IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 9TH DAY OF JULY 2024 / 18TH ASHADHA, 1946

ITA NO. 35 OF 2019

AGAINST THE ORDER DATED 18.12.2018 IN ITA NO.252 OF 2018 OF

I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT/RESPONDENT/ASSESSEE:

UNITAC ENERGY SOLUTIONS (INDIA) PVT.LTD.,
2ND FLOOR, UNITAC ARCADE, OPPOSITE DECATHALON,
N.H.BYPASS, THYKOODAM, VYTTILA, KOCHI - 682 019.

BY ADV NISHA JOHN

RESPONDENT/APPELLANT/REVENUE:

THE ASSISTANT COMMISSIONER OF INCOME TAX,
CORPORATE CIRCLE-2(1), KOCHI, 3RD FLOOR, CENTRAL
REVENUE BUILDING, I.S.PRESS ROAD, KOCHI - 682 018.

BY ADV. SRI.JOSE JOSEPH,SC

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 09.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

The appellant before us is a company engaged in the business of providing infrastructure maintenance of more than 7000 telecom tower sites in the States of Kerala, Karnataka, and Tamil Nadu. During the assessment year 2013-2014, it filed a return of income declaring a total income of Rs.2,01,14,710/-. The return was selected for scrutiny and a notice under Section 143(2) of the Income Tax Act (hereinafter referred to as “the IT Act”) was issued on 05.09.2014. Subsequently, a notice under Section 142(1) read with Section 129 of the IT Act was also served on the assessee. The assessment proceedings thereafter culminated in Annexure A order dated 30.03.2016, whereby the Assessing Officer made two disallowances, namely, (1) Under Section 40(a)(ia) of the Act, and (2) Under Section 36(1)(va).

2. The disallowance under Section 40(a)(ia) was essentially on the ground that the assessee, who was obliged to deduct tax at source under Section 194C of the IT Act on payments made to the contractor, did not do so, and hence the disallowance under Section 40(a)(ia) in

relation to the amounts paid to such contractors would operate. The case of the assessee, on the other hand, was that by virtue of provisions of Section 194C(6) of the IT Act, there was an exemption from deduction of tax at source, in respect of payments made to the account of a contractor during the course of business of plying, hiring or leasing goods carriage, where such contractor owned 10 or less goods carriages at any time during the previous year, and furnished a declaration to that effect along with his permanent account number, to the person paying or crediting such sum. While the appellant assessee had furnished the declarations from the contractors to whom it had made payments, the assessing authority appears to have brushed aside the said declarations on the specious finding that the payments made by the assessee were to agents of transport contractors, and therefore, the exemption under Section 194C(6) did not apply.

3. In the appeal preferred by the appellant against the assessment order on this issue, the First Appellate Authority accepted the plea of the appellant and deleted the disallowance made by the Assessing Officer. In a further appeal carried by the revenue before the Tribunal, however, the Appellate Tribunal found that the Assessing Officer was justified in making the disallowance since there was a doubt with regard to whether or not the payments made by the appellant

assessee were to contractors, who were engaged in the business of plying, hiring or leasing of goods carriages. The Tribunal, therefore, remanded the matter to the assessing authority for a fresh consideration of the issue based on the declarations/contracts to be produced by the assessee.

4. In the appeal before us, the argument of the learned counsel for the appellant assessee is that the assessing authority had no case that the declarations that were required for claiming exemption in terms of Section 194C(6) had not been produced before it in support of the claim for exemption. The assessing authority had merely stated, for no apparent reason, that the payments made by the appellant assessee were only to agents of transporting contractors. It was the said arbitrary decision of the assessing authority that was set aside by the First Appellate Authority, and hence the Appellate Tribunal ought not to have remanded the matter to the assessing authority.

5. Per contra, the submission of Sri. Jose Joseph, the learned Standing counsel for the revenue is that there is nothing to show that the appellant assessee had produced copies of the contracts with the transport contractors or furnished the declaration required in terms of Section 194C(6) before the assessing authority, and hence there was no

necessity to interfere with the order of the Tribunal, which merely remanded the matter to the assessing authority for verification of the said documents.

