
(2014) 02 RAJ CK 0132
In the Rajasthan High Court
Case No : IT Appeal No. 301 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Consulting Engineering Group Ltd.

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Companies Act, 1956 — Section 269

Income Tax Act, 1961 — Section 260A, 40A(2)(a), 40A(2)(b), 44AD, 44AF

Citation : (2014) 267 CTR 447 : (2014) 365 ITR 284 : (2014) 223 TAXMAN 440

Hon'ble Judges : J.K. Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Mahendra Gargieya and Ms. Manisha Surana, Advocate for the Appellant; R.B. Mathur, Advocate for the Respondent

Judgement

Jainendra Kumar Ranka, J.—This appeal under s. 260A of the IT Act 1961 (for short, "IT Act") has been preferred by the appellant-Revenue against the order of the Tribunal dt. 17th Oct., 2008 passed in ITA No. 1058/Jp/2007 by which the Tribunal has dismissed the appeal filed by the appellant-Revenue against the order of the CIT(A)-II, Jaipur [for short, the "CIT(A)"]. The relevant assessment year is the asst. yr. 2004-05. The brief facts, as emerging on the face of record, are that the respondent-assessee is a limited company and mainly engaged in the business of contract and working for National Highway Authority of India on contract basis and the respondent-assessee gets work order after submission of tenders. It is claimed by the respondent-assessee that it is maintaining regular and proper books of accounts supported by material and relevant records and accounts are also audited by a chartered accountant.

2. The AO, during the course of assessment proceedings, desired the respondent-assessee to explain the nature and source of payment debited on account of job work charges to the extent of Rs. 2,51,80,655 and particularly of three sub-contractors, namely, Shri Bhura Ram Chaudhary, M/s. Payal Builders & Consultants & Gautam Builders and Consultants to whom substantial payments

amounting to Rs. 24,49,757, Rs. 27,92,267 and Rs. 16,47,516 respectively have been made and finding that the amount being substantial desired further particulars and evidence with reference to the said payments to the said three subcontractors.

3. The respondent-assessee had claimed an expenditure of Rs. 50,18,663 under the head of soil testing and surveying expenses and with reference to the same as well, further evidence was desired by the AO. There was a third claim with reference to the remuneration/salary to one Shri Viswas Jain who is chairman-cum-managing director of the respondent-assessee-company to whom salary of Rs. 24 lac was paid and, according to the AO, the payment is excessive.

4. During the course of hearing, the AO desired explanation on all three points, referred to hereinabove. In so far as the first issue is concerned, Shri Bhura Ram Chaudhary appeared before the AO and his statements were recorded and he submitted that he does not maintain books of accounts but he has worked for the assessee-company and has filed return under s. 44AF of the IT Act. However, the AO, in view of the statement recorded, was of the view that Shri Bhura Ram Chaudhary was not aware as to what amount he received from the assessee-company as also the payments made by him to his labourers. Finding discrepancies, the AO was not satisfied with the explanation so offered. With reference to M/s. Payal Builders & Consultants, it has been observed by the AO that one Smt. Aruna Rajawat, who is the proprietress of the concern, on the receipt of Rs. 27,92,267, filed return only disclosing an income of Rs. 93,045 and, therefore, was not satisfied with the explanation offered. With reference to Gautam Builders and Consultants, it is observed that on the payment of Rs. 16,47,516 Shri Gautam Jain, proprietor of M/s. Gautam Builders & Consultants, submitted a return under s. 44AD of the IT Act disclosing an income of Rs. 1,60,010 and after holding that out of the three above sub-contractors, since two have filed return of income on the presumptive basis under s. 44AD, they do not maintain regular books of accounts and the third one has paid tax of Rs. 354 only and accordingly disallowed the amount of Rs. 12,59,033 @ 5 per cent out of the total job charges on an estimate/ad hoc basis.

5. In so far as the soil testing and surveying expenses, the AO simply held that the expenditure is disproportionate in proportion to the income received by way of soil testing and surveying expenses and therefore, made an ad hoc addition of 10 per cent and disallowed the amount of Rs. 5,01,866.

6. Insofar as the salary paid to Shri Viswas Jain is concerned, amount of Rs. 9 lac was disallowed on the premise that the said amount is excessive considering s. 40A(2)(a) of the IT Act as salary paid to Shri Viswas Jain was Rs. 3 lac in the asst. yr. 2002-03 which was increased to Rs. 12 lac in the asst. yr. 2003-04 and abruptly increased by double to Rs. 24 lac during the previous year relevant to the year under appeal when the AO observed that there is no major change of duties and responsibility. He further observed that one Alam Singh, who was a technical person, being engineer and professor in the field of civil engineering,

was paid highest amount of Rs. 2,40,000 and therefore feeling that the salary paid is disproportionate, held that the salary of Rs. 15 lac was reasonable and disallowed Rs. 9 lacs.

