Commissioner of Income Tax Vs Mitra Logistics P. Ltd.

Court: Calcutta High Court

Date of Decision: March 25, 2013

Citation: (2014) 265 CTR 593 : (2013) 357 ITR 657

Hon'ble Judges: Tarun Kumar Das, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: S.B. Saraf, for the Appellant;R. Bharadwaj, for the Respondent

Judgement

Girish Chandra Gupta, J.
The Assessing Officer by his order dated December 28, 2010, disallowed the transportation payments of more

than Rs. 50,000 for the assessment year 2006-07 aggregating to a sum of Rs. 86,04,049 on the ground that the aforesaid payments were made to

the sub-contractors without deducting tax. Consequently, the aforesaid sum of Rs. 86,04,049 was disallowed u/s 40(a)(ia) of the income tax Act,

1961, and added to the total income. Similarly, a sum of Rs. 96,01,585 was disallowed for the same reason for the assessment year 2008-09.

Both the assessments were made on the same day, i.e., December 28, 2010. The reasons assigned for the aforesaid addition by the Assessing

Officer for both the assessment years 2006-07 and 2008-09 are as follows:

On being show-caused why Rs. 86,04,049 will not be disallowed and added to the total income as per the provisions of section 40(a)(ia) of the

income tax Act, 1961, the learned authorised representative, vide letter dated October 20, 2010, replied that as no payment exceeding Rs.

50,000 was given to a vehicle, the provisions of section 40(a)(ia) will not be applicable. Nay, the interpretation of the provisions of section 40(a)

(ia) is that the payment made to a transporter below Rs. 50,000 in a year is not liable to deduct tax as per the provisions of section 194C Hence,

the payments exceeding Rs. 50,000 to the transporters is liable to deduct the tax. The assessee-company did not deduct tax on such payments to

the transporters exceeding Rs. 50,000 to the tune of Rs. 96,01,585. Thus, the submission of the assessee-company is not tenable. Consequently,

Rs. 86,04,049 is disallowed u/s 40(a)(ia) of the income tax Act, 1961, and added to the total income.

Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal which was allowed by the Commissioner of income tax

(Appeals) by his order dated August 10, 2011. The Revenue preferred an appeal before the Tribunal which was dismissed by an order dated June

19, 2012, which is under challenge before us. Mr. Bharadwaj, learned advocate appearing for the assessee, submitted that the assessee had

furnished Form No. 15J for the assessment year 2008-09 with copies of Form No. 15-I on June 5, 2008, and with respect to the assessment year

2006-07 he had filed Form No. 15J along with copies of Form No. 15-I on June 6, 2006, and, therefore, the assessee had no authority in law to

deduct tax before making payment to the sub-con tractors. The sub-contractors upon submission of Form No. 15-I were entitled to get full

payment and the assessee was liable to make full payment without any deduction. There is, as such, no reason why any tax should have been

deducted. There is also no reason why either section 194C or section 40(a)(ia) should be applicable in his case. He contended that the legal

position was not realised by the Assessing Officer which was subsequently corrected by the appellate authority and the Tribunal. He also relied on

an unreported judgment of the Division Bench of the Gujarat High Court dated October 1, 2012, in Commissioner of Income Tax-I Vs. Valibhai

Khanbhai Mankad, wherein the following views were taken:

In our view, therefore, once the conditions of further proviso to section 194C(3) are satisfied, the liability of the payee to deduct tax at source

would cease. The requirement of such payee to furnish details to the income tax authority in the prescribed form within the prescribed time would

arise later and any infraction in such a requirement would not make the requirement of deduction at source applicable under sub-section (2) of

section 194C of the Act. In our view, therefore, the Tribunal was perfectly justified in taking the view in the impugned judgment. It may be that

failure to comply such requirement by the payee may result into some other adverse consequences if so provided under the Act. However,

fulfilment of such requirement cannot be linked to the declaration of tax at source. Any such failure, therefore, cannot be visualized by adverse

consequences provided u/s 40(a)(ia) of the Act.

2. Mr. Saraf, learned advocate for the Revenue, drew our attention to the proviso referred to in the aforesaid judgment of the Gujarat High Court,

which reads as follows:

Provided further that no deduction shall be made under sub-section (2), from the amount of any sum credited or paid or likely to be credited or

paid during the previous year to the account of the subcontractor during the course of business of plying, hiring or leasing goods carriages, on

production of a declaration to the person concerned paying or crediting such sum, in the prescribed form and verified in the prescribed manner and

within such time as may be prescribed, if such sub-contractor is an individual who has not owned more than two goods carriages at any time during

the previous year:

Provided also that the person responsible for paying any sum as aforesaid to the sub-contractor referred to in the second proviso shall furnish to

the prescribed income tax authority or the person authorised by it such particulars as may be prescribed in such form and within such time as may

be prescribed; or

(ii) any sum credited or paid before the 1st day of June, 1972; or....

