(2013) 10 AHC CK 0221

In the Allahabad High Court

Case No : I.T. Appeal No. 154 of 2009

Commissioner of Income Tax APPELLANT

Vs

Krishna Kumar Goel RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 224 TAXMAN 165

Hon'ble Judges : Satish Chandra, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

1. The present appeal has been filed by the Department u/s 260A of the income tax Act, 1961 against the judgment and order dated 22.05.2009, passed by the Income Tax Appellate Tribunal, Lucknow in ITA No. 79/Luck/2009, for the assessment year mentioned above. The brief facts of the case are that the assessee is a contractor engaged in the civil construction and electrical installation on the basis of turnkey project system involving specialized work. During the assessment year under consideration, the assessee has undertaken work of scientific convention centre at Lucknow. During scrutiny, the Assessing Officer observed that a sum of Rs. 3,98,020/-, has been shown as liability of TDS in the balance-sheet. The TDS was deducted against the payment made to the sub-contractor for various work undertaken from them which inter alia includes the supply of material as well as other work executed by the sub-contractor. The Assessing Officer has also opined in his order that TDS was not paid within prescribed time limit. Finally, the Assessing Officer has made the addition for three component, namely, Rs. 2,01,09,049/-; + Rs. 15,15,376/-; + Rs. 97,69,921/- u/s 40(a)(ia) of the Income Tax Act. In the first appeal, the CIT(A) has given partial relief. However, the Tribunal has deleted the said addition. Being aggrieved, the Department has filed the present appeal on the proposed substantial question of law, which are as under:--

"(i) Whether in facts and in the circumstances and in law the learned Income Tax Appellate Tribunal was right in holding that no T.D.S. is deductible on the contract amount of Rs. 2,01,09,049.00 when the contract was not a contract for sale but was in fact a turnkey contract involving specialized works.

(ii) Whether in facts and in the circumstances and in law the learned Income Tax Appellate Tribunal was correct in deleting addition of Rs. 2,01,09,049.00 relying on CBDT Circular No. 681 dated 8.3.1994 whereas the circular had no application to the case."

2. With this background, Sri D.D. Chopra, learned counsel for the Department has justified the order passed by the Assessing Officer. He submits that the tax was deducted at source partly to the sum provided under the head "interest" on unsecured loans and also to the payments made to various persons with whom arrangements had been made for procurement of material. He submits that the contract was awarded to assessee by the Project Manager, Construction and Design Services (C & DS), U.P. Jal Nigam, Lucknow.

3. Learned counsel also submits that a sum aggregate to Rs. 2,01,09,049/- had been made for purchase of material, which was accounted on different dates prior to March, 2005. He read out Section 40(a)(ia) of the Income Tax Act. On reproduction, it reads as under:--

"Section 40(a)(ia) -any interest, commission or brokerage, rent royalty fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of Section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of Section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid:"

4. Lastly, he justified the order passed by the Assessing Officer.

5. On the other hand, learned counsel for the assessee has relied on the impugned order. He has drawn the attention to the Circular No. 681 dated 08.03.1994, issued by the CBDT, where the applicability of Section 194(C) to service contracts was clarified in view of the observation made by Hon''ble Patna High Court in the case of Associated Cement Co. Ltd. Vs. Commissioner of Income Tax, In the said clarification, it was observed in Clause 7(vi)(b) of the circular that:--

"Where, however, the contractor undertakes to supply any article or thing fabricated according to the specifications given by Government or any other specified persons and the property in such article or thing passes to the Government or such person only after such article or thing is delivered, the contract will be a contract for sale and as such outside the purview of this section."

6. Learned counsel further submits that the payment in question was pertaining to the goods/equipment supplied by various persons and installed by them at site.

7. He also submits that the Scientific Convention Centre was supposed to be inaugurated by the Hon''ble President of India on 19.12.2004. Hence, timely execution of the work was ensured. So, the assessee tied up with the established suppliers for procurement of material, which included supply and installation at site of elevators, furnishing material, fire fighting and fire detection system, air conditioning, etc. The arrangements with them was to supply the customized equipment and installation thereof at the site. So, the involvement of labour was only constituted a negligible part of the overall cost and the same was incidental to supply of goods. On such payments, no tax is deductible. According to the learned counsel, the payment came to be reported in the Tax Audit Report u/s 44AB. He also submits that whatever the tax due, the same was already been paid alongwith the interest. There is no loss to revenue. Lastly, he made a request for the dismissal of the appeal.

8. After hearing both the parties and on perusal of the record, it appears that as per the concurrent finding given by both the authorities, copies of the bills were produced before the Assessing Officer, during the assessment proceedings and the same were also placed before the CIT(A). The bills proved that the payments was pertaining to the supply of goods. The case of the assessee is covered by the Circular No. 894 [sic 681] dated 08.03.1994, issued by the CBDT, where the definition of the contract for sale was defined.

9. Further, it appears that the payment is duly reflected in the ledger account under the head "material purchased" and the same was part of the sums aggregating payment, which was appearing distinctly in the Profit & Loss Account also. When it is so, then the purchase of the goods/equipments as per the Circular (supra), the provisions of Section 194(C) is not attracted and the case of the assessee is covered by the Circular issued by the CBDT. When it is so, then we decline to interfere with the impugned order passed by the Tribunal, the same is hereby sustained for the reasons mentioned therein. Till date, neither the appeal is admitted nor any substantial question of law is framed. So, the appeal filed by the Department is dismissed, at admission stage.