
(2006) 04 DEL CK 0073

In the Delhi High Court

Commissioner of Income Tax

APPELLANT

Vs

Galaxy Power Cables Ltd.

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Citation : (2007) 294 ITR 493

Hon'ble Judges : T.S. Thakur, J;S.N. Dhingra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. For the assessment year 1996-97, the assessed filed a return showing a total loss of Rs. 1 crore 83 lakhs odd. It claimed to have received a sum of Rs. 75 lakhs from M/s. Himachal Futuristic Communication Ltd. (HFCL) in connection with the setting up a cable unit for benefit of the latter. Against the said amount, the assessed debited a sum of Rs. 65 lakhs on account of consultancy/service charges which were according to it paid by the assessed to M/s. 1st Ltd. who had actually undertaken the work allotted by HFCL. The assessing officer enquired into the question whether the said payment of Rs. 65 lakhs was supported by any work undertaken by 1st Ltd., and came to the conclusion that there was neither any formal agreement between the assessed and 1st Ltd. in relation to the work nor any other reliable material to show that any such work was undertaken by the 1st Ltd. He, accordingly, disallowed the expenses of Rs. 65 lakhs claimed by the assessed and added the same back to its taxable income.

2. Aggrieved by the above order the assessed appealed to the Commissioner of Income Tax (Appeals) and argued that the assessing officer had not approached the issue from a correct perspective. Reliance was placed before the Commissioner upon the correspondence exchanged between the petitioner-company on the one hand and 1st Ltd., on the other hand to show that not only was 1st Ltd. equipped with highly skilled and semi-skilled staff and engineers but the work assigned to 1st Ltd. had actually being executed by it. It was also demonstrated before the Commissioner that tax had been deducted at source at

the time of payment of Rs. 65 lakhs to 1st Ltd. which payment was made through banking channels. The Commissioner was on the basis of the said material persuaded to hold that 1st Ltd. had indeed performed the contract work and the expenses claimed by the assessed were lawfully allowable. The addition made to the assessing officer was on that basis deleted. Aggrieved of the said deletion the revenue appealed to the Income Tax Appellate Tribunal who on a reappraisal of the material on record affirmed the finding recorded by the Commissioner and held that the expenses claimed by the assessed could not be disallowed just because there was no formal agreement between the assessed on the one hand and the HFCL on the other or between HFCL and 1st Ltd. The Tribunal was of the view that the material on record sufficiently established that 1st Ltd. had the requisite manpower and the capacity to execute the work in question and that payments made to it had resulted in a tax deduction at source of a sum of Rs. 2,87,500 paid to the Central Government. The Tribunal observed:

We also observe that the assessing officer has included the sum of Rs. 75 lakhs claimed by the assessed to have been received from HFCL as income but has not allowed the expenses of Rs. 65 lakhs claimed by the assessed in the execution of the contract. The learned AR of the assessed submitted that the assessed is a limited company and following the mercantile system of accounting and the expenses accrued during the year were provided during the year by debiting the same in the assessment year 1996-97. He submitted that from the payments made TDS of Rs. 2,87,500 was deducted on March 30, 1996, and the same was paid to the credit of the Central Government on April 9, 1996. He also submitted that the payments were made through banking channels. In these facts of the case, we are of the considered opinion that the assessed received Rs. 75 lakhs from the said HFCL, which is not in dispute. The said payment has been received by the assessed on the completion of the work. Therefore, it cannot be said that the work was not executed. The assessed claimed that the work was executed by M/s. 1st Ltd. the associated concern of the assessed, as the assessed did not have the manpower and capacity to execute the work. It is the submission of the assessed that by executing the said contract the assessed has earned Rs. 10 lakhs as income. Had the assessed not undertaken this contract then it would not have earned the said income of Rs. 10 lakhs from the transaction.

It is also his submission that M/s. HFCL wanted the assessed to carry out this job for them. If the assessed would have refused the work or had asked HFCL to approach 1st Ltd. then the chances were that the work might have been allotted to any of his competitors. In these circumstances, we are of the considered opinion that the payment has been received by the assessed the amount to Rs. 75 lakhs which have been shown as income. The assessed has shown Rs. 65 lakhs payable to 1st Ltd. as it was following the mercantile system of accounting.

The payment was made in the subsequent year and the TDS was deducted at the time of payment. Hence, the expenses were incurred by the assessed for its business purposes and allowable as deduction.

Hence, we uphold the order of the Commissioner of Income Tax (Appeals) and reject the ground of appeal of the revenue.

3. Having heard Ms. Bansal counsel for the revenue, we are of the view that the concurrent findings of fact recorded by the Commissioner of Income Tax and the Tribunal concluded the matter. The facts as found, by the two authorities leave no room for this Court to examine the question whether the expenses claimed by the assessed had in fact been incurred. If the said finding is accepted as we are bound to do, we see no substantial question of law arising from the same for our determination. This appeal, accordingly, fails and is hereby dismissed.