(2011) 01 GUJ CK 0079

In the Gujarat High Court

Case No : Tax Appeal No. 1039 of 2009 (A.Y. 2000-01)

CIT — APPELLANT

Vs

Bhavana Property Developers Ltd. — RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:
Income Tax Act, 1961 — Section 260A, 69

Citation : (2011) 01 GUJ CK 0079

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Advocate : Bhatt, With Mrs. Mauna M. Bhatt, for the Appellant;

Final Decision : Dismissed

Judgement

1. The appellant-revenue in this appeal u/s 260A of the Income Tax Act, 1961 (the Act), has challenged order dated 21-11-2008 made by the Income Tax Appellate Tribunal (the Tribunal) proposing the following two questions:-

Whether the Appellate Tribunal was justified in upholding the order of the CIT(A) in deleting the disallowance of Rs. 50,18,505/- made by the Assessing Officer on account of labour expenses for failure of the assessee to substantiate its claim by producing the labour contractors for examination?

Whether on the facts and circumstances of the case, the Appellate Tribunal was justified in holding that the share application money amounting to Rs. 6,50,000/- was explained inspite of the fact that the assessee failed to prove creditworthiness of creditors, genuineness of the transaction?

The assessment year is 2000-01 and the relevant accounting period is the financial year 1999-2000. The assessee who is assessed in the status of a limited company is involved in the business of construction of Government and other private buildings.

2. In relation to proposed question [A], which relates to disallowance of Rs.

50,18,505/- on account of labour expenses for failure of the assessee to substantiate its claim by producing the labour contractors for examination during the course of assessment proceedings, the Assessing Officer noticed that the assessee had claimed labour expenses to the extent of Rs. 3.32 crores as against the total receipts of Rs. 6.92 crores and most of the bills raised were in the month of March, 2000. The Assessing Officer made further inquiries through the Inspector from the Department and it was found that none of the labour contractors were available at the given addresses. He, therefore, called upon the assessee to produce the labour contractors for examination. Despite several opportunities being granted, the assessee failed to produce the labour contractors. In the circumstances, the Assessing Officer observing the inconsistency in the receipts and labour payments, inferred that the expenses were non-genuine and disallowed 15% of such expenses amounting to Rs. 50,18,505/-. Being aggrieved, the assessee preferred appeal before the Commissioner (Appeals) who observed that the expenses were compatible with that of the preceding year and that most of the labour payments were made through Account Payee cheques. He, accordingly, held the expenses to be genuine and deleted the addition. Revenue took the matter in appeal before the Tribunal, which came to be dismissed by the impugned order.

3. Mr. M.R. Bhatt, learned senior advocate appearing on behalf of the appellant has invited attention to the order made by the Assessing Officer to submit that the findings recorded by the Assessing Officer and those recorded by the Commissioner (Appeals) are contradictory inasmuch as before the Assessing Officer, the assessee had stated that the labour contractors generally camp at the site and are not having bank account at that place, hence, payments are made in cash for their day to day expenses. However, the Commissioner (Appeals) has found that payments are made by cheque and that the contractors belong to nomadic tribes and as such, have no permanent residence. It is further submitted that despite several opportunities having been granted to the assessee, the assessee has not produced any labour contractor and as such, the Assessing Officer was justified in disallowing part of the labour expenses claimed by the assessee.

4. As can be seen from the impugned order of the Tribunal, the Tribunal has concurred with the findings recorded by the Commissioner (Appeals). In the circumstances, it may be germane to refer to the findings recorded by the Commissioner (Appeals). The Commissioner (Appeals), upon appreciation of the evidence on record has found that the Assessing Officer had not taken into account other relevant material for deciding the issue of any disallowance out of labour expenses. The Assessing Officer had taken an adverse view of the fact that majority of the payments were made to the labour contractors by cash, however about 94.5% of the payments made to the labour contractors had been made by cheque. It was further found that according to the Assessing Officer, labour expenses debited during the relevant period were about 50% of the total contract receipts. However, the Assessing Officer had wrongly taken into account

