(2012) 02 RAJ CK 0022

In the Rajasthan High Court

Case No : ITA No. 267 of 2011 (A.Y. 2000-01)

CIT APPELLANT

Vs

Rajasthan State Bridge and Construction Corporation Ltd. RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 154, 260A, 43B

Citation : (2012) 346 ITR 53

Hon'ble Judges : Arun Kumar Mishra, C.J;Narendra Kumar Jain, J

Bench : Division Bench

Advocate : R.B. Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the appellant. The Revenue has preferred this appeal u/s 260A of the IT Act against order dated 19-9-2008 passed by Tribunal, Jaipur Bench, Jaipur whereby appeal preferred on behalf of Revenue has been dismissed.

2. Briefly stated the facts of the case are that assessee filed return of income for assessment year 2000-01 on 26-3-2001 showing nil income. The order u/s 143(3) of the IT Act was passed on 17-2-2003. Later on, AO issued a notice u/s 154 of the Act on 24-11-2003 as to why Rs. 15,00,000 claimed on account of provision made for leave salary should not be disallowed. The explanation was furnished. However, it was not accepted. Consequently, the AO vide its order dated 6-3-2007 disallowed the claim of Rs. 15 lakhs and added it back to the income of the assessee. Being aggrieved with the order of AO dated 6-3-2007, an appeal was preferred which was allowed by CIT(A)-II, Jaipur vide order dated 2-5-2008. The Revenue further preferred an appeal before Tribunal, Jaipur Bench, Jaipur, which was dismissed vide order dated 19-9-2008. The said order is under challenge in this appeal.

3. Submission of learned counsel for the appellant is that learned Tribunal has

wrongly relied upon the judgment of Hon''ble Supreme Court in Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, . He has submitted that the said judgment was referred and considered by the AO also but the same was not found to be applicable in the facts and circumstances of the case. Therefore, the orders of appellate authority as well as Tribunal be set aside and order of AO be restored.

4. We have considered the submissions of the learned counsel for the appellant and examined the impugned orders.

5. The only issue involved in the appeal is whether the disallowance of Rs. 15 lakhs by AO in respect of provision for leave salary was justified or not. We have examined the facts of the present case and also the ratio of apex Court in Bharat Earth Movers case (supra). The appellate authority as well as Tribunal considered the facts of the present case and came to a conclusion that judgment of the apex Court is fully applicable and consequently set aside the order of AO. The relevant portion of judgment of Tribunal is as under :

We have gone through the orders of the lower authorities as well as the decisions relied upon. We find that assessment u/s 143(3) was completed. Thereafter AO found that the assessee had claimed Rs. 15,00,000 on account of provision for leave encashment, which could not be disallowed while passing assessment order section 143(3) of the Act. He, therefore, issued notice u/s 154 but he was not satisfied with the explanation of the assessee that provision of Rs. 15,00,000 was in respect of any ascertained liability. The AO noted further that no details of calculation of the said amount was given. He accordingly made the disallowance of Rs. 15,00,000. The learned CIT(A), however, following the decision of Hon''ble Supreme Court in the case of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, held that amount set apart to meet liability on account of leave encashment of employees was not a contingent liability and the amount is deductible. He observed that on the issue the amendment u/s 43B has been made effective from 1-4-2002 as per which deduction is linked with payment. The learned CIT (A) held further that since the issue under consideration was highly debatable and there were more than two views on the issue, the AO was not justified in invoking the provisions of section 154 of the Act for making disallowance of Rs. 15,00,000. After having gone through the above decision of Hon''ble Supreme Court on the issue in the case of Bharat Earth Movers v. CIT (supra), we find that the Hon''ble Court in that case has been pleased to hold that the provision made by the assessee company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by the employees of the company, inclusive of the officers and the staff, subject to ceiling on accumulation as applicable on the relevant date, was entitled to deduction out of the gross receipts of the accounting year during which the provision is made for the liability. The liability was not a contingent liability. Since the issue is fully covered by the decision of Hon''ble Supreme Court, the learned CIT(A) has rightly deleted the disallowance of Rs.

15,00,000 made by the AO treating the provisions for leave encashment was not an ascertained liability. The first appellate order is thus upheld. The ground is thus rejected.

6. The Hon''ble apex Court in Bharat Earth Movers case (supra) considered the question "Whether, on the facts and in the circumstances of the case, the provision for meeting the liability for encashment of earned leave by the employee is an admissible deduction ?" The Hon''ble apex Court after considering the facts and circumstances of the case and the relevant law held as under :

Applying the above said settled principles to the facts of the case at hand we are satisfied that the provision made by the appellant-company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by the employees of the company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, is entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the liability. The liability is not a contingent liability. The High Court was not right in taking the view to the contrary.

The appeal is allowed. The judgment under appeal is set aside. The question referred by the Tribunal to the High Court is answered in the affirmative, i.e., in favour of the assessee and against the Revenue.

7. After considering all the facts and circumstances of the case, we are of the view that matter is fully covered by judgment of Hon''ble apex Court, referred above. The orders passed by the appellate authority as well as the Tribunal are legal and justified and the same do not call for any interference. No substantial question of law is involved in this appeal and the same is accordingly dismissed.

