(2015) 06 CAL CK 0056

In the Calcutta High Court

Case No : GA 3976 of 2014 and ITAT 198 of 2014

Commissioner of Income Tax APPELLANT

Vs

Hallmark Construction Co. P. Ltd. RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Citation : (2015) 06 CAL CK 0056

Hon'ble Judges : G.C. Gupta, J;Arindam Sinha, J

Bench : Division Bench

Advocate : P. Dudhoria, for the Appellant; A. Gupta, Advocates for the Respondent

Judgement

1. The subject matter of challenge in the appeal is a judgment and order dated 1st August, 2014 pertaining to the assessment year 2007-08. The assessment originally was made under Section 143(1). Subsequently section 147 proceedings were started and assessment was completed disallowing various expenses including an expense of a sum of Rs. 2.10 crores on account of earth filling. Other disallowances were also made. Aggrieved by the order, the assessee preferred an appeal. The CIT(A) after hearing the parties allowed the appeal partly. He restricted the disallowance of the aforesaid sum of Rs. 2.10 crores to 20% thereof. The other expenses disallowed by the assessing officer were also partly allowed. The order of the CIT(A) was challenged before the learned Tribunal by the revenue. The learned Tribunal has concurred with the views of the CIT(A). The revenue is once again before us. The following questions of law have been suggested:

"(a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, ''C'' Bench Kolkata erred in law in upholding the order of CIT(A) in restricting the disallowances at 20% of Rs. 2,10,92,000/- on account of payment made for earth filling without considering the facts that no confirmation and verification could be made in respect of the disallowances made by the Assessing Officer?

(b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, ''C'' Bench Kolkata erred in law in wrongly interpreting the nature and computation adopted in respect of the addition made as ''under valuation of stock'' by the Assessing Officer of an amount of Rs. 2,13,440/-

(c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, ''C'' Bench Kolkata erred in law upholding the order of CIT(A) in restricting the disallowances at 25% of Rs. 11,32,358/- on account of labour charges and payments without considering the facts and circumstances that no confirmation and verification could be made in respect of the disallowances made by the Assessing Officer?

(d) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, ''C'' Bench Kolkata erred in law in upholding the order of CIT (A) in deleting the addition of Rs. 1,60,027/- on account of bogus purchase of building material?

(e) Whether the impugned order is bad, arbitrary, illegal perverse and the same is nothing but a total non-application of mind of the Income Tax Appellate Tribunal, Kolkata and the same is liable to be set aside and/or quashed?"

2. It would appear that the real question is the question No. (e). Therefore, point for determination is whether the order passed by the CIT(A) and subsequently confirmed by the learned Tribunal is perverse.

3. Mr. Dudhoria, learned advocate, appearing for the revenue/appellant, has not disputed the fact that the assessing officer himself made an observation that some earth filling work was done, that is to say, the claim of the assessee was partly accepted by the assessing officer though he disallowed the expenditure in toto.

4. The assessing officer''s order was examined by the CIT(A) and he was of the opinion that the expenditure was partly allowable. The view has been accepted and confirmed by the learned Tribunal. On a question of fact, both the CIT(A) and the learned Tribunal have agreed. Mr. Dudhoria is unable to show us as to why the view taken by them is perverse nor is it his case that the view taken by them is not based on evidence.

5. For the aforesaid reasons, we refuse to admit the appeal which is accordingly dismissed.

