

(2013) 04 MAD CK 0087

In the Madras High Court

Case No : Tax Case (Appeal) No's. 69 and 70 of 2013 and M.P. No. 1 of 2013

S.A.A. Ispahani Trust

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Income Tax Act, 1961 — Section 194C, 201(1), 201(1A)

Citation : (2013) 216 TAXMAN 1

Hon'ble Judges : R. Banumathi, J;K. Ravichandrabaabu, J

Bench : Division Bench

Advocate : R. Venkatanarayanan for Subbaraya Aiyar, for the Appellant; J. Narayanasamy Standing Counsel for I.T., for the Respondent

Judgement

K. Ravichandrabaabu, J.—The assessee is on appeal against the order of the Income Tax Appellate Tribunal in respect of the assessment

year 2003-2004. The following are the reframed substantial questions of law raised in T.C. (A) No. 69 of 2013:-

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding the assessee to be in default u/s 201(1)

ignoring the CBDT Circular No. 275/201/95-IT(B) dated 29.1.1997 and the Hon'ble Supreme Court decision reported in Hindustan Coca Cola

Beverage Pvt. Ltd. Vs. Commissioner of Income Tax, clarifying that recovery could not once again be made from deductor where the payee

included the income on which tax was alleged to have been short deducted in its taxable income and paid taxes thereon?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee ought to have deducted tax

on the entire payments made to M/s. Tamil Nadu Real Estates Ltd., and not only

on the remuneration paid to them?

2. The following are the reframed substantial questions of law raised in T.C. (A) No. 70 of 2013:-

1. Whether on the facts and in the circumstances of the case, the Tribunal ought to have appreciated that interest u/s 201(1A) has to be determined

year to year on the basis of amount payable for that year till the date the recipient has made arrangement for payment of tax or filed the return of income for that year?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the levy of interest u/s 201(1A) without considering the taxes already deducted and paid earlier?

3. In both the Tax Case Appeals the facts are common in respect of the same assessment year 2003-2004. In T.C. (A). No. 69 of 2013, the

assessee questions the order of the Tribunal holding them as ""assessee in default"" u/s 201(1) of the Income Tax Act. In T.C. (A). No. 70 of 2013,

the assessee questions the levy of interest u/s 201(1A) of the Income Tax Act.

4. The following are short facts, as projected by the assessee, in these appeals.

The assessee, a public charitable Trust, owned a property and in order to develop the same by putting up a multistoried building, it had entered

into an agreement on 1.11.1994 with one M/s. Tamil Nadu Real Estates Ltd., (shortly, TNREL) for constructing the building. As per the said

agreement, TNREL is the Project Manager to construct the building and the assessee will reimburse the cost of construction by selling 55,000 sq.ft

of built up area. Subsequently, the terms of the agreement were modified and approved by both the assessee and TNREL on 17.5.1995 and

31.5.1995 respectively in their Board meetings. As per the terms of the modified agreement, the assessee would construct the building with

technical assistance from TNREL, who would also incur the expenses on behalf of the assessee and get them reimbursed from the assessee.

5. The Assessing Officer proceeded that the assessee had acted upon the terms of the agreement dated 1.11.1994 and therefore they should have

deducted the tax at source at 2% on the entire cost of construction. Thus, the Assessing Officer raised a demand u/s 201(1) and also charged

interest u/s 201(1A).

6. Aggrieved by the order passed by the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals),

who in turn confirmed the order of the Assessing Officer, by holding that the entire payments/reimbursements to TNREL is covered by Section

194C of the Act. The assessee filed further appeal before the Income Tax Appellate Tribunal. The Tribunal also confirmed the order of the first

appellate authority. Therefore, the present appeals are preferred before this Court.

7. Though the assessee had raised several grounds on merits and questioned the order of the authorities below in holding the assessee as defaulter

u/s 201(1) of the Income Tax Act, the learned counsel appearing for the appellant/assessee confined his submission by relying on the decision of

the Hon'ble Supreme Court reported in Hindustan Coca Cola Beverage Pvt. Ltd. Vs. Commissioner of Income Tax, to contend that the assessee

cannot be directed to pay the tax when the recipient viz., TNREL has paid the tax on the income. The learned counsel thus submitted that the

authorities below failed to apply the said decision of the Apex Court and consequently, the order in directing the assessee to pay the TDS amount

to the tune of Rs. 47,33,656/- and the interest u/s 201(1A) amounting to Rs. 35,68,182/- are not justifiable and the same are liable to be set aside.

