IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 6TH DAY OF JULY 2021 / 15TH ASHADHA, 1943

ITA NO. 70 OF 2017

AGAINST THE ORDER DATED 08.01.2016 OF THE I.T.A.TRIBUNAL, COCHIN BENCH, ERNAKULAM IN ITA 388/COCH/2014 FOR THE ASSESSMENT YEAR 2007-08

APPELLANT/ RESPONDENT/ ASSESSEE :-

SUDARSANAN P.S.,
COIRLAND EXPORTS, ASRAMAM WARD,
AVALOOKUNNU P.O., ALAPPUZHA - 688 006.

BY ADVS.
SRI.S.ARUN RAJ
SMT.C.T.SUJA

RESPONDENT/ APPELLANT/ REVENUE :

COMMISSIONER OF INCOME TAX,
PUBLIC LIBRARY BUILDING, LAL BAHADUR SASTRI ROAD,
KOTTAYAM - 686 001.

BY ADVS.
SRI.JOSE JOSEPH, SC, FOR INCOME TAX
SRI.P.K.RAVINDRANATHA MENON (SR.)

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 06.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The assessee is engaged in the business of manufacture and sale of coir mats and mattings. For the assessment year 2007-08, the return filed by the assessee was accepted and a refund was also granted. However proceedings for reopening of assessment were initiated and the assessee was called upon to produce the balance sheet and the profit and loss account for the assessment year 2007-08. Assessee replied that the accounts were misplaced.

2. Noticing that assessee had submitted audited accounts for different assessment years with the State Bank of India, after collecting the said audited accounts from the Bank, assessing officer proposed to assess the income on the basis of the said accounts filed by the assessee. After finding that the assessee failed to furnish the books of account fearing detection of escapement of income, the assessee was re-assessed on the basis of the audited accounts furnished before the bank. After rejecting the contentions of the assessee, the total income was fixed at Rs.46,82,920/-. The figure was arrived at by disallowing an amount of Rs.32,18,677/- from deduction under freight charges as per Section 40(a)(ia) of the Income Tax Act, 1961 [Hereinafter referred to as 'the Act'] for failure to deduct TDS under Section 194C of the Act. A further sum of Rs.8,86,790/- was also disallowed under Section 40(a)(ia) of the Act for failure to deduct TDS under Section 194H. Yet

another sum of Rs.3,26,380/- was added to gross total income under Section 69C of the Act, since the assessee failed to furnish any details to prove the source.

3. On appeal, the Commissioner Appeals allowed the appeal in part and directed deletion of the dis-allowance of a total of Rs.41,05,467/- under Section 40(a)(ia) of the Act as well as the addition of Rs.3,26,380/- under Section 69C of the Act.

4. The Revenue went in appeal to the Appellate Tribunal. After finding that the conclusion of the Appellate Authority that once the assessing officer accepted the estimated income, the provisions of Section 40(a)(ia) cannot have an application is not a correct proposition of law, the Tribunal restored the order of the assessing officer. This appeal is thus preferred under Section 260A of the Act. Though the appeal was admitted on five substantial questions of law with the consent of the counsel for both sides, we rephrased the questions of law as follows :-

1. Whether sub-clause (k) of Section 194(c) has applicability for the previous year 2006-07 (AY-2007-08).

2. Whether the Tribunal was correct in restoring the addition of Rs.32,88,677/- made by the assessing officer on account of the dis-allowance under Section 40(a)(ia) of the Act for non-payment of TDS under Section 194C of the Act.

3. Whether the addition of Rs.8,86,790/- made by the assessing officer as affirmed by the Tribunal on account of disallowing the claim under Section 40(a)(ia) of the Act, for non-payment of TDS under

Section 194H of the Act is justified.

4. Whether the Tribunal was justified in restoring the addition of Rs.3,26,380/- made by the assessing officer under Section 69C of the Act.

5. We heard Adv.Arun Raj S., the learned counsel for the assessee as well as Adv.Jose Joseph, the learned Standing Counsel for the Department of Tax.

6. The learned counsel for the appellant argued that as far as dis-allowance of the amounts under Section 40(a)(ia) are concerned, the Tribunal as well as the assessing authority had failed to consider the inapplicability of Section 194C (k) to the asseessee for the relevant assessment year. Adv.Arun Raj contended that assessee had no liability to deduct TDS for the freight charges paid, since they were all paid separately to different individuals which were all less than Rs.20,000/-. He further pointed out that the disallowance on account of non-deduction of TDS under Section 194H, amounting to Rs.8,86,790/- also ought not to have been directed to be added since even according to the assessing officer, the audit report that was given to the bank was prepared by a reputed chartered accountant and when he had not pointed out any mistake in the audit report, the assessing officer could not have gone behind the audit report and found mistakes in it.

7. The learned Standing Counsel for the Department, on the other hand justified the conclusions of the Tribunal and pointed out that the instant case was not one fit for interference and also that no case had been made out by the assessee for interference.

