

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).3891/2017
(Arising out of Special Leave Petition (C) No(s). 30221/2015)

M/S PRADEEP SINGH WAZIR

APPELLANT (s)

VERSUS

COMMISSIONER OF INCOME TAX AND ANR.

RESPONDENT(s)

O R D E R

Leave granted.

We have heard the learned counsel for the parties at this stage finally.

The appellant/assessee is involved in undertaking transport contracts. During the relevant year, it entered into a contract with the army for carriage of goods and personnel etc. In this regard, an amount of Rs. 74,81,106/- is said to have been received from the army including interest element of Rs. 1043/-. An amount of Rs. 57,98,885/- was debited by the assessee as hiring charges. Upon verification, the Assessing Officer found that the details of the vehicles provided by the assessee through which the contract was supposed to be executed and hiring charges paid were cars, scooters, tractors etc. Confronted with the situation, the assessee withdrew the details of the vehicles furnished earlier, which were stated to have been hired by it, and furnished another list of vehicles with some details of trips undertaken by each vehicle. Return of income was filed by the appellant for the Assessment Year

2008-09. The Assessing Officer vide its order dated 27.12.2010 by invoking the provisions of Section 40(a) (ia) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), disallowed the amount of Rs.55,59,585/- and added it back to the income of the assessee. The Assessing Officer computed the income of the assessee as per the provisions of Section 144 of the Act which worked out to RS.9,93,069/-. Against the order of the Assessing Officer, an appeal was preferred by the assessee. The Commissioner of Income Tax (Appeals) vide its order dated 09.07.2012 reduced the net profit rate from 12.5% to 5% and held that the Assessing Officer could not have made any disallowance under Section 40(a) (ia) of the Act. Aggrieved by the said order, the Revenue filed an appeal before the Income Tax Appellate Tribunal(hereinafter referred to as the 'Tribunal'). The Tribunal vide its order dated 29.11.2012 set aside the findings of disallowance under Section 40(a)(ia)of the Act. The assessee being aggrieved filed an appeal before the High Court. The High Court vide impugned judgment dated 01.06.2015 dismissed the appeal. Hence, the present appeal.

We find that the High Court has referred to the provisions of Sub-Section(3) of Section 194C of Act as well as Rule 29D of Income Tax Rules. Sub-Rule (3) of Rule 29D stipulates that the particulars under the third proviso to clause(i) of sub-section (3) of Section 194C to be furnished by a contractor responsible for paying any sum to such sub-contractor shall be in Form No. 15J. The High Court has treated the filling of the said Form as a prerequisite and on that basis held that provisions of Section 40(a)(ia) of the Act could not be invoked.

In the process the High Court has failed to notice that even that aspect of not filling Form No. 15J is kept aside, in the present case, the income of the assessee on the total contract receipts of Rs.74,81,106/- had been reached at by applying the net rate of profit after reduction and, thus, no further addition could be made under Section 40(a)(ia) of the Act. This is the reason which is rightly ascribed by the Commissioner of Income Tax (Appeals) to the order.

As a result, this appeal is allowed.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
MARCH 10, 2017.

ITEM NO.2

COURT NO.8

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 30221/2015

(Arising out of impugned final judgment and order dated 01/06/2015 in ITA No. 04/2013 01/06/2015 in ITA No. 4/2013 passed by the High Court Of Jammu & kashmir At Srinagar)

M/S PRADEEP SINGH WAZIR

Petitioner(s)

VERSUS

COMMISSIONER OF INCOME TAX AND ANR.

Respondent(s)

(WITH OFFICE REPORT)

Date : 10/03/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. Ambhoj Kumar Sinha, Adv.

For Respondent(s) Mr. K. Radhakrishnan, Sr. Adv.
Ms. Niranjana Singh, Adv.
Mrs. Anil Katiyar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur)

(Mala Kumari Sharma)

COURT MASTER

COURT MASTER

(Signed order is placed on the file)