**Court No. - 32**

**Case :-** INCOME TAX APPEAL No. - 230 of 2011

**Appellant :-** Assistant Commissioner Of Income Tax (Tds), Noida
**Respondent :-** M/S. Lotus Valley Education Society
**Counsel for Appellant :-** Ashok Kumar (S.S.C.)

AND

**Case :-** INCOME TAX APPEAL No. - 231 of 2011

**Appellant :-** Assistant Commissioner Of Income Tax (Tds), Noida
**Respondent :-** M/S. Lotus Valley Education Society
**Counsel for Appellant :-** Ashok Kumar (S.S.C.)

**Hon'ble Sunil Ambwani,J.**
**Hon'ble Surya Prakash Kesarwani,J.**

1. We have heard Sri Ashok Kumar for the appellant-department.

2. These Income Tax Appeals under Section 260-A of the Income Tax Act 1961 (the Act) are directed against the judgment and order dated 14.01.2011 of the Income Tax Appellate Tribunal, Delhi Bench D, New Delhi for the Assessment Years 2008-09 and 2009-10.

3. The assessee appellant has raised following substantial questions of law, for consideration:-

i. Whether ITA Tribunal was legally justified in allowing the appeal of assessee holding the assessee itself has not utilized the buses being plant but they were used by the transporters ignoring the provisions of Section 194-I of the Income Tax Act?

ii. Whether Income Tax Appellate Tribunal is legally justified in holding that provisions of Section 194-I are not applicable on hiring of vehicles in the cases of assessee, ignoring the provisions of Section 194-I amended w.e.f 01.06.2007 as also not considering the definition of plant provided u/s 43 (3) of the Act?

iii. Whether in any view of the matter, the impugned order of Tribunal can sustain in the eyes of law?"

4. The Assistant Commissioner of Income Tax (TDS), Noida found short deduction of Rs.13,95,726/-, and on which he charged interest of Rs.3,07,013/- and raised a demand of Rs.17, 02,739/- for the financial year 2007-08. For the financial year 2008-09, the AO found short deduction of Rs.24,08,808/-, on which interest of Rs.2,79,679/- was charged and the demand raised was Rs.26,88,487/-.

5. In appeal filed by the assessee, CIT (A) affirmed the order of AO by holding that the amended provisions of Section 194-I of the Act uses the word 'plant' - vehicle used by the assessee comes under the definition of 'plant' as per sub section (3) Section 43, which reads that "plant' includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purpose of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings.

6. In the second appeal, the ITAT held that the provisions of Section 194-I of the Act could not be applied to the facts of the case. The assessee has rightly deducted tax in accordance with provisions of Section 194-C of the Act. Paragraph 6 of the judgment of the Tribunal, giving the reasoning to arrive at such conclusion is quoted hereunder:

"We have carefully considered the rival submission in the light of material placed before us. A careful consideration of the assessment order would reveal that AO while holding that assessee is liable for deduction of tax at source under the provisions of Section 194-I of the Act has mainly rested his case on the ground that it is the "rent" as defined in explanation under Section 194-I and the assessee has paid rent in respect of buses utilized by him being in the nature of plant. In our opinion, simply for the reason that "rent" being explained under Explanation given u/s 194-I in respect of a plant will not make the relevant payments liable for deduction u/s 194-I. The sum and substance of the transaction has to be seen and it has to be decided that under which Section the case of the assessee would fall. If one goes by the logic adopted by the AO, then the same will also be equally applicable in respect of Section 194-C where also under Explanation-III to sub-section (2) of Section 194-C, the "work" has been defined or explained which according to clause (c) thereto includes "carriage of goods and passengers by any mode of transport other than by railways". According to the transport contract entered into by the assessee, the activity of the transport contractor will be a simple activity of carriage of passenger by any mode of transport other than by railways. The object of the assessee to enter into such agreement was a simple activity of carrying its students and staff from their homes to the school and similarly from school to their homes. the assessee has not responsibility whatsoever regarding the buses to be

