RESERVED JUDGMENT

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR

AND

THE HON'BLE JUSTICE Mr. ALOK MAHRA

INCOME TAX APPEAL NO.10 of 2024

Commissioner of Income Tax,
International Taxation-3, New Delhi. ...Appellant

Versus

Samsung Heavy Industries Company Limited
C/o Price Wate House Coopers Pvt. Limited,
Building No.10, 17th Floor, Tower-C,
DLF, Cyber City Gurgaon 122002
PAN AAJCS7859K. ...Respondent

(Mr. Hari Mohan Bhatia, Advocate for the appellant)
(Mr. Arijit Prasad, Senior Advocate assisted by Mr. Pulak Raj Mullick, Advocate for the respondent)

Reserved on :24.06.2025
Delivered on :10.07.2025

ALOK MAHRA, J.

JUDGMENT

The present Income Tax Appeal has been filed by the Commissioner of Income Tax under Section 260-A of the Income Tax Act, 1961, assailing the order

dated 22.12.2023 passed by Income Tax Appellate Tribunal, Dehradun in ITA No.873/DEL/2017 for Assessment Year 2012-2013.

2. Facts of the case, in brief, are that Samsung Heavy Industries Company Limited (respondent herein) filed its return of income under Section 139(1) of the Income Tax Act, 1961 on 29.09.2012, declaring an income of ₹51,79,380/-; that the return of income was selected for scrutiny assessment and the notices under Section 143(2) and Section 142(1) of the Income Tax Act, 1961 were served upon the respondent; that on 12.05.2015, the Assessing Officer completed the assessment and passed the final assessment order under Section 143(3) of the Income Tax Act at total income of ₹117,11,60,400/-; that against the order passed by the Assessing Officer, the assessee (respondent herein) preferred an Appeal before the Commissioner of Income Tax (Appeals)-2, Noida; that the Commissioner of Income Tax, vide his order dated 19.12.2016 in Appeal No. 36/CIT(A)-2/2015-16, partly allowed the Appeal of the assessee but uphold the additions of ₹2,81,90,744/- and ₹4,20,03,868/- made for short-deduction of tax at source under Section 40(a)(ia) in respect of payments made for Interior and Electrification Works, and observed as under:

> "5.18 Recently, in the Kerala High Court in the case of P V S Memorial Hospital Ltd. held that if the tax is deductible under Section 194J of the Act but is deducted under Section 194C of the Act, the disallowance under Section 40(a)(ia) of the Act is still applicable. The High Court observed that the expression

> 'tax deductible at source under Chapter XVII-B' occurring in Section 40(a)(ia) of the Act has to be understood as tax deductible at source under the appropriate provision of Chapter XVII-B of the Act. Further, the latter part of this Section that such tax has not been deducted again refers to the tax deducted under the appropriate provision of Chapter XVII-B of the Act."

3. Against the order of learned Commissioner of Income Tax (A)-2, Noida for A.Y. 2012-2013 dated 19.12.2016, both, assessee and revenue filed Appeals before the Income Tax Appellate Tribunal. The grounds raised by the assessee in his Appeal, before the Income Tax Appellate Tribunal, are as under: -

> "1.2. Without prejudice to the above, the Ld. CIT(A) erred in applying the provisions of Section 40(a)(ia) without appreciating that the same is not applicable in the cases of short deduction of taxes.
>
> 1.3. Without prejudice to the above, the CIT(A) failed to understand that provisions of section 40(a)(ia) is applicable only to those expenses which are outstanding at the end of the year."

4. Learned Income Tax Appellate Tribunal vide order dated 22.12.2023 allowed the Appeal filed by the assessee and held as under: -

> "13. The only issue is to be decided in this appeal of the assessee is whether the provisions of section 40(a)(ia) of the Act could be made applicable for short deduction of tax at source.
>
> 14. We have heard the rival submission and perused the material available on record. It is not in dispute that the assessee made

payments to Arjun Engineering Pvt. Ltd. and Builcraft Interior Pvt. Ltd and deduced tax at source @2% thereon in terms of section 194C of the Act for carrying out electrification work and interior work respectively. The revenue concluded that the said work falls under the limb of professional services and fee for technical services warranting deduction of tax at source u/s 194J of the Act @10%. Since the assessee had not deducted tax at source in terms of section 194J of the Act, the ld AO proceeded to disallow the expenses u/s 40(a)(ia) of the Act. Now the short question that arises for our consideration is whether the provision of section 40(a)(ia) of the Act per se could be made applicable for short deduction of tax at source. This issue is no longer res integra in view of the decision of Hon'ble Calcutta High Court in the case of S. K. Tekriwal in ITA No. 183/2012 GA No. 2067/2012 dated 03.12.2012 wherein it had been categorically held that section 40(a)(ia) of the Act cannot be made applicable to short deduction of tax at source and the disallowance made was deleted. Further the Hon'ble Delhi High Court in the case of PCIT Vs. Future First info Services Pvt. Ltd in ITA No. 195/2022 dated 14.07.2022 had also given the same proposition. The ld CIT(A) however relied on the decision of the Hon'ble Kerala High Court in the case of PVS International Hospital Ltd reported in 380 ITR 284 (Ker) and decided the issue against the assessee. As could be seen above, none of the High Court decisions referred are the decisions rendered by the Hon'ble Jurisdictional High Court. The Hon'ble Supreme Court in the case of Vegetable Products Ltd reported in 88 ITR 192 had held that when there are divergent views of various non- Jurisdictional High Courts on an identical issue, the construction that is favourable to the assessee should be considered. Respectfully following the said decision of the Hon'ble Supreme Court, we are inclined to follow the ratio laid down by

> the Hon'ble Calcutta High Court and decision rendered by the Hon'ble Delhi High Court referred (supra) and hold that section 40(a)(ia) of the Act cannot be made applicable for short deduction of tax at source. Accordingly, the ld AO is hereby directed to delete the disallowance thereon. The grounds raised by the assessee are allowed."

