
(2014) 01 GUJ CK 0103
In the Gujarat High Court
Case No : Tax Appeal No. 774 of 2013

Commissioner of Income Tax

APPELLANT

Vs

B.M.S. Projects P. Ltd.

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Income Tax Act, 1961 — Section 133(6) 40(a)(ia)

Citation : (2014) 361 ITR 195

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Sudhir M. Mehta, for the Appellant; Manish J. Shah, for the Respondent

Judgement

Sonia Gokani, J.—Following is the proposed question of law in the present tax appeal arising out of the order dated January 21, 2013, of the income tax Appellate Tribunal, Ahmedabad ("the Tribunal" for short), in I.T.A. No. 748/Ahd/2009, for the assessment year 2005-06:-- Whether the hon"ble income tax Appellate Tribunal is right in deleting the addition of Rs. 3,40,51,847 made on account of disallowance of payment made to sub-contractors of Rs. 3,40,51,847 as the assessee failed to prove the genuineness of payments made?

While deciding Tax Appeal No. 775 of 2013, an identical question had arisen for our consideration, where we have held thus : 2. This tax appeal is preferred challenging the order of the income tax Appellate Tribunal, Ahmedabad ("the Tribunal" for short) dated January 21, 2013, raising the following substantial questions of law for our consideration :

(A) Whether the hon"ble income tax Appellate Tribunal is right in deleting the addition of Rs. 3,40,51,847 made on account of disallowance of payment made to sub-contractors of Rs. 3,40,51,847 as the assessee failed to prove the genuineness of payments made?

(B) Whether the hon"ble income tax Appellate Tribunal is right in deleting the

addition made u/s 40(a)(ia) of the income tax Act on account of payment of transportation charges of Rs. 11,36,949 as the provisions in the Finance Bill, 2010, clearly states that the amendment by the Finance Act, 2010, is with effect from April 1, 2010, is proposed to take effect from April 1, 2010, and will accordingly apply in. relation to the assessment year 2010-11 and subsequent years?

3. The factual details necessary for adjudication of the issues are as follows :

3.1 The assessee-company is engaged in the business of construction of infrastructural projects mainly the water supply projects. The principal source of income of the assessee is the job-work receipts from various construction related job works done for and on behalf of the predominantly Government or public sector undertakings. For the assessment year 2005-06, the return of income was filed by the assessee which was taken to scrutiny. It was noticed by the Assessing Officer that the major expenses incurred by the assessee were on account of job works which were sub-contracted to various persons for carrying out the work contracted out to the assessee. The assessee had sub-contracted the works to the tune of Rs. 3,41,38,500 in the financial year 2004-05.

3.2 After examination of the issue thoroughly, the Assessing Officer had made an addition of Rs. 3.41 crores (rounded off), which had aggrieved the assessee-respondent who carried such decision in the form of second appeal before the Commissioner of income tax (Appeals).

3.3 The Commissioner of income tax (Appeals), after an elaborate examination of the issue, had given respite to the assessee to the tune of Rs. 2.54 crores (rounded oft) and thus confirmed only Rs. 86.48 lakhs out of the total disallowances of Rs. 3.41 crores.

3.4 This was carried to the Tribunal by the Department. The Tribunal had deleted the entire addition of Rs. 3.40 crores (rounded off). Aggrieved by the same, the present tax appeal has been preferred by the Revenue raising the aforementioned questions of law.

4. We have heard the learned counsel, Shri Sudhir Mehta for the Department and the learned senior advocate, Shri J.P. Shah for the assessee-respondent.

5. It could be noticed from the material on record that a detailed inquiry was conducted by all the authorities, and the Assessing Officer deemed it fit to call for the information u/s 133(6) of the Act in respect of nearly seventy six parties. The Assessing Officer on account of the fact that there was a report of the inspector stating that the premises had been vacant and some of the persons had never worked from their residential premises nor was it possible to recognise these persons in the vicinity, concluded that these were bogus parties. The Assessing Officer also noted that the address given was identical and they were registered from a single place. On account of non-production of the parties as witness, the Assessing Officer deemed it fit to disallow a sum of Rs. 3.40 crores made

towards expenses claimed.

6. It could also be noticed that the remand report was also called for by the Commissioner of income tax (Appeals). The Assessing Officer furnished one on November 14, 2008, and a supplementary report was also furnished on December 15, 2008. As above, the Commissioner of income tax (Appeals) decided the issue confirming the part of the amount to the extent of Rs. 2.31 crores. The Tribunal exhaustively noted the details furnished by both the sides and also quoted the Commissioner of income tax (Appeals) to conclude that on due opportunity afforded to both the sides, the Commissioner of income tax (Appeals) had approached the issue properly. On the ground of residential addresses and the registration addresses of some of the sub-contractors being the same, the Tribunal noted that it did not find any reason to disbelieve the evidence.

6.1 It has also been argued before us by the learned senior counsel, Mr. Shah, that these being the sub-contractors who are mainly on the move from one place to another and, therefore, ordinarily for the convenience of one and all, the address given by many of them was the same addresses. It could be also noticed that the TDS was deducted on payments made to these sub-contractors and other details were also furnished. From the totality of the facts, the Tribunal has committed no error in deleting the entire addition made by the Assessing Officer. The entire issue is based on factual matrix. From the sufficiency of evidence, when the Tribunal has held in favour of the assessee and when no question of law much less substantial question of law has arisen, this issue deserves no further consideration on the merits.

7. The second question pertains to the addition made u/s 40(a)(ia) of the Act by the assessee to the sub-contractors for the period from April, 2004, to February, 2005, on which TDS has been paid on May 24, 2005. This issue has already been addressed by this court in the case of Commissioner of Income Tax-III Vs. Gujarat Narmada Valley Fertilizers Co. Ltd., and in Tax Appeal No. 412 of 2013 and allied appeals (CIT v. Omprakash R. Chaudhary) wherein, it is held that the amendment in section 40(a)(ia) of the income tax Act by the Finance Act of 2010 has retrospective effect. Reference also needs to be made to a decision of this court in Tax Appeal No. 706 of 2010 decided on July 18, 2011 (CIT v. J. K. Construction Co. [2014] 361 ITR 181 (Guj)). Since the issue is already answered, the present tax appeal requires no further consideration.

8. Resultantly, these tax appeals fail and are accordingly dismissed. No costs.

2. This tax appeal, therefore, is dismissed.