utilized for that purpose, which was the sole responsibility of the transport contractor. The transport contractor only was liable to keep and maintain the required number of buses for such activity at their own expenses with the specified standard therefore, the said contract is purely in the nature of services rendered by the transport contractor to the assessee. The assessee was not having any responsibility whatsoever regarding the transport vehicles used in such activity. As against that, "rent" which is defined in Explanation Section 194-I inter-alia is for the use "plant" which according to the AO includes buses. Here, according to the facts of the present case, assessee itself has not utilized the buses being plants but they were used by the transport contractor for fulfilling the obligations set out in the contract agreement. Therefore, the provisions of Section 194-I could not be applied to the facts of the present case and it has to be held that assessee has rightly deducted tax at source under the provisions of Section 194-C of the Act. Ground Nos. 2 & 3 raised in both the appeals are allowed."

7. Sri Ashok Kumar has supported the reasoning given by AO, CIT (A), and submits that the word 'plant 'has been defined in Section 43 (3) of the Act, which includes vehicles and thus rent paid for the buses would attract TDS under Section 194-I. He has relied on the judgment in **United Airlines Vs. Commissioner of Income-Tax and others** [(2006) 287 ITR 281 (Delhi)] in which the Delhi High Court held as follows.

"The word "rent" in the aforesaid definition has a wider meaning, as already stated above, than in common parlance and it amounts to a legal fiction. Legal fictions are well-known in law. For instance, Section 43 (3) of the Income-tax Act defines "plant" to include a book. Normally, in common parlance "plant" means a factory but Section 43 (3) includes books within the meaning of the word "plant" for the purpose of depreciation.

Learned counsel for the petitioner sought to go into the intention of the provision and the background, etc., but in interpreting a taxing statute all these considerations are irrelevant. In a taxing statute, the principle of literal interpretation is very strictly applied. It is often said that there is no equity in taxes and tax and equity are strangers.

In our opinion, there is no equity in a tax and considerations of equity are wholly out of place in a taxing statute. This is because the principle of strict interpretation applies to taxing statutes."

8. We have examined the reasoning given by AO, CIT and the Delhi High Court (Supra), and find that word 'rent' in the explanation to 194-I includes 'plant' but that 'plant' has not been defined under definition clause of Section 2 of the Act, which is general definition clause under the Income Tax Act.

9. In the present case, the word 'rent' has not been defined in Section 2 of the Act. The definition of the word 'plant' under sub section (3) of Section 43, falls in Chapter IV - Computation of Total Income, which is neither relatable nor applicable to the Chapter XVII, relating to collection and recovery of tax. Even otherwise, it is difficult to believe that the word 'plant' defined in Chapter IV - computation of total income, falling under Section 43 of the Act, includes buses hired by the educational institutions. The definition of 'plant' in sub section (3) of Section 43 of the Act clearly states that 'plant' includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession. A plain and general interpretation of 'plant' in Chapter-IV of sub section (3) of Section 43 of the Act would show that it has included the use of ships, vehicles, books, scientific apparatus and surgical equipment for the purposes of Section 28 to 41. We are not permitted to add or subtract anything from it, nor can we read it as an inclusive definition to be used for the purpose of sections in Chapter XVII - collection & recovery of tax at source

10. We further find that Section 194-C of the Act provides for collection and deduction of tax at source in respect of the payments made to contractors and sub contractors.

11. Any person responsible for paying any sum to any resident for carrying out any work is liable to deduct an amount equal to one percent where the payment is being made or credit is being given to an individual or a Hindu undivided family and at two percent, where the payment is be made or credit is being given to a person other than an individual or a Hindu undivided family. The definition clauses for the purpose of Section 194-C provides that the term 'work' shall include (a) advertising; (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting: (c) carriage of goods or passengers by any mode of transport other than by railways; (d) catering; (e) manufacturing or supplying a product according to the requirement or specifications of a customer by using material purchased from such customer

12. The Tribunal did not commit any error of law in invoking Section 194-C, which clearly provides under explanation-III to sub section (2) of Section 194-C that 'work' includes carriage of goods and passengers by any mode of transport other than by railways

13. In our view, the tribunal has not committed any error of law nor any substantial question of law arises for consideration.

14. The Income Tax Appeals are **dismissed**.

**Order Date :-** 12.9.2013
nethra