

(2008) 07 KAR CK 0013
In the Karnataka High Court
Case No : IT Appeal No. 93 of 2000

Assistant Commissioner of Income Tax	APPELLANT
Vs	
Consolidated Engineering Enterprises	RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Citation : (2010) 322 ITR 224

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : E.R. Indra Kumar, for the Appellant; K.R. Prasad and Kulkarni, for the Respondent

Judgement

K.L. Manjunath, J.—This appeal is by the Revenue challenging the concurrent findings of the Commissioner of income tax (Appeals) and the income tax Appellate Tribunal, Bangalore Bench in 1867/Bang/91 for the assessment year 1989-90. On April 3, 2001, when the matter was listed for admission this court without framing questions of law arising in this appeal admitted the appeal with the following observations:

We have heard learned counsel for both the parties. All that we need to record at this stage is that the points in issue require further consideration. The appeal is accordingly admitted since the respondents are represented, fresh notice is unnecessary.

Thereafter the matter was listed for final hearing before a Division Bench of this court which by its order dated May 30, 2006, affirming the order of assessment permitting the Revenue to raise the demand, granted four weeks' time for the assessee to produce satisfactory proof before the Assessing Officer to cancel the demand and adjust the amount of demand in the light of the proof to be made available to the Department. The order passed by the Division Bench on May 30, 2006, was taken up in appeal to the Supreme Court by the assessee in Civil Appeal No. 5278 of 2007. Their Lordships by their order dated November 16,

2007, allowed the appeal and set aside the order passed by the Division Bench of this court on the ground that this court had disposed of the appeal without considering whether any substantial question of law had arisen for consideration of this court and framing the question of law. In the circumstances the matter is now placed before us after the order of remand by the Supreme Court. Since the question of law arising for consideration of this appeal has not been framed at the time of admission, we are of the opinion that after hearing learned counsel for both the parties on ascertaining the facts and question of law arises for our consideration, we have to formulate the questions and if such questions of law arises, we have to answer the same in accordance with law.

2. We have heard Sri E.R. Indrakumar for the Revenue and Mr. Kulkarni for the respondent/assessee.

3. The facts leading to this case are as under:

The assessee is a contractor and it is a partnership firm engaged in constructional activities after obtaining contract work from the PWD and other works. The assessee filed a return for the assessment year 1989-90 declaring a loss of Rs. 5,07,350. The case was taken up by the Assessing Officer u/s 143(3) of the income tax Act. The Assessing Officer called upon the representative of the assessee as well as the managing partner of the assessee-firm and after verifying the details produced by the assessee the order of assessment was completed.

4. The assessee-firm is a contractor undertaken the work entrusted to it by the PWD/Government departments. According to the assessee, all the works were assigned to sub-contractors. Most of the sub-contractors were none other than the partners of the assessee-firm. The Assessing Officer having noticed that there was no tripartite agreement between PWD/ Government department, the assessee and the sub-contractors held that the assessee-firm alone is solely responsible for the State Government as a contractor. According to the assessee, it has received 4 per cent. commission on the amount paid by the Government from the sub-contractors. The amount was paid to the assessee by the department after deducting 2 per cent. of tax deduction at source. In the return filed by the assessee, the Department mainly disputed the following two entries one in regard to the receipt Rs. 25,70,785 from the Government by virtue of the arbitration award passed relating to the reduction of rates pertaining to the work completed at Ravattanahalia Tank Project during January 1984 to September 1988 and receipt of retention money amounting to Rs. 12,13,083 which amount was retained by the Government in respect of various works entrusted to the assessee. Considering these two points, the order of assessment was completed. The demand was raised for payment of Rs. 7,64,728 and further there is an order to initiate penalty proceedings u/s 271(1)(c) of the Act separately.

5. The assessee aggrieved by the same filed an appeal before the Commissioner of income tax (Appeals), Bangalore, on the ground that the award amount

received by it amounting to Rs. 25,19,369 pursuant to an arbitration award was on account of the sub-contractors. Since the amount received by the assessee had been paid to the sub-contractors on account of the work being executed by the sub-contractors and that the same cannot be considered as an income of the assessee, it is entitled for a commission. It was also contended that the retention amount received by the assessee had been declared by the assessee during the relevant assessment years and therefore, it cannot be included again since it amounts to double taxation and in the running bills of the relevant assessment years the break up amount was shown by the assessee. Therefore, the assessee requested the Commissioner of income tax (Appeals) to delete these two additions and allow the appeal accordingly.

