

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 18TH DAY OF AUGUST, 2015

PRESENT:

THE HON'BLE MR.SUBHRO KAMAL MUKHERJEE,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE A.V.CHANDRASHEKARA

INCOME TAX APPEAL NO.92 OF 2014

C/W

INCOME TAX APPEAL Nos.93 OF 2014, 94 OF 2014
95 OF 2014, 96 OF 2014, 97 OF 2014

INCOME TAX APPEAL NO.92 OF 2014

BETWEEN:

1. THE COMMISSIONER INCOME-TAX
AAYAKAR BHAVAN,
HUBLI - 580 020.
2. THE ASSISTANT COMMISSIONER
OF INCOME-TAX,
TDS CIRCLE,
AAYAKAR BHAVAN,
STAFF ROAD, FORT,
BELLARY - 583 102.

...APPELLANTS

(BY SRI AMEETKUMAR DESHPANDE, ADVOCATE)

AND:

THE EXECUTIVE ENGINEER
O & M DIVISION,
(GESCOM),
RAICHUR – 584 101.

...RESPONDENT

(BY SRI A. SHANKAR, SRI V. CHANDRASHEKAR
& SRI M. LAVA, ADVOCATES)

THIS INCOME-TAX APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE, ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, 'C' BENCH BANGALORE IN ITA NO.772/BANG/2013 DATED 30.09.2013 VIDE ANNEXURE-C CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME-TAX, TDS CIRCLE, BELLARY.

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INCOME TAX APPEAL NO.94/2014**BETWEEN:**

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INCOME TAX APPEAL NO.95/2014

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INCOME TAX APPEAL NO.97/2014

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THESE APPEALS COMING ON FOR ADMISSION THIS DAY, **ACTING CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

These appeals by the revenue are against the judgment and order dated September 30, 2013, passed by the Income-Tax Appellate Tribunal, C Bench, Bengaluru, affirming the order dated July 29, 2011, passed by the Commissioner of Income-tax (Appeals), Navanagar, Hubli.

2. We are informed that in all these six appeals, similar questions of law and facts are involved. Therefore, by consent of the parties, we take up all these appeals for analogous hearing.

3. Gulbarga Electricity Supply Company Limited, the assessee in short, challenged demands of the jurisdictional Deputy Commissioner of Income-tax. Appeals were filed before the Commissioner of Income-tax (Appeals) and by order dated July 29, 2011, the appeals were partly allowed. The revenue took the

matter before the Income-tax Appellate Tribunal, but the attempt of the revenue was abortive.

4. The first issue involved in these appeals is if on the payment made against the supply of materials included in composite contracts for executing Turn Key Projects, provisions under Section 194C of the Income-Tax Act, 1961 (for short, 'the Act') would attract or not.

5. The other issue is if payments made by the assessee to Bellary Computers and IT Solutions, Bellary, towards Bill Management Services are fees for professional and technical services and, therefore, comes within the purview of Section 194J of the Act or payments made towards carrying out work come within the ambit of Section 194C of the Act.

6. The Tribunal, in its detailed discussion, held that the issue regarding non-deduction/short deduction of tax deducted at source on payments made on supply

part of contracts awarded for execution of Turn Key Projects, has, already, been settled by the Jurisdictional High Court in the case of ***Commissioner of Income-tax and others vs. Karnataka Power Transmission Corporation Limited, the respondent in ITA 337 of 2011***. The issue was decided by a Division Bench of this court on March 15, 2012. It is recorded that the decision of the coordinate Bench is also binding on this Bench.

7. We are, also, of the opinion that the clauses of the contract particularly, clause 3.5 of the contract agreement, make it clear that three separate contracts have been entered into, but all the separate contracts were integral parts of a composite contract on single sale responsible basis. The invoices raised on the basis of the said composite contract separately mentioning the value of the material supplied, no deduction is permissible under Section 194C of the Act. Section

194C of the Act cannot be pressed into service to deduct tax at source. The whole object of introduction of that Section is to deduct tax in respect of payments made for works contract. No division is, therefore, permissible in respect of a contract for supply of materials for carrying out the work. It is in a case of distinct contracts. The contract for supply of material being a separate and distinct contract, no division is permissible under Section 194C of the Act. Section 194C has suffered an amendment also with effect from October 1, 2009 and the provision has been made very clear without any ambiguity.

8. Thus, we can conclude safely that if a person executing the work, purchases the materials from a person other than the customer, the same would not fall within the definition of 'work' under Section 194C of the Act.

9. Now, we shall deal with the second issue. If the provisions of Section 194J or Section 194C would apply in respect of payments made by an assessee towards Bill Management Services. The services rendered by the agencies engaged by the assesseees at Hospet, Bellary and Raichur are not professional services, and, therefore, Section 194J is not attracted. The demand towards the alleged short deduction of tax deducted at source and interest, therefore, was improper. The contract was rightly held to be a service contract by the Tribunal and we, also, feel that it was a contract, which should be covered under Section 194C of the Act.

10. We do not find that these appeals involve any substantial question of law, which requires consideration by this court. Therefore, all these appeals are dismissed.

11. The parties are however directed to bear their respective costs.

**Sd/-
ACTING CHIEF JUSTICE**

**Sd/-
JUDGE**

DM