5. Learned counsel for the appellant submitted that admittedly this is a case pertaining to short deduction of T.D.S. The T.D.S. was deducted by the assessee under Section 194C at the rate of 2 percent, instead of deduction under Section 194J at the rate of 10 percent, therefore, the Assessing Officer invoked the provision under Section 40(a)(ia) of the Income Tax Act, 1961. In order to buttress his argument, learned counsel for appellant placed reliance upon the judgment rendered by High Court of Kerala in the case of "Commissioner of Income Tax Vs. PVS Memorial Hospital Ltd.", reported in (2016) 380 ITR 284 (Kerala), wherein the Court, in paragraph no.9, held as under:

> "9. If Section 40(a)(ia) is understood in the manner as laid down by the Apex Court, it can be seen that the expression "tax deductible at source under Chapter XVII-B" occurring in the Section has to be understood as tax deductible at source under the appropriate provision of Chapter XVII-B. Therefore, as in this case, if tax is deductible under Section 194J but is deducted under Section 194C, such a deduction would not satisfy the requirements of Section 40(a)(ia). The latter part of this Section that such tax

> has not been deducted, again refers to the tax deducted under the appropriate provision of Chapter XVII-B. Thus, a cumulative reading of this provision, therefore, shows that deduction under a wrong provision of law will not save an assessee from Section 40(a)(ia).”

6. Per contra, Mr. Arijit Prasad, learned Senior Counsel assisted by Mr. Pulak Raj Mullick, learned counsel for the respondent (assessee) submitted that the Income Tax Appellate Tribunal has rightly relied on the law laid down by Hon’ble Calcutta High Court in the case of Commissioner of Income Tax Vs. S.K. Tekriwal, reported in [2014] 361 ITR 432 (Calcutta).

7. Learned Senior Counsel for the respondent placed reliance on the judgment rendered by Hon’ble Supreme Court in the case of Commissioner of Income Tax Vs. Vegetable Products Ltd., reported in [1973] 88 ITR 192 (SC), wherein it is held that when there are divergent views of various non-jurisdictional High Courts on an identical issue, the construction that is favourable to the assessee should be considered.

8. In view of the law laid down by Hon’ble Supreme Court in the aforesaid case, this Court has no hesitation in upholding the finding returned by learned Income Tax Appellate Tribunal, wherein it has held that Section 40(a)(ia) of the Income Tax Act, 1961 cannot be made applicable to short deduction of tax at source and the disallowance made was directed to be deleted. This finding of learned Income Tax Appellate Tribunal is

based on the judgment rendered by Hon'ble Calcutta High Court in the case of Commissioner of Income Tax Vs. S.K. Tekriwal (supra). Learned Income Tax Appellate Tribunal have negated the submission of the revenue, which relied on the decision of Kerala High Court in the case of Commissioner of Income Tax Vs. PVS Memorial Hospital Ltd.(supra), by relying on the judgment passed by the Hon'ble Apex Court in the case of "Commissioner of Tax Vs. Vegetable Products", reported in [1973] 88 ITR 192 (SC), wherein it was held that when there are divergent views of various non-jurisdictional High Courts on an identical issue, the construction that is favorable to the assessee should be considered.

9. Learned counsel for the appellant further submitted that the judgment of Hon'ble Kerala High Court has been challenged before the Hon'ble Supreme Court in Special Leave to Appeal No. 26075-26076 of 2016 M/s. PVS Memorial Hospital Ltd. Vs. The Commissioner of Income Tax and, vide order dated 02.11.2018, the Hon'ble Supreme Court granted leave in the matter and now it has been converted to Civil Appeal No(s). 10915-10916/2018 and, as per the website of Hon'ble Supreme Court, the case is ripe-up for final hearing and is still pending consideration before the Hon'ble Supreme Court, therefore, the hearing of present Appeal may be deferred till decision in the aforesaid Civil Appeal.

10. We do not find any infirmity in the order of the Income Tax Appellate Tribunal.

11. In the light of above observations, in our considered view, no substantial question of law arises for consideration in the present Appeal and, therefore, we refuse to admit the Appeal.

12. Accordingly, the Income Tax Appeal stands dismissed. However, liberty is granted to the Revenue to approach this Court, if the aforesaid Civil Appeal is decided in their favour and the order passed by Hon'ble Kerala High Court is upheld.

(G. NARENDAR, C.J.)

(ALOK MAHRA, J.)

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ARPAN JAISWAL

Digitally signed by ARPAN JAISWAL
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