SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Cit Vs. K.K. Engineering Co.

Cit Vs. K.K. Engineering Co.

SooperKanoon Citation : sooperkanoon.com/731812

Court : Kerala

Decided On : Feb-27-2001

Reported in : (2001)167CTR(Ker)209

Appeal No. : IT Ref. No. 108 of 1997 27 February 2001

Appellant : Cit

Respondent : K.K. Engineering Co.

Advocate for Pet/Ap. : P.K.R. Menon & George K. George, *for the Revenue* None, *for the Assessee*

Judgement :

S. Sankarasubban, J.

This reference is at the instance of the revenue against the order of the Tribunal in ITA No. 469/Coch/of 1991 and cross-objection No. 36 of 1991. The questions of law raised are as follows:

1. Whether, on the facts and in the circumstances of the case and on an interpretation of section 194C, is not the levy of interest under section 201(1A) valid and justified ?

2. Whether, on the facts and in the circumstances of the case, is the decision CIT v. Kannan Devan Hill Produce Co. : [1986]161ITR477(Ker) applicable to the facts

of the case ?'.

2. The facts of the case are as follows :-- The assessee is a contractor and it sub-contracted the work, to one C.V.P. & Co. for a sum of Rs. 56,09,233. The tax deducted at source was only Rs. 26,890 as against the deductible amount of Rs. 56,092. The assessing officer issued show-cause notice as to why interest should not be charged for the short-deduction. The assessee pleaded that the sub-contractor was short of working capital and on the completion of the assessment in the case of M/s C.V.P. & Co. the sub-contractor, it was found that tax was excess paid by it resulting in refund. Thus, it was contended that shortfall in deduction of tax on the payments to the sub-contractor did not result in the loss of revenue and hence, interest under section 201(1A) was not chargeable. The assessee relied on the decision reported in CIT v. Kannan Devan Hill Produce Co. Ltd. (supra). The assessing officer did not accept the contentions of the assessee and levied interest of Rs. 14,600 under section 201(1A) by order, dated 14-8-1990. The assessee took the matter in appeal. The appellate authority referred to the decision in : [1986]161ITR477(Ker) (supra) and also the decision of the Madhya Pradesh High Court in CIT v. LIC (1987) 166 CTR (MP) 191. The appellate authority accepted the contentions of the assessee and cancelled the interest charged by the assessing officer. It is against that decision, the revenue has filed the appeal before the Tribunal. According to the Tribunal, there can be no two opinions on the proposition laid down by the High Courts in the cases cited supra. The Tribunal observed that, sub-contractor had paid tax in excess of the amount which was determined as payable by him. The Tribunal felt that the component of taxes paid by the sub-contractor namely, by way of advance tax and by way of self-assessment tax and the date of such payments are relevant to decide the issue. If at about the time, when the assessee was obliged to deduct the tax on the payments made to the sub-contractor, the sub-contiactor had paid the taxes in full, then there was no scope for levy of interest. On the other hand, if the advance tax paid by the sub-contractor tell short of 75 per cent of the taxes payable by him, the levy of interest is justified on the amount of shortfall. The Tribunal held that 'as details were not available before us, we set aside the order of the Commissioner (Appeals) with a direction to the assessing officer to either cancel or otherwise modify the quantum of interest charged under section 201(1A) of the Act'.

3. Even though notice was served on the respondent, nobody appeared before us. Sri George K. George appearing for the revenue submitted that the order of the Tribunal is wrong. He submitted that section 201(1A) casts a duty on the respondent to deduct the entire sum prescribed therein. If it is deducted, it shall be paid to the Income Tax Officer. It on the other hand, the amount is not deducted, he will be treated as an assessee in default and will be liable for payment of interest. According to the learned counsel, it is only that provision that has been resorted to by the Commissioner. So far as the decision in Kannan Devan Hill Produce Co. Ltd. (supra), learned counsel for the revenue submitted that it is not applicable to the present case because that was not under section 201(1A). It is submitted that in that case, section 201(1A) was not considered. What was considered there is section 201 of the Act. In that case it was held that employer cannot be deemed to be an assessee in default for failure to deduct tax at source from the salary of the employee. Section 201(1A) casts a duty on the assessee. On a plain interpretation of the section it is clear that assessee is liable to pay interest. As was held by this court in CBDT v. Cochin Goods Transport Association : [1999]236ITR993(Ker) , so long as the language employed in the statutory provisions and moreso in the fiscal statute is clear, the court should interpret it on the face value and there is no warrant to go behind it. Nothing should be added or subtracted to interpret the plain language and the semantic view alone should be taken. In CIT v. Dhanalakshmy Weaving Works : [2000]245ITR13(Ker) , it was held as follows :

'The levy of interest is a compensatory measure for withholding tax which ought to have gone to the exchequer. Section 201(1A) of the Income Tax Act makes it clear that the levy of interest is mandatory. It is true that the use of the expression 'shall' is not always determinative of the fact whether a provision is directory or mandatory in nature, but the context in which expression 'shall' is used in section 201(1A) makes it clear that the levy is mandatory. The purpose of the levy is to claim compensation on the amount which ought to have been deducted and deposited and has not been done.'

The Division Bench of this court also took note of the judgment in CIT v. Kannan Devan Hill Produce Co. Ltd. (supra), but took the view that, that decision was

concerning section 201, and not section 201(1A) of the Income Tax Act. While section 201 relates to non-deduction of tax, the other relates to levy of interest. The Division Bench further held that, the liability for payment of interest at the rate stipulated accrues automatically on a failure to pay the amount of tax by the due date. We agree with the above view. Hence, according to us, interest was liable to be paid since the amount deducted at source was not paid immediately. We answer the questions of law as follows :

The first question is answered in the affirmative and in favour of the revenue . The second question is answered by saying that the decision in : [1986]161ITR477(Ker) (supra) is not applicable to the facts of the case.

The income-tax reference is disposed of as above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com