the details in respect of the contracts for labour and material and contracts for labour only, together. The Commissioner (Appeals) found that when details for contracts for labour and material and contracts for labour only are taken separately, the percentage of labour charges with respect to contract receipts in the contracts come to 27.62% and 84.22% respectively which cannot be said to be excessive considering the nature of the respective contracts. The Commissioner (Appeals) was of the view that Gross Profit rate of 13.45% and 12.43% for contracts for material and labour and contracts for labour only respectively could not be said to be on the lower side. According to Commissioner (Appeals), the assessee was following the mercantile system of accounting wherein the bills in the year end were required to be accounted for in the month of March only; that the outstanding amount was in respect of the bills raised for the months of January to March, 2000 which were duly paid subsequently. Hence, the same could not be made the basis for disallowing 15% of the labour expenses claimed by the assessee. The Commissioner (Appeals) further found that insofar as the issue as regards non-production of labour contractors was concerned, such persons belonged to nomadic tribe, that is, Vanjara who have no permanent residence and as such, the assessee has valid reason for not producing them at a particular time. It was noted that the assessee had made payments to the labour contractors by cheque only and had deducted TDS out of majority of the payments made to them and filed necessary TDS returns and that notices issued to the seven labour contractors had been duly served by the postal authorities at the addresses given by the assessee. An important factor, according to the Commissioner (Appeals) was that the Inspector of the Department had visited the sub-contractors, had obtained writings from them which indicated that all the labour contractors had duly confirmed having carried out the work for the assessee as claimed by it, for the previous year relevant to the assessment year under consideration. Considering the percentage of labour expenses to total work receipts for the relevant period as compared to other assessment years, the Commissioner (Appeals) found that the percentage of labour expenses for the relevant period was rather low. In the backdrop of the aforesaid facts, Commissioner (Appeals) found that the disallowance had been made by the Assessing Officer merely on suspicion by observing that possibilities of incurring expenses for non-business purposes cannot be ruled out. He, accordingly, deleted the disallowance. The Tribunal, in the impugned order, concurred with the findings recorded by Commissioner (Appeals) and was of the view that the Assessing Officer had made ad-hoc disallowance of 15% of the labour expenses without appreciating the explanation of the assessee.

5. Thus, both the Tribunal as well as the Commissioner (Appeals) have recorded concurrent findings of fact to indicate that the assessee had made payments to labour contractors by cheque only; had deducted tax at source out of majority of payments and had filed necessary TDS returns. The Assessing Officer had not pointed out any defect in the books of account regularly maintained by the

assessee. In the light of the aforesaid findings of fact, the view taken by the Tribunal that the order made by the Assessing Officer was based on suspicion cannot be said to be, in any manner, unreasonable. The conclusion arrived at by the Tribunal being based on concurrent findings of fact, the said ground of appeal, therefore, does not give rise to any question of law.

6. In relation to proposed question [B], the Assessing Officer made addition of Rs. 6,50,000/-, brought in as share capital as income of the assessee from undisclosed sources. The Assessing Officer had observed that the assessee has shown increase in share capital to the extent of Rs. 6,50,000/- stated to have been received from the four persons named in the assessment order and called upon the assessee to submit evidence, confirmation of the shareholders and source of investment. The assessee submitted confirmation but no evidence was furnished regarding the source of investment. The Assessing Officer called upon the assessee to submit evidence in respect of source of income of the shareholder, in reply to which the assessee explained that all the persons were regular income tax assessees and their Permanent Account Numbers were also submitted. The Assessing Officer, however, was not satisfied with the evidence submitted and added the said amount to the income of the assessee by treating the same as ingenuine and taxed it as income of the assessee from undisclosed sources. In appeal by the assessee, the Commissioner (Appeals) deleted the addition. In revenues appeal, the Tribunal placed reliance upon a decision of the Supreme Court in the case of Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., , and held that in the facts and circumstances of the case, the amount of share application money of Rs. 6,50,000/- cannot be held to be undisclosed income u/s 69 of the Act particularly when all the four persons who had paid share application money were existing income tax assessees. It was further noted that there was no dispute that the names and addresses of the four persons were given to the Assessing Officer and that the said persons had furnished confirmations before the Assessing Officer.

7. In Commissioner of Income Tax v. Lovely Exports (P) Ltd. (supra) the Supreme Court has held that if the share application money is received by the assessee from alleged bogus shareholders, whose names are given to the Assessing officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of the assessee company.

8. From the facts noted hereinabove, it is apparent that the Tribunal has merely applied the decision of the Supreme Court to the facts of the present case. In the circumstances, the said ground of appeal cannot be stated to give rise to any question of law so as to warrant interference. For the foregoing reasons, in the absence of any question of law, much less, a substantial question of law, the appeal is dismissed.