

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM :

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

TCA.No.601 of 2018

Commissioner of Income Tax,
Corporate Circle 2,
Madurai

.. Appellant

Vs.

M/s. Sri Parameswari Spinning
Mills Private Limited,
4A Mill Premises, 38/39,
Great Cotton Road,
Pandalgudi, Auppukottai.

.. Respondent

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Chennai 'C' Bench, Chennai, dated 20.02.2018 in I.T.A.No.1364//Mds/2016 for the assessment year 2012-2013.

For Appellant

: Ms.V.Pushpa

Senior Standing Counsel

For Respondent

: Mr.A.S.Sriraman

* * *

J U D G M E N T

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]

This appeal filed by the assessee under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as the Act) is directed against the order dated 20.02.2018 passed by the Income Tax Appellate Tribunal Chennai 'C' Bench in I.T.A.No.1364/Mds/2016 for the Assessment Year 2012-2013.

2. The revenue has filed this appeal raising the following substantial questions of law:

" (i) Whether the Tribunal is correct in confirming that in the absence dividend income, no disallowance under Section 14A read with Rule 8D can be made?

(ii) Whether the Tribunal is correct in not confirming the disallowance under Section 40(a)(ia) made by the Assessing Officer when the assessee did not comply with requirements of Sub-Section 7 of Section 194C read with Rule 31A?."

3. We have heard Ms.V.Pushpa, learned Senior Standing Counsel for the appellant/Revenue and Mr.A.S.Sriraman, learned

counsel for the respondent/assessee.

4. The revenue is on appeal before us challenging the order passed by the Tribunal dated 20.02.2018 stating that the Tribunal while remanding the matter to Assessing Officer had made certain observations, which is to the following effect:

"11.....In our opinion, considering the facts and circumstances of the case, the issue requires a fresh look by the Id. Assessing Officer. Ld. Assessing Officer has to verify whether assessee had complied with Sub Section (6) of Section 194C of the Act. He also needs to verify whether the assessee had filed form No.26Q, though belatedly. If assessee has complied with these there can be no disallowance u/s. 40(a)(ia) of the Act."

5. Ms.V.Pushpa, learned Senior Standing Counsel would contend that the Tribunal virtually has indicated that the Assessing Officer cannot make disallowance under Section 40(a)(ia) of the Act. The question is as to whether the assessee has filed the requisite declaration for claiming the benefit under Section 194C(6).

6. We find sub-Section 6 of Section 194C is the provision which grants benefit to the assessee. This benefit comes with the condition of compliance of Sub-Section (7) of Section 194C, which is the procedure to be followed. The question would be as to whether if the procedure under Section 194C(7) has not been adhered to by the assessee would it be fatal and thereby disentitle the assessee to the benefit under sub-Section 6 of Section 194C.

7. It is a submission of Mr.A.S.Sriraman, learned counsel for the appellant/assessee that Section 31A deals with statement of deduction of tax under sub-Section 3 of Section 200 referring to Section 31(A)(4)(vi). It is submitted that the deductor at the time of preparing statement of tax, deductor shall furnish particulars of amount paid or credited on which tax was not deducted in view of the compliance of provision of sub-Section 6 of Section 194C by the payee. Section 234(E) was relied to state that if the statement is not filed, a fee of Rs.200/-for every day, during which the failure continues, has to be paid by the assessee. Therefore, it is the submission that the non-filing of a statement in terms of sub-Section 7 of Section 194C cannot take away the benefit which will accrue to the assessee under sub-Section 6 of Section 194.

8. We fail to understand as to what is the apprehension in the mind of the Revenue when the Tribunal has remanded the matter to the Assessing Officer to consider whether the assessee has filed form no. 26(Q) belatedly and to examine as to whether the fee has to be collected. We find that there is no ground to interfere with the order passed by the Tribunal.