8. Per contra, the learned counsel appearing for the Revenue submitted that the assessee has been held as ""assessee in default"" for not deducting

the tax at source when they made payment to TNREL. Consequently, the levy of interest was also made u/s 201(1A) of the Act. However, he

does not dispute the applicability of the decision reported in Hindustan Coca Cola Beverage Pvt. Ltd. Vs. Commissioner of Income Tax, to the

facts and circumstances of the case.

9. We heard the learned counsel appearing for both sides.

10. The Tribunal found that the assessee is obliged u/s 194C to deduct tax at source on contract payments as and when such payments exceed Rs.

20,000/- and to pay such TDS to the Government account within one week from the last date of the month in which deduction is made. It is also

found by the Tribunal that it is a clear case where the assessee has failed to deduct tax on the entire contract payments made to the contractor and

the assessee has also failed to produce any evidence for the taxes already

deducted as contended by them. Therefore, the Tribunal found that the assessee is in default u/s 201(1) and also liable to pay interest u/s 201(1A) from the day on which the tax was required to be paid u/s 194C upto the date of actual payment. These factual findings rendered by all the authorities below in holding that the assessee is in default u/s 201(1) of the Income Tax Act do not warrant any interference by this Court. On the other hand, as already stated supra, the learned counsel for the assessee wanted this Court to follow the decision of this court reported in Hindustan Coca Cola Beverage Pvt. Ltd. Vs. Commissioner of Income Tax, and to grant the relief to the assessee as per the law laid down therein.

11. A perusal of the said order of the Hon''ble Supreme Court in Hindustan Coca Cola Beverage case would show that the assessee therein was

held ""as assessee in default"" u/s 201(1) of the Act and also levied interest u/s 201(1-A). The assessee therein contended that the recipient therein

has been assessed on their income and the tax due has been recovered from them by the Department and therefore no further tax could have been

collected from the assessee therein. The said contention was accepted by the Tribunal. It was held that though the assessee therein was held to be

as assessee in default, there could be no recovery of the tax alleged to be in default once again from the assessee therein considering the fact that

the recipient had already paid the tax on the amount received from the assessee. The said order of the Tribunal was challenged before the High

Court which in turn interfered with the same. Further appeal came up before the Hon''ble Supreme Court. In the said appeal, the Apex Court

found that the Tribunal came to the right conclusion that the tax once again could not be recovered from the appellant therein since the tax has

already been paid by the recipient of the income. The Apex Court also relied on the circular issued by the Central Board of Direct Taxes in

Circular No. 275/201/95-IT (B) dated 29.1.1997 wherein it is declared that no demand visualised u/s 201(1) of the Income Tax Act should be

enforced after the tax deductor has satisfied the Revenue that taxes due have paid by the deductee-assessee. While holding so, the Apex Court

however pointed out that such position will not alter the liability to charge interest u/s 201(1A) till the date of payment of taxes by the deductee

assessee.

12. Going by the said decision, what emerges is that the even though the appellant herein is held as assessee in default, tax cannot be recovered

from them, if the same has been paid by the recipient viz., TNREL. However, it would not absolve their liability to pay interest u/s 201(1A) from

the date of its liability till the date of actual payment made by the recipient. There are no findings rendered by the authorities below with regard to

the payment of tax by the recipient and its quantum. Therefore, the matter requires to be remitted back to the Assessing Officer to re-work the

quantum of liability as well as the interest in the light of the decision made by the Hon"ble Supreme Court reported in Hindustan Coca Cola

Beverage Pvt. Ltd. Vs. Commissioner of Income Tax, . It is needless to say that the Assessing Officer should find out as to what extent the

recipient had paid the tax. If the entire tax amount as claimed from the assessee herein has been paid by the recipient, then there cannot be any

further demand of the same from the assessee. On the other hand, if the recipient had only paid part of the tax amount, then rest of the same shall

be recovered from the assessee. Insofar as the interest demand is concerned, the assessee is liable to pay the interest from the date of its liability till

the date of actual payment made by the recipient. Accordingly, the Assessing Officer is directed to re-compute the liability of the assessee and

pass fresh orders. The questions of law raised in both the appeals are answered accordingly. The Tax Case Appeals are disposed of accordingly.

Consequently, the connected M.P. is closed. No costs.