(2010) 06 KL CK 0135

In the High Court Of Kerala

Case No : IT Appeal No. 1155 of 2009

Commissioner of Income Tax	APPELLANT
Vs	
Vellapally Bros. (Constructions) (P.) Ltd.	RESPONDENT

Date of Decision : 04-06-2010

Acts Referred:

Citation : (2011) 196 TAXMAN 269

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.K.R. Menon and Jose Joseph, for the Appellant; Joseph Kodianthara, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Heard Sri Jose Joseph, the learned standing counsel appearing for the Appellant and Sri Joseph Kodianthara, the learned senior counsel appearing for the Respondent.

2. The only question raised in the departmental appeal is whether the Tribunal was justified in allowing deductions of total payment of Rs. 9,06,604 made by the Respondent to three Sub-contractors of which two of them are unrelated to the Respondent and the other is a related firm. The Tribunal allowed the claim for the reason that the contract provided for payment to sub-contractors on receipt from the awarder namely, the Cochin Port Trust. The learned standing counsel appearing for the Appellant raised the contention that it was a voluntary payment without any legal liability and so much so, it is not entitled to be allowed.

3. We feel the crucial question that should have been considered was whether the Respondent has in fact made payments to sub-contractors during the previous year relevant for the assessment year 1994-95 and recovered TDS on payments to sub-contractors and whether the subcontractors have accounted the transactions and paid tax in their assessments. Even though learned senior

counsel appearing for the Respondent produced assessment order of the related Assessee namely Vellapally Brothers (Constructions) Pvt. Ltd., insofar as payments to others are concerned there is nothing to prove assessments of the same amounts in the hands of the sub-contractors. Since none of the authorities have considered this and Tribunal has allowed the claim merely based on the scheme of payment in the original contract. We feel the matter requires reexamination on these issues with regard to the admission of income and payment of tax by sub-contractors. Since there is no provision for the subcontractors for sharing of award amount in arbitration proceeding between the Respondent and awarder, we are not able to uphold the Tribunal''s order allowing the claim based on a provision in the contract providing for payment after receipt from the awarder.

We therefore, allow the appeal by reversing the order of the Tribunal but remitting the matter to the Assessing Officer to verify whether the Respondent have deducted TDS and the sub-contractors have offered the amount and paid tax. If this has happened, that is, recovery of TDS and assessments of the same amounts in the hands of the sub-contractor''s, then we do not think department can apply another yard stick in the case of the Respondent as above. The Assessing Officer should verify the position as to whether the Respondent has collected TDS on the amounts and the very same amount is in the hands of contractors and if so to allow the deductions or otherwise to disallow the claim.

The appeal is allowed to the above extent and in the way stated above.