3. Mr. Saraf contended that if the assessee had furnished the requisite forms at the appropriate time, the question would not have arisen at all. The

assessee, in fact, was served with a show-cause notice and in reply thereto the assessee contended himself by alleging that the payments were all

below Rs. 50,000. Therefore, the section requiring the assessee to deduct tax was not at all applicable. It was never the contention of the assessee

that he had omitted to deduct tax because Form No. 15-I was submitted by the sub-contractors. Mr. Saraf in this regard drew our attention to the

findings recorded by the Assessing Officer which we have quoted above. Mr. Bharadwaj did not dispute that on the basis of the reply to the show

cause, the aforesaid views were taken by the Assessing Officer. It is not in dispute that the letter, written by the assessee in reply to the show-

cause notice, did not contain any allegation that appropriate Form No. 15J had been submitted on June 6, 2006, for the assessment year 2006-07

or on June 5, 2008, for the assessment year 2008-09. The assessee, in fact, made an additional/alternative case at the appellate stage that it had

duly submitted the requisite Forms Nos. 15I and 15J, as indicated above.

4. Mr. Saraf in this regard drew our attention to the following comments made by the Assessing Officer in his remand report, which was filed

pursuant to an order of the Commissioner of income tax (Appeals) when the assessee wanted to adduce additional evidence:

In spite of sufficient opportunities, the assessee-company could not submit the same at the time of assessment proceedings. Moreover, the learned

authorised representative did not raise any voice that Form No. 15J along with Form 15J was not available. On the other hand, the learned

authorised representative, vide letter dated October 29, 2010, replied that as no payment exceeding Rs. 50,000 was given to a vehicle, the

provisions of section 40(a)(ia) will not be applicable.

At the time of assessment proceedings for the assessment year 2007-08, the director of the company submitted, vide letter that the company did

not deduct any tax at the time of payment to transporters. Next time, the authorised representative of the assessee submitted that Form No. 15J

were not available due to shifting of the office. The assessee submitted Form No. 15J without Form No. 15J before the undersigned showing that

the same was deposited before ITO, (TDS) Ward-58(3) on December 30, 2009, where the time-bar of the case was on December 31, 2009. As

per the inspection report on very day, it was ascertained that Form No. 15] was not deposited to that ward at all.

The Inspector was deputed to verify whether Form No. 15J along with Form No. 15J were actually filed with the O/o the ACIT(TDS), Cir-

59/Kol or not. As per the inspector reports the concern office could not finish any register or any Form No. 15J along with Form. No. 15J.

The allegation made by the assessee that the assessment was completed hurriedly and intentionally on December 28, 2010, whereas time barred of

the case was as on December 31, 2010. The authorised representative of the assessee first appears to represent the case on August 25, 2010. S,

from the period August 25, 2010, to December 28, 2010, he could not submit the copy of Form No. 15J along with Form No. 15-I as submitted

to the before learned Commissioner of income tax (Appeals) as new documents. The allegation of the learned authorised representative is quite

illogical.

As Form No. 15-I were not enclosed with Form No. 15J substantiate that the assessee did not collect Form No. 15-I from the transporters.

Hence, deduction of tax by the assessee-company is compulsory. The incomplete new documents as submitted before the learned Commissioner

of income tax (Appeals) could not be considered as the verification from the end of the transporters could not be done. All the above

circumstances, it revealed that the assessee manipulated the documents to escape from the grip of section 40(a)(ia).

5. Mr. Saraf contended that the Assessing Officer on the basis of evidence opined that the assessee manipulated the documents to escape the

rigour of law. In spite thereof the Commissioner of income tax (Appeals) without disclosing any reason held that tax was rightly not deducted by

the assessee. He drew our attention in that regard to the following views expressed by the Commissioner of income tax (Appeals):

The Assessing Officer has also observed that Form No. 15J was supposed to have been filed in the office of the jurisdictional Commissioner of

income tax, i.e., Commissioner of income tax-III, Kolkata, in this case, and since such Form in this case was not filed in the office of the

Commissioner of income tax-III, Kolkata, the same could not be taken cognizance of. It is true that Form No. 15J is required to be filed with the

jurisdictional Commissioner of income tax, and the appellant has not claimed that such form was filed in the office of Commissioner of income tax-

III, Kolkata, but that does not believe the fact that Form No. 15-I were received by the appellant from the transporters and on the strength of

those Forms he did not deduct tax at source from payments made to them.

In the instant case, there is evidence to show that the appellant had submitted Form 15J with the Department on June 5, 2008. Otherwise also, the

fact that the appellant produced copy of Form 15J before me proves that the appellant had received form 15-I from the transporters to whom

transport charges were paid, therefore, the appellant had rightly not deducted tax at source from those payments. Perusal of the annexures to Form

15J show that Form 15-I were received from all the transport whose names are mentioned in the assessment order.