6. The Commissioner of income tax (Appeals) considering the case pleaded by the assessee came to the conclusion that the receipt of Rs. 24,55,097.85 by the assessee was for and on behalf of the sub-contractors and it is for the sub-contractors to explain the same and tax has to be paid by them. Accordingly, it was ordered to be deleted. Similarly an amount of Rs. 12,13,083 received as retention money was also ordered to be deleted on the ground that the same was distributed. Being aggrieved by the order of the Commissioner income tax (Appeals) dated May 17, 1991, the Revenue took up the matter before the income tax Appellate Tribunal, Bangalore contending that the Commissioner of income tax (Appeals) has committed an error in deleting the addition of Rs. 24,55,097.85 and Rs. 12,13,083. The income tax Appellate Tribunal by its order dated April 20, 2000 dismissed the appeal of the Revenue on the ground that the award amount received by the assessee from the Government cannot be treated as an exclusive income of the assessee as the same was received on account of the sub-contractors. Accordingly, the appeal was dismissed. Being aggrieved by the concurrent findings of the Commissioner of income tax and the income tax Appellate Tribunal, the present appeal is filed by the Revenue.

7. Though several questions of law are framed by the Revenue in the appeal memo, after hearing learned counsel for the parties, we are of the opinion that we have to reformulate the question of law framed in the appeal memo and answer the same in accordance with law. According to us the following substantial questions of law arise:

1. Whether the Commissioner of income tax (Appeals) and the Tribunal were justified in reversing the findings of the Assessing Officer even though the assessee failed to produce the adequate proof to show that an amount of Rs. 25,70,785 was received by the assessee on behalf of the sub-contractors and that the sub-contractors in turn had assessed to tax ?

2. Whether the Commissioner of income tax (Appeals) as well as the Tribunal were justified in deleting a sum of Rs. 12,13,083 retention amount without adequate proof to show that the same was assessed to tax in the earlier years ?

8. After hearing learned counsel for both parties and on perusal of the records, it

is not in dispute that the contract work was undertaken by the assessee from the Government. As rightly put by learned counsel for the Revenue, there is no tripartite agreement between the principal-contractor and the sub-contractor. The agreement is bilateral. The work is entrusted to the assessee. According to the assessee, in turn the assessee had entrusted the work for execution to the sub-contractors. If the work was entrusted to the sub-contractors since there is no tripartite agreement, the bills submitted by the sub-contractors shall be in the name of the contractor and the Government has to issue cheque only to the contractor and not to the sub-contractor. The terms of the contract is the contractor has to receive commission or profit in terms of the agreement entered into between the assessee and the sub-contractors. Therefore, what was required to be considered by the Assessing Officer was whether in terms of the agreement entered into between the assessee and the sub-contractor what was the amount payable to the assessee and even if the award was passed in favour of the assessee, whether the assessee had in turn passed on the award amount to the sub-contractor and whether the sub-contractor in his return had declared the receipt of the arbitration award amount ? If the award amount which is stated to have been disbursed by the assessee to the sub-contractor, we are of the opinion that the Commissioner of income tax (Appeals) as well as the Tribunal were justified in deleting the aforesaid amount, but the assessee has not produced adequate documents to prove the same.

9. Before us Mr. Kulkarni has produced certain returns said to have been filed by the sub-contractors to show that the sub-contractors have paid taxes on the arbitration amount, which in turn passed on to the sub-contractors by the assessee. Since these documents were not produced by the assessee before the Assessing Officer, we are of the opinion that a liberty should be given to the assessee to produce these documents and prove that the arbitration award amount received by the assessee in turn had been passed on to the sub-contractors and the sub-contractors have paid tax thereon. If such an opportunity is not given to the assessee, it amounts to calling upon the assessee to pay tax again. If tax had been paid by the subcontractors and again if the assessee is called upon to pay tax, the same would amounts to double taxation. In the interest of justice we are of the opinion that answering question of law No. 1 framed by us, we have to set aside all the orders of the Assessing Officer, the Commissioner of income tax (Appeals) and the Appellate Tribunal and remand the matter to the Assessing Officer for fresh consideration on question No. 1.

10. In regard to question No. 2 after hearing learned counsel for the parties, we are of the opinion that an opportunity should be given to the assessee to explain how the retention amount of Rs. 12,13,083 was accounted by the assessee in the previous assessment years. If an opportunity is given the assessee will be in a position to answer the questions put forth by the Assessing Officer. If the same amount had been declared earlier, in such an event the assessee would be entitled for deletion. In view of our finding on issue No. 1, we are not required to answer question No. 2 also. Considering that the assessment is of the year

1989-90, the Assessing Officer has to dispose of the assessment within a period of four months from the date of receipt of this order. Liberty is granted for the assessee to produce relevant documents and if the documents are produced the same shall be received by the Assessing Officer at the time of hearing the parties. Accordingly, the appeal is disposed of.