9. Ms.V.Pushpa placed reliance on the decision of the Hon'ble Supreme Court in the case of **CIT Vs. Valibhai Khanbhai Mankad** reported in **[(2014) 51 Taxmann.com 385 (SC)]** where the Hon'ble Supreme Court has granted leave to file appeal by the revenue against the order passed by the Gujrat High Court in **CIT Vs. Valibhai Khanbhai Mankad** reported in **[(2012) 28 Taxmann.com 119]**. In the said decision the High Court of Gujarat held that once conditions of proviso to Section 194(C)(7) are satisfied, liability of payer to deduct taxes at source would cease and consequently, disallowance of payment of sub-contractor under Section 40(a)(ia) could not be made on the ground that the assessee had not furnished form no.15J as required under Rule 29D. We find that the said decision is of no assistance to the case of the Revenue.

10. Mr.A.S.Sriraman, learned counsel for the assessee referred to the decision of the ITAT Jaipur in the case of **ACIT Vs. Arihant Trading Co.** reported in **[176 ITD 397 (Jaipur-Tri)]**. In the said decision it has been held that Section 194C(6) & (7) are independent of each other and cannot read together to attract disallowance under Section 40(a)(ia) read with Section 194C of the Act.

11. In the result we find that there is no substantial question of law arising for consideration, accordingly, the appeal filed by the Revenue fails and the same is dismissed. No costs.

(T.S.S., J.)

(V.B.S., J.)

01.07.2019

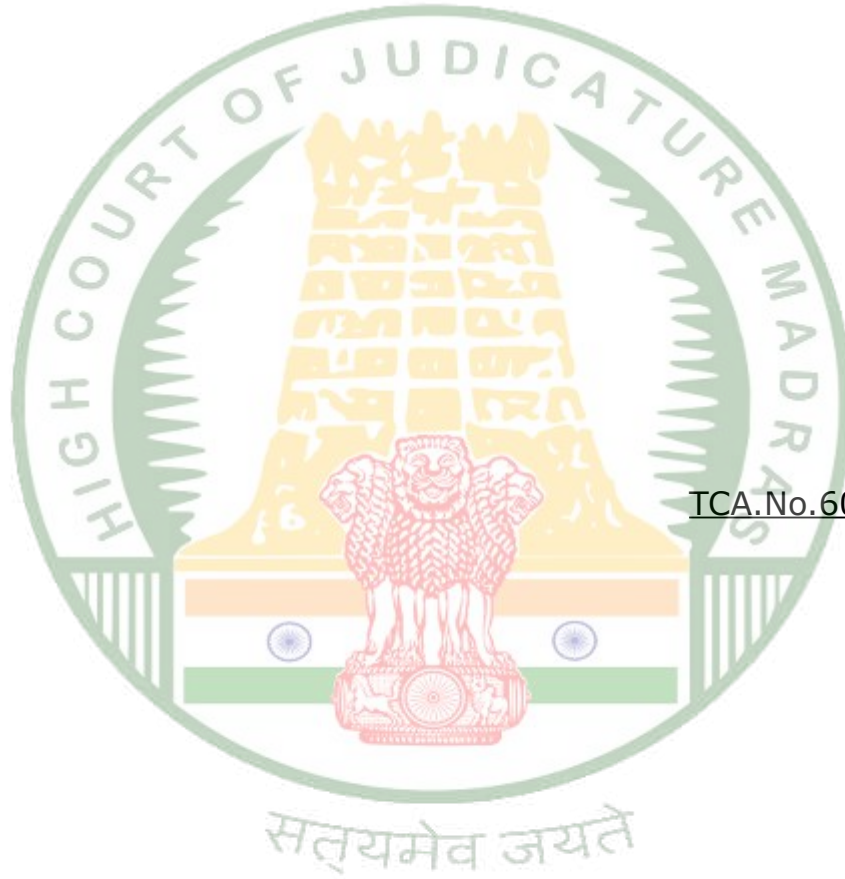
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T.S.SIVAGNANAM, J.
and
V.BHAVANI SUBBAROYAN, J.

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