

HIGH COURT OF MADRAS

S.P.Alaguvel

v.

Deputy Commissioner of Income-tax, Media Circle-I, Chennai

R. SUDHAKAR AND G. M. AKBAR ALI, JJ.

T.C. (A) NO.191 OF 2014

JULY 21, 2014

V.S. Jayakumar for the Appellant. **M. Swaminathan** for the Respondent.

JUDGMENT

G.M. Akbar Ali, J. - Appeal filed against the order of the Income Tax Appellate Tribunal, Chennai in ITA No.1288/Mds/2013 and C.O.No.150/Mds/2013 for Assessment Year 2009-2010.

2. The assessee is in the business of Media and dealing in Movie/ Film Satellite Rights by taking them on Assignment basis and reassigning to the channels and derives income from salary, business and other sources. The assessee filed return of income for the Assessment year 2009-2010 admitting a total income of Rs.16,07,190/-. The case was selected for scrutiny and notice under sec.143(2) of the Income Tax Act 1961 (hereinafter referred to as "Act") dated 18.8.2010 was issued.

3. During the course of assessment proceedings, the Assessment Officer raised a question whether the assessee had deducted TDS under SEC.194J. The assessee furnished explanation for not deducting TDS and claimed that the purchase of film copy right is neither covered under 194J nor under sec.194C of the Act. The assessee further claimed that the assessee is in the business of buying and selling satellite rights and therefore, the provision of Sec.194J is not applicable.

4. However, Assessing Officer is of the view that the transaction claimed as purchase of film right is in reality a transfer/lease of right for a definite period of use by converting the film rolls to DVCAM for satellite usage without permanently transferring the satellite right to the assessee. Thus, the payments debited as purchase warrant a TDS under Sec.194J of the Act and worked out disallowance under sec.40(a)(ia) for non-deduction of TDS under Sec.194J of the Act. Aggrieved by which, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

5. The Commissioner of Income Tax (Appeals) allowed the appeal holding that the consideration paid do not come under sec.194J] of the Act to apply the provision under sec.40(a)(ia) of the Act.

6. The Revenue preferred an Appeal before the Income Tax Appellate Tribunal. It was contended that the payments made by the assessee towards acquisition of satellite right would fall within the ambit of Royalty and the assessee was duty bound to deduct tax at source under sec.194J of the Act.

7. A cross objection was also filed on the ground that Commissioner of Income Tax (Appeal) ought to have considered the issue of disallowance under sec.40(a)(ia) of the act on merits as well. However, the Tribunal placed reliance on *Asstt .CIT v. Balaji Communications* [2013] 140 ITD 687 and also found that the payments made would fall within the definition of Royalty and in that situation, the assessee was duty bound under Sec.194J to deduct tax at source on the payments effected, such deductions having not been made rigors of Sec.40)a)(ia) stood attracted.

8. As far as the cross objection is concerned, the Tribunal accepted the contention of the assessee that his arguments before the CIT Appeals, challenging the disallowance under sec.40(a)(ia) of the Act, has not

been considered on merits and restored the cross objection with a direction to the CIT Appeals to consider disallowance under sec.40(a)(ia) of the Act in accordance with law. Consequently, the revenue appeals as well as the cross objections were allowed.

9. Aggrieved by allowing the Revenues appeal, the assessee is before this court. On admission, the following questions of law were raised:

- "1. Whether on the facts and circumstances of the case, the learned Income tax Appellate Tribunal erred in upholding the disallowance under Section 40(a)(ia) of the Income Tax Act, 1961 as against the appellant?
2. Whether the learned Income Tax Appellate Tribunal erred in failing to appreciate the proposition that a disallowance of expenses under Section 40(a)(ia) of the Income Tax Act, 1961 would not lie on payments already made?
3. Whether the learned Income Tax Appellate Tribunal erred in concluding that the payments made by the appellant were tantamount to Royalty?
4. Whether the learned Income Tax Appellate Tribunal's findings are perverse on the facts and circumstances of the case, and therefore liable to be set aside?"

10. On notice, Mr.M. Swaminathan, learned Standing counsel appeared for Revenue.

11. When the matter was taken up, the learned counsel for the assessee submitted that a similar issue has been decided by this court reported in *Mrs. K. Bhagyalakshmi v Dy.CIT* [2014] 221 Taxman 225/[2013] 40 taxmann.com 350 .

12. On the perusal of the decision, it would show that the Division Bench of this Court answered the substantial question of law No.3 as framed in favour of the assessee and held that the payment made by the assessee were not royalty, but one of sale, thereby, the Division Bench has upheld the findings of the CIT Appeal and set aside the order of the Tribunal.

13. The learned counsel for the assessee would submit that the facts and circumstances of the case cited supra are similar to the case on hand and urged this court to allow the appeal and restore the findings of CIT Appeal.

14. Heard the counsel for the Revenue. The learned counsel submitted that the facts are distinguishable from one pertaining to the above matter and hence not applicable to the case on hand.

15. We have considered the submissions made on either side and perused the materials available on record.

16. The perusal of the facts and circumstances of the case in hand and perusal of the facts and circumstances of the case in *Mrs.K. Bhagyalakshmi (supra)* would show that the substantial question of law raised are one and the same.

17. Whether the grant of satellite rights to the assessee under an agreement for 99 years is a Royalty, within the meaning of sec.9(1)(vi) of the Act or a sale in terms of sec.26 of Copy Right Act, is the common question of law raised in the case on hand and the Bagyalakshmi's case *Mrs.K. Bhagyalakshmi (supra)*. The earlier Division Bench of this court in has considered elaborately the perpetual transfer of rights for a period of 99 years [in terms of Sec.26 of Copy Right Act and also the definition under clause (5) to Explanation 2 to sec.9(1) is a sale and therefore, excluded from definition of royalty under sec.9(1) Explanation 2(5)] of the Act.

18. We are fully in agreement with the decision rendered in the case of Mrs. *K. Bagyalakshmi (supra)* and therefore, we hold that the Tax Appellate Tribunal has erred in concluding that the payments made by the appellant are Royalty and not sale.

19. In the result, the assessee appeal is allowed and the order of the Income Tax Appellate Tribunal in ITA No.1288/Mds/2013 is set aside and the findings of Commissioner of Income Tax (Appeal) in Order dated 24-12-2012 is restored.