6. On a consideration of the rival submissions, we are of the view that on the facts and circumstances presented in the instant case, the remand by the Tribunal of this issue to the Assessing Officer was wholly unnecessary. As has already been noticed, the disallowance by the assessing authority at first instance was not for the reason that the declarations were not produced as required under Section 194C(6). The disallowance was on a specious finding that the payments made by the appellant assessee were not to transport contractors but to their agents. While we are at a loss to understand the basis on which the assessing authority arrived at such a finding, even if the assessing authority did entertain a doubt in that regard, he ought to have considered the declarations that were produced before him (the production of which was never denied by him) and given reasons as to why those declarations could not be accepted on their face value. In the absence of such a finding by the assessing authority, his finding that the payments were made only to agents had to be seen as wholly without any basis, and against the documents made available before him. To that extent, we find that the First Appellate Authority, who had

perused the declarations and found them to be genuine arrived at a correct decision by deleting the disallwance made by the assessing authority under Section 40(a)(ia). We also believe that in the light of the facts before us, the Appellate Tribunal was not justified in remanding the matter to the assessing authority for a fresh adjudication on this issue.

7. As regards the disallowance under Section 36(1)(va), we find that the assessing authority had found that the appellant assessee had occasioned a delay in making the payment of the employees' contribution to statutory dues under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' State Insurance Act, 1948 to the authorities concerned and it was under those circumstances that the disallowance was made of the said payments made by the appellant assessee. In a further appeal carried by the appellant before the First Appellate Authority, the First Appellate Authority relied on a decision of the Rajasthan High Court, Jaipur Bench, in the case of **CIT v. Rajasthan State Beverages Corporation Pvt. Ltd. [(2017) 250 Taxman 0016]**, which had opined that even in cases where the employer had paid the employees' contribution under the welfare statutes belatedly, so long as the amounts were paid to the statutory authorities within the due date for filing of return of income

under Section 139(1), the deduction under Section 36(1)(va) would be permitted. In the further appeal carried by the revenue, however, the appellate Tribunal placed reliance on the decision of this Court in **Commissioner of Income Tax v. Merchem Ltd. [(2015) 378 ITR 443 (Ker)]** as followed in **Alliaz Corhill Information Services (P) Ltd v. DCIT [2018 406 ITR 150 (Ker)]** to find that in circumstances where the employees' contribution to EPF/ESI was not made over by the employer to the statutory authorities within the due date prescribed for making those payments under the respective statutes, the disallowance under Section 36(1)(va) would operate against the erring employer assessee. It accordingly proceeded to hold that in the instant case also the disallowance made by the assessing authority had to be restored. We see no reason to interfere with the finding of the Tribunal in relation to the disallowance under Section 36(1)(va) since, as already noticed, it is based on the judgments of this Court referred above, that settle the issue.

8. In the IT Appeal before us, the appellant has raised the following questions of law:

> (1) Did not the Appellate Tribunal err in law in restoring the addition of Rs.54,91,753 deleted by the CIT(A), mechanically without ascertaining whether payments were made within

due date or not and without entering a finding as to whether Sec.36(1)(va) is applicable or not on the facts and circumstances of the case?

(2) Did not the Tribunal err in not having given weight to the Apex Courts ruling dismissing the SLP filed against the judgment whereby High Court of Rajasthan held that, employees contribution if paid within due date of filing of Return of Income u/s.139(1) are allowable?

(3) Did not the Tribunal err in not holding that the non obstante clause of Sec.43 B make it mandatory to allow deduction of actual payments made to Employees Contribution as per the provisions contained in that section?

(4) Should not the Appellate Tribunal have held that Sub Section (6) of Section 194 C is squarely applicable to the sums paid to Transport Contractors?

(5) Did not the Appellate Tribunal err in law in not finding that Sec.40(a)(ia) is not applicable to assessee's payments made to Transport Contractors?

(6) Did not the Tribunal err in remanding the matter to AO, to verify the agreements entered between Contractors and assessee, when the statute prescribes furnishing of only PAN of Transport contractors for claiming deduction?

(7) Did not the Tribunal err in not holding that Sec.40(a)(ia)

is applicable only to amounts outstanding as payable as on 31.03.2013?

In the light of the discussions above, we dispose the IT Appeal by answering question Nos.1, 2, and 3 against the assessee and in favour of the revenue and question Nos.4, 5, 6, and 7 in favour of the assessee and against the revenue.

The I.T Appeal is disposed as above.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

SYAM KUMAR V.M.
JUDGE

mns

APPENDIX OF ITA 35/2019

PETITIONER ANNEXURES

ANNEXURE A	**TRUE COPY OF ASSESSMENT ORDER DATED ISSUED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CORPORATE CIRCLE - Z(I), KOCHI.**
ANNEXURE B	**TRUE COPY OF THE APPELLATE ORDER NO.ITA NO.260/CIT(A)-I/EKM/16-17 DATED 26/03/2018 ISSUED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-I, KOCHI.**
ANNEXURE C	**CERTIFIED COPY OF APPELLATE ORDER NO.ITA NO.252/COCH/2018 DATED 18/12/2018 OF ITAT, COCHIN BENCH.**