8. We have considered the rival contentions. Admittedly the assessee had failed to produce the books of account for verification and the assessee accepted assessment to be carried out on the basis of accounts and records available with the assessing officer. When the assessee failed to produce the books of account, the officer was justified in assessing the income on the basis of the audited accounts furnished by the assessee himself and produced before the bank authorities. In fact, after consenting to such an assessment, assessee cannot thereafter turn around and object to the reliance of the records obtained by the assessing officer.

9. However, certain payments made by the assessee and claimed deduction as expenses were disallowed by the assessing officer under Section 40(a)(ia) for the reason that tax had not been deducted at source for those payments. The payment of Rs.32,18,677/- were claimed to have been made by the assessee as freight and coolie charges, and carriage charges. The assessing officer held those charges to be not liable for deduction as the assessee had failed to deduct tax at source under Section 194C of the Act. Though the CIT Appeals interfered with the said finding, the Appellate Tribunal restored the findings of the assessing officer.

10. It is relevant to note that the obligation to deduct tax for payments made to an individual under Section 194C, beyond the monetary limit was brought into effect only from 01.06.2007. As rightly contended by Adv.Arun Raj Sub clause (k) of Section 194C was brought into effect by the Finance Act, 2007. Though Section 2 of the Finance Act, 2007 states that

Section 2 to Section 93 of the Amendment Act will come into effect from 01.04.2007, Section 54 of the Finance Act, 2007 which amends Section 194C of the Act specifies that the amendment in 194C will be substituted with effect from 01.06.2007. Thus, it is beyond the pale of any dispute, that the liability for deducting tax at source for payments made to individual contractors above the monetary limits arose only with effect from 01.06.2007. When the liability to make such deduction arose from 01.06.2007, it cannot be assumed that for failure to deduct such a tax at source for the previous year 2006-07, (i.e.01.04.2006 to 31.03.2007), the assessee should be put to a liability for non-deduction of such tax at source. We, therefore, hold that the asseessee was not bound to deduct tax at source for payment made to individual contractors for the assessment year in question. In the circumstances, the Tribunal went wrong in interfering with the order of the First Appellate Authority directing deletion of the disallowance made under Section 40(a)(ia) to the extent of Rs.32,18,677/- for non-payment of TDS under Section 194C of the Act. We hold that the assessee was entitled to deduct the aforesaid sum even though tax had not been deducted at source.

11. The claim for deduction of the commission or brokerage paid by the assessee was negated by the assessing officer as well as the Appellate Tribunal. Admittedly, the assessee had paid commission and brokerage to the extent of Rs.8,86,790/-. The assessee was bound to prove that such payments were made to different persons and the value of such payments were all less than the monetary limits prescribed under law. When the books

of accounts were not produced before the assessing officer and there were no records to justify the claim of the assessee, the assessing officer was entitled to draw inferences. The burden to clarify a doubt raised by the department is upon the assessee. When the assessee fails to explain the doubtful circumstances, the assessing officer is entitled to draw assumptions from the circumstances arising in the case.

12. In the absence of any record or material to show that the commission or brokerage paid by the assessee to the extent of Rs.8,86,790/- were to different individuals and each one of such payments were less than the monetary limit of Rs.20,000/-, we are of the view that the Tribunal was justified in interfering with the order of the First Appellate Authority. Accordingly, we affirm the order of the Tribunal as far as the claim under Section 194H of the Act is concerned. The last question that was argued by Adv.Arun Raj related to the claim under Section 69C of the Act for the payment of Rs.3,26,380/-. As mentioned earlier, when satisfactory explanation is not offered by the assessee, the assessing officer is entitled to draw inferences. The expenditure to the extent mentioned above was not found by the assessing officer to be on the basis of any known sources of income. The Tribunal as a final fact finding authority came to the conclusion that in the absence of any details furnished by the assessee, the conclusion of the assessing officer that the above referred amount was incurred out of undisclosed sources cannot be faulted. In the above circumstances, we affirm the finding of the Tribunal as related to the claim under Section 69C.

In view of the above consideration, the first two questions of law claimed in this appeal are answered in favour of the assessee while the latter two are are answered in favour of the department.

This appeal is therefore allowed in part.

Sd/-
S.V.BHATTI, JUDGE

Sd/-
BECHU KURIAN THOMAS, JUDGE

RKM

APPENDIX OF ITA 70/2017

PETITIONER'S ANNEXURES :

ANNEXURE A	TRUE COPY OF THE ASSESSMENT ORDER DATED 22.12.2010 PASSED UNDER SECTION 143(3) OF THE ACT FOR THE AY 2007-08.
ANNEXURE B	TRUE COPY OF THE ORDER DATED 4.6.2014 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS), KOCHI FOR THE AY 2007-08.
ANNEXURE C	CERTIFIED COPY OF THE ORDER DATED 8.1.2016 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN FOR THE AY 2007-08.
ANNEXURE D	TRUE COPY OF THE ORDER DATED 19.9.2014 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN FOR THE AY 2005-06.