7. Dissatisfied with the said disallowances, an appeal came to be preferred before the CIT(A). The respondent-assessee submitted a detailed explanation stating that the results have been fair and reasonable and there was overall growth in the receipts and when receipts are substantially better, the consequential expenditure had also to be incurred. It was contended that all the expenses paid to the subcontractors are by account payee cheques and they are being assessed to IT Act and even tax deduction at source was made from their respective payments as sub-contractorship and it is none of the duties of the respondent-assessee to find out whether they are filing returns under presumptive scheme or otherwise. With reference to other disallowances also, the CIT(A), after considering the arguments advanced by the respondent-assessee, deleted the disallowances on all the three counts.

8. The Revenue carried the matter in appeal before the Tribunal where also the Tribunal, after considering the submissions made by both the sides, upheld the deletion of the disallowances and dismissed the appeal filed by the Revenue. Hence this appeal.

9. Shri R.B. Mathur, learned counsel for the appellant-Revenue submitted that the AO had correctly disallowed all the three expenses out of the aforesaid expenses as the claim was abnormal and the respondent-assessee was unable to lead further evidence and to justify that the expenditures were incurred to a large extent. He contended that merely because those sub-contractors are filing some return, that does not mean that any amount of payment can be made and allowed. He contended that it was the duty of the respondent-assessee to show the justification of payment of huge amounts to the respective sub-contractors which ranged from Rs. 16 lac to Rs. 27 lac. He further contended that there was no justification for claiming abnormal amount on account of soil testing and surveying expenses as also as to why the salary to the tune of Rs. 24 lac was paid to Shri Viswas Jain, who happens to be chairman-cum-managing director of the respondent-company itself and therefore, he was the sole person to take whatever the salary he wanted and this is not fair and proper. He contended that just in three years, the salary has been increased from Rs. 3 lac to Rs. 24 lac and therefore, increase by 8 times was not proper. He contended that the AO had himself allowed an increase of 5 times i.e. 15 lac and considered the same as reasonable and therefore, the salary over and above Rs. 15 lac was correctly disallowed. He contended that substantial question of law arises out of the order of the Tribunal and needs consideration by this Court.

10. Mr. Mahendra Gargieya, learned counsel for the respondent-assessee, on the other hand, contended that it is basically a finding of fact, not only by the Tribunal but also the CIT(A), who, after appreciation of evidence and material on record, deleted the additions which had no basis. He contended that the

estimated disallowances could not have been made without specific defects and when all round performance was better and when both the appellate authorities have found, as a finding of fact, that the receipts have sharply increased in comparison to the stated expenditures, then no disallowance was required to be made and fully supported the order of the Tribunal and submitted that no question of law arises out of the order of the Tribunal.

11. We have considered the arguments advanced by counsel for the parties and gone through the impugned orders as well as the orders of the lower authorities.

12. In so far as the payments to sub-contractors are concerned, it is noticed that all the payments are by account payee cheques and the work, which the respondent-assessee is doing, certainly required sub-contractorship to look into various other jobs which possibly the respondent-assessee was unable to handle on its own. Admittedly, Shri Bhura Ram Chaudhary appeared before the AO, accepted that he has worked for the respondent-assessee and had also received payments from the said concern. One may not remember after lapse of years as to exact amount having been received from a particular concern and therefore, to say that there was discrepancy in the statements of Shri Bhura Ram Chaudhary is not proper. He had already conveyed that he had filed his return under s. 44AF (should be 44AD as he was not aware of the provisions of law) but did not maintain the books of accounts which, in fact, is not required to be maintained in a case of presumptive taxation. He has already conveyed that he had taken 25 people for working for the respondent-assessee and used to take 10 to 12 persons as and when required and that the tax was also deducted at source. In so far as the Payal Builders & Consultants and Gautam Builders & Consultants, both have admitted that they have received amount from the respondent-assessee for the work done by them and tax has also been deducted in their respective cases. It may be that these are small time persons and as required under the IT Act under s. 44AD, they were filing return and therefore, not required to maintain regular and proper books of accounts and if adverse inference is drawn by the AO on account of this fact, in our view, is not proper. It is also an admitted fact, as observed by the CIT(A) as well as the Tribunal that income from DPR work had increased by 21.35 per cent over preceding year whereas the corresponding expenditure is only 17.19 per cent. We also observe that while the payment to the three sub-contractors totalled Rs. 60,09,550 whereas the AO, for no reason, disallowed 5 per cent out of the total job work charges paid amounting to Rs. 2,51,80,655 and this exercise of the AO appears without any justification and was not proper. When all the three recipients did claim that they have received the amount for the work done on behalf of the respondent-assessee, then by and large there was no occasion for the AO to disallow the same and if or any reason the AO was not satisfied with reference to the income shown by the recipients in their respective hands, adverse inference at least could not have been made in the hands of the assessee and if at all then, the AO, assessing the assessee ought to have forwarded such information to the AO, assessing those recipients and action, if deemed proper, could have been

taken in their respective hands rather than observing here in the case of the respondent-assessee that the sub-contractors have not shown proper income or the income is disproportionate to the receipts. Therefore, we feel that such an observation and ultimate conclusion by the AO to disallow the ad hoc amount was not correct and rightly accepted by both the appellate authorities.

