

Income-tax Appeal No.662 of 2010

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Income-tax Appeal No.662 of 2010

Date of decision: 5.4.2011

Commissioner of Income-Tax-I, Ludhiana

...Appellant

Versus

M/s Grewal Brothers

...Respondent

**CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE AJAY KUMAR MITTAL**

Present: Mr. Rajesh Katoch, Senior Standing Counsel for the appellant.

Adarsh Kumar Goel, J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 against order dated 29.1.2010 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh in ITA No.883/CHD/2009, for the assessment year 2006-07, claiming following substantial questions of law:-

“i) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is justified in law in holding that the provisions of Section 194C are not applicable on the payments of Rs.54,66,942/- made by the firm to its partners on account of transportation charges for use of trucks owned by the partners?

ii) Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is

justified in law in deleting the addition of Rs.51,61,183/- made in view of the provisions of section 40(a)(ia) of the Income Tax Act, 1961 as no tax at source was deducted by the firm as required under section 194C of the Income Tax Act, 1961?

3. The assessee is engaged in business of transport. It entered into a contract with Hindustan Petroleum Products and Indian Oil Corporation for carriage of LPG. From the payment made to it, the companies deducted tax. The assessee firm passed on the transportation work to its partners and made the payment received from the said companies to its partners after deducting 3% commission as charges for the firm having secured the contract. The assessing officer held that in giving of the contract of transportation by the firm to the partners there was a sub contract and the firm was liable to deduct TDS out of the payment made to the partners as sub contractors in absence of which the payment made to the partners was liable to be disallowed. On appeal, the CIT(A) upheld the plea of the assessee that there was only one contract of transportation to be executed by the partners for the companies and the firm only acted as an agent for securing the contract and earned 3% commission and thus, there was no separate sub contract between the firm and the partners. This view has been upheld by the Tribunal as under:-

“The provisions of section 194C of the Act are attracted when there is a contract, whether in writing or oral, between two entities and any payment is made in lieu thereof. We find support

from the ratio laid down by the Hon'ble Himachal Pradesh High Court in Sirmour Truck Operators Union Vs. CIT (supra) wherein it was held that freight paid by the association of persons to truck owners, who were of the members of the association of persons, was not liable for deduction of tax at source under section 194C of the Act.

14. Further, in CIT Vs. Ambuja Darla Kashlog Mangu Transport Coop Society 2009) 31 DTR (HP) 49, it was held that the payment by Society/AOP to member truck owner is not a sub contract liable for deduction of tax at source u/s 194C(2) of the Act. Drawing strength from the ratio laid down by the Himachal Pradesh High Court in Sirmour Truck Operators Union Vs. CIT(supra) and Ambuja Darla Kashlog Operators Union Vs. CIT(supra), we hold that though the assessee firm and its partners are separate juristic identities but in the absence of any contract/sub contract between the two, wherein the assessee firm retains only 3% as commission and transfers the balance to the respective accounts of the partners who in turn are owing the said trucks, is not liable for tax deduction at source under section 194C of the Act as it is neither a payment made to a contractor or a sub contractor.”

4. We have heard learned counsel for the parties.

5. Learned counsel for the revenue submits that since the firm and the partners were separate persons under the income tax law and had separate income, the firm was liable to deduct tax on payment made to its partners as sub contractors. There was a deemed oral agreement between the firm and the partners for execution of transportation contract by the partners and thus mere fact that the companies had made deduction of tax from the payment made to the firm was no justification for the firm for not deducting tax from the payment made to the partners who were infact executing the work as sub contractors.

6. We are unable to accept the submission. No doubt the firm and the partners may be separate entities for income tax and it may be permissible for a firm to give a contract to its partners and deduct tax from the payment made as per Section 194C, it has to be determined in the facts and circumstances of each case whether there was any separate sub contract or the firm merely acted as agent as pleaded in the present case. Case of the assessee is that it was the partners who were executing transportation contract by using their trucks and payment from the companies was routed through the firm as agent. The CIT(A) and the Tribunal accepted this plea on facts. Once this plea was upheld, it cannot be held that there was a separate contract between the firm and the partners in which case the firm was required to deduct tax from the payment made to its partners under section 194C. The view taken by the Tribunal is consistent with the view taken by the Himachal Pradesh High Court in **Commissioner of Income Tax Vs. Ambuja Darla Kashlog**

Mangu Transport Co-op. Society (2009) 227 CTR (HP) 299 and judgment of this court in *Commissioner of Income Tax Vs. United Rice Land Ltd. (2008) 217 CTR (P&H) 332*. The matter being covered by earlier judgment of this Court, no substantial question of law arises.

7. Accordingly, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

April 05, 2011
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(Ajay Kumar Mittal)
Judge



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