leaders

are paid on the basis of the cubic meter, running meter and square meter on the fixed price according to the SR rates of the PWD. As the assessee did not produce any evidence for payments made to the workers individually, the assessing authority as well as the Tribunal were justified in holding that the status of the group leader is that of a contractor and, therefore, no case of interference is made out.

4. From the aforesaid facts and rival contentions it is clear that the assessee is a State Government undertaking. They take up rural developmental construction works directly by eliminating middlemen like contractors and sub-contractors to avoid exploitation of the rural poor, thereby passing on the full worth of money to the people. The material on record discloses that the corporation transfers the amount earmarked for said projects to the account of the engineer who is in charge of the such project, who is also an employee of the assessee-company. The said engineer at the spot engages the services of the workers. Probably, he cannot go in search of employees, the responsibility is given to a person who brings the labour force, who is called as a group leader. He is also one among the workers who is engaged in executing the works. The payment is made to the group leader, in turn who disburses the amount to his co-employees. Merely because the amount was calculated on the basis of the cubic meter, running meter and square meter on fixed price according to the SR rules of the PWD, no inference could be drawn that the relationship is that of an employer and a contractor. Of course it is purely a question of fact and it is seen from the impugned order that the assessee has failed to produce evidence and, therefore, the assessing authority had drawn such an inference. The assessee submits that they have maintained records according to the standing orders of the Karnataka Land Army Corporation and a group leader is entrusted with all the responsibilities to disburse payment. After payment is made to the workers, receipt is obtained by the assessee, attendance is maintained and group leader is responsible to maintain the entire account for disbursing the payment to the workers and he is entitled only for the value for his labour. Under these circumstances, we are of the view, as ordered by the Appellate Commissioner for the subsequent years, it would be appropriate to send the matter back to the assessing authority reserving liberty to the assessee to produce such documents to substantiate its claim. The assessing authority after taking into consideration all the material produced by the assessee, shall record a finding whether the agreement with the workers is in the nature of a contract or the payments are made individually to the workers. Depending on the said finding, application of section 194C of the Act to the case shall be decided.

With these observations, we pass the following order:

ORDER

(a) The appeal is allowed.

(b) The impugned orders passed by the Tribunal as well as the assessing authority are hereby set aside.

(c) The entire matter is remitted back to the assessing authority for fresh consideration and in accordance with law after giving opportunity to produce such material as it deems fit and then decide the case on the merits.

All contentions are kept open to be adjudicated by the assessing authority.

Ordered accordingly.