13. Insofar as the disallowance out of the soil testing and surveying expenses is concerned, both the Tribunal as well as CIT(A) have correctly disallowed the deletion and there was no occasion for any ad hoc disallowance out of the said expenditure @ 10 per cent. The CIT(A) so also the Tribunal had considered the matter after analyzing the details submitted before them and it has been observed by the CIT(A) and approved by the Tribunal that the receipts by the assessee were to the extent of Rs. 85,75,162 as against the expenditure of Rs. 50,18,663. Therefore, even the receipts are substantially higher than the expenditure and, in our view, the disallowance deleted by the CIT(A) and approved by the Tribunal cannot be faulted with.

14. Insofar as the salary/remuneration to the chairman-cum-managing director Shri Viswas Jain to the extent of Rs. 24 lac is concerned, in our view, it is for an assessee, a businessman, who happens to be well versed in running business/profession to come to a conclusion as to what remuneration/salary is to be paid to an employee and, in our view, reasonableness is to be judged from the angle of a businessman rather than from the angle of the AO who may not be aware of the realities and peculiarities of business. It has already been explained on the assessment records that the reasonableness or the justification of paying salary to the tune of Rs. 24 lac to Shri Viswas Jain was highest as he was the sole person who was influential in getting business for the assessee-company. It is already observed in the assessment record that the receipts of the assessee had increased from 7.73 crores in the asst. yr. 2003-04 to 9.92 crores during the previous year relevant to the year under appeal due to competence of Shri Viswas Jain whereas the salary has been increased from Rs. 12 lac to Rs. 24 lac during the previous year under appeal. Not only this, it is a case of a limited company and the said remuneration/increase in the remuneration was approved after passing a proper resolution in an extraordinary general meeting of the shareholders under s. 269 of the Companies Act. The minutes of the said meeting where all the directors were present had also been produced before the lower authorities. It is already on record that it was on account of Shri Viswas Jain who happens to be the key person of the company and whole time director and who had converted his proprietorship concern into a limited company from the asst. yr. 2003 and when he has been proved to be an asset for the company, in our view, the CIT(A) rightly deleted the said disallowance which was upheld by the Tribunal and we also see no reason in interfering with the same. In our view, on the face of overwhelming evidence on record, salary of Rs. 24 lac cannot be said to be excessive or unreasonable and the Revenue has not been able to make out as to whether the salary paid to Shri Viswas Jain was not as per the fair market value as provided under s. 40A(2)(a) and 40A(2)(b) of the IT Act.

15. Certainly, aforesaid section provides that the AO, if he is of the opinion that such expenditure is excessive or unreasonable, having regard to the legitimate business needs of the company and the benefit derived by assessee, is not proper, has a chance to disallow any amount over and above which he feels appropriate but the opinion should be formed objectively from the point of view of a prudent businessman and after taking into account the statutory criteria and all relevant circumstances and should not be influenced by immaterial considerations. Therefore, the AO, in our view, has been influenced by extraneous considerations and has not properly appreciated the involvement of Shri Viswas Jain in leading a limited company of having substantial increase in receipts and overall results since the limited company was formed. Not only that, we also notice that the assessee-company as well as the salary paid to Shri Viswas Jain has offered to tax at maximum rate in his individual capacity and therefore, it can be said that there is hardly any loss to the Revenue insofar as the payment of salary is concerned. We have observed this only by way of an observation, otherwise, as observed hereinabove, the reasonableness has to be considered from the angle of a businessman and the assessee, who happens to be a businessman, certainly did consider that salary of Rs. 24 lac to Shri Viswas Jain was fair and reasonable and after getting it approved, as observed hereinabove, in the extraordinary general meeting of the company.

16. In view of what we have discussed hereinabove, on all the three issues, the Tribunal, after appreciation of evidence, has come to the conclusion that the disallowance out of job work charges, soil testing and surveying charges and directors' remuneration is not proper and it had been rightly deleted by the CIT(A) and we do not find any infirmity or perversity in the said order of the Tribunal. It is purely a finding of fact and no question of law much less substantial question of law can be said to emerge out of the said order of the Tribunal so as to call for any interference of this Court. In our view, no substantial question of law arises out of the order passed by the Tribunal. Consequently, the appeal, being devoid of merit, is hereby dismissed in limine. No order as to costs.