(2008) 01 KAR CK 0085

In the Karnataka High Court

Case No : IT Appeal No. 158 of 2003

Commissioner of Income Tax	APPELLANT
Vs	
Balaji Engineering and Construction Works	RESPONDENT

Date of Decision : 14-01-2008

Acts Referred:

Citation : (2010) 323 ITR 351

Hon'ble Judges : K.L. Manjunath, J;A.S. Bopanna, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; A. Shankar, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—This appeal is by the Revenue challenging the concurrent findings of the Commissioner of income tax (Appeals) and the order passed by the income tax Appellate Tribunal, Bangalore Bench in I.T.A. No. 1913/ Bang/1992. The assessee is a firm indulging in constructional activities. For the assessment year 1989-90, the assessee filed a return of income. The Assessing Officer disallowed an income of Rs. 37,17,788 holding that the expenditure incurred paid by way of cash is contrary to section 40A(3) of the Act. The assessee filed an appeal before the Commissioner of income tax (Appeals) which appeal came to be allowed. Against which a second appeal was filed by the Revenue which appeal has been dismissed by the Tribunal confirming the order passed by the Commissioner of income tax (Appeals). Against these two orders, the present appeal is filed.

2. We have heard the learned counsel for the parties.

3. According to the learned counsel for the appellant, the following substantial question of law would arise for consideration in this appeal:

(1) Whether the Tribunal was correct in holding that the cash payment of Rs. 37,17,798 made by the assessee did not attract the provisions of section 40A(3)

of the Act and therefore no explanation under rule 6DD of the Rules was required to be assigned by the assessee.

4. Having heard the counsel for the parties, it is noticed by us that the assessee who is a civil contractor, after obtaining a contract from the Government entrusted the work to a sub-contractor. According to him, on the total cost of project, the assessee was entitled to 1 per cent, commission for having transferred his right in favour of the sub-contractor. According to the assessee, though it has received the payments from the Government, 99 per cent, of the amount has been passed to the sub-contractor in cash. Therefore, the said amount has to be considered as an amount paid to the sub-contractor by the assessee. The contention of the assessee was rejected by the Assessing Officer on the ground that, since the amount is paid in cash the same has to be considered as an expenditure, the assessee was not entitled to claim any deduction. Therefore, the claim made by the assessee was rejected.

5. The Tribunal as well as the Commissioner of income tax (Appeals) on facts have held that it is not an expenditure claimed by the assessee, but it is a payment made to the sub-contractor pursuant to an agreement. Therefore, we are of the opinion, that whether it is a business expenditure to attract the provision of section 40A(3) of the Act or an amount passed on to the sub-contractor is a question of fact and not question of law. If both the authorities on facts have held that the assessee being a principal contractor has passed on the amount to the sub-contractor, such amount, cannot be treated as an expenditure. Therefore, we are concurring with the findings of the authorities below and we have to answer the question of law framed against the Revenue and in favour of the assessee. Accordingly, this appeal is dismissed.