(1995) 04 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 510 of 1995

T.K. Warehousing Enterprises P. Ltd. and Another — APPELLANT

Vs

Central Board of Direct Taxes and Others — RESPONDENT

Date of Decision : 27-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 194C

Citation : (1995) 216 ITR 305

Hon'ble Judges : A.R. Tiwari, J

Bench : Single Bench

Advocate : Ram Gilda, for the Appellant; P.K. Saxena and Shaikh Nayeem, for the Respondent

Judgement

A.R. Tiwari, J.—This is a petition under Article 226/227 of the Constitution of India.

2. Briefly stated, the facts of the case are that petitioner No. 1 is a private limited company incorporated under the Companies Act, 1956, and petitioner No. 2 is its managing director. The respondents issued a Circular No. 681 (see [1994] 206 ITR 299), dated March 8, 1994, with regard to Section 194C of the Income Tax Act, 1961 (annexure P-1), which required the deduction of the tax. Respondent No. 4 (income tax Officer, (TDS), Bhopal), wrote a letter to petitioner No. 1 on November 15, 1994 (annexure P-2), complaining that the petitioner has failed to make deduction of TDS on the freight Charges paid in excess of Rs. 10,000 u/s 194C of the Income Tax Act, 1961, and demanding the particulars of such transactions and conveying that on the failure to do so, it will be treated as an assessee in default and shall be exposed to recovery in accordance with law. Petitioner No. 1 has filed reply on February 20, 1995 (annexure P-4), asserting that the demand is without the authority of law and thus, without jurisdiction. The petitioners also made a reference to the case of Bombay Goods Transport Association and another Vs. Central Board of Direct Taxes and others, , decided

by the Bombay High Court. Thereafter, the respondents have not elected to send any further communication to the petitioners. Yet, the petitioners have filed this writ petition seeking quashment of the aforesaid circular (annexure P-l) on the ground that it is not in conformity with Section 194C of the Income Tax Act, 1961.

3. I have heard both the sides.

4. Counsel for the petitioners urged that the circular is in conflict with the aforesaid section and deserves to be quashed. Counsel for the respondents, on the other hand, dubbed the aforesaid contention as non-meritorious and submitted that the petitioners have no locus standi to challenge and in any case, they may approach respondent No. 4 and seek disposal of the reply (annexure P-4). Counsel submitted that those suffering deductions, have not found any ground to challenge the deductions. Counsel, therefore, has questioned the bona fides of this petition.

5. In view of the fact that the petitioners have submitted the reply (annexure P-4), I do not find it fit to go into the merits of the matter and entertain this petition. The petitioners can approach respondent No. 4 and obtain proper decision on the reply submitted by them. Needless to say, when the question of jurisdiction is raised and the invalidity of the circular is set up, respondent No. 4 is required to decide the matter in conformity with law.

6. As the aforesaid remedy is available to the petitioner, I decline admission and dismiss this petition summarily with no order as to costs.