In the light of the above discussions and following the decision of the income tax Appellate Tribunal, Ahmedabad, in the case of Deputy CIT v.

Niten Hasmukhbhai Shah in I.T.A. No. 1982/Ahd/2009 and also the decisions of my predecessors in the appellant"s own case for the assessment

year 2007-08 on the same issue and on the similar facts, it is held that the appellant had rightly not deducted tax at source u/s 194C from

transportation charges incurred by it, therefore, the same could not be disallowed u/s 40(a)(ia).

6. The learned Tribunal without going deep into the questions held that the deletion of the disallowance was proper. In paragraph 14 of the

judgment, the Tribunal opined as follows:

Learned representatives fairly agree that as the assessee had filed all the relevant Form 15J with the Department on June 5, 2008, and also before

the Commissioner of income tax (Appeals) during the appellate proceedings, the case of the assessee is squarely covered in his favour, by

decisions of the coordinate benches in the cases of, among other, Capital Transport Corporation of India v. ITO [2013] 1 ITR (Trib)-OL 369

(Kolkata) (I.T.A. No. 1753/Kol./2009). We see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench,

and hold that, in view of the fact that the assessee has duly filed all the relevant Form No. 15J declarations, the Commissioner of income tax

(Appeals) was justified in deleting impugned disallowance of Rs. 96,01,585 u/s 40(a)(ia) read with section 194C.

7. Mr. Bharadwaj submitted that it would appear from paragraph 14 that the Departmental representative and the representative of the assessee

have jointly been referred to in the first sentence of paragraph 14 and the impression one would get is that both the representatives agreed that the

forms have duly been filed.

8. Mr. Saraf submitted that no such submission was made by the representative of the Department nor had the Tribunal recorded that the

Departmental representative made any such concession. He submitted that the case of the Revenue was that Form No. 15J were never submitted.

Therefore, the question of making any such concession did not arise.

9. Therefore, the following questions arise for our determination:

(a) Whether additional evidence was legally admitted by the Commissioner of income tax (Appeals).

(b) Whether the finding that Forms Nos. 15-I and 15J were submitted, is perverse.

(c) Whether the deletion of disallowance is contrary to section 194C read with section 40(a)(ia).

10. Rule 46A provides for production of additional evidence before the appellate authority. Sub-rules (1) and (2) of rule 46A provide as follows:

46A. (1) The appellant shall not be entitled to produce before the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner

(Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the

Assessing Officer, except in the following circumstances, namely:--

(a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing

Officer; or

(c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any

ground of appeal; or

(d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence

relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner

(Appeals) records in writing the reasons for its admission.

11. It would appear that the attempt to adduce additional evidence was made by the assessee on the ground that the Assessing Officer did not

grant sufficient opportunity to adduce evidence. The Commissioner of income tax (Appeals) remanded the matter to the Assessing Officer for a

report. The Assessing Officer after making necessary enquiry and on the basis of evidence discussed in his report, opined that the assessee had

manipulated the documents to escape the rigour of law. The learned Commissioner of income tax (Appeals) did not record any reason in his

judgment to show that the aforesaid views of the Assessing Officer were unjustified nor did he record any reason to show that the assessee was

entitled to adduce additional evidence because he had, in fact, been prevented from adducing the evidence at the appropriate stage or because the

Assessing Officer did not give him sufficient opportunity to do so. Even, in a case where additional evidence may be admitted, it is the bounden

duty of the fact-finding authority to assess the value of the evidence permitted to be adduced. In this case, the assessee was served with a show-

cause notice as to why the amount paid to the sub-contractors on account transportation charges should not be disallowed. The assessee in reply

never took the point that it did not or could not in law deduct the tax because Form No. 15-I had been submitted by the transporters. Therefore,

the case that the assessee had submitted Form No. 15J on the basis of Form No. 15-I received from the transporters was inconsistent with the

reply given to the show-cause notice by the assessee himself. In the absence of any satisfactory explanation as to why was this case not made out

in reply to the show-cause notice, the contention that such Form 15J had been submitted on the basis of Form 15-I lost credibility. The

Commissioner of income tax (Appeals) did not go into the relevant questions and straightaway proceeded to hold that Form No. 15-I were

received by the appellant from the transporters and on the strength of those Forms he did not deduct the tax. This was not even the case of the

assessee in reply to the show-cause notice. Under sub-rule 2, the Commissioner of income tax (Appeals) is required to record in writing the

reasons for admission of the additional evidence. The Commissioner of income tax (Appeals) did not do so. Therefore, we answer the questions

formulated above as follows:

Question (a) is answered in the negative.

Question (b) is answered in the affirmative.

12. Since the disallowance was deleted on the supposed compliance with filing of Form No. 15J on the basis of Form No. 15-I, which we have

negatived above, the answer to question No. (c) is answered in favour of the Revenue.

13. In the circumstances, the appeal succeeds. Order under challenge is set aside.

Tarun Kumar Das, J.

I agree.