

आयकर अपीलीय अधीकरण, न्यायपीठ – “ B ”, कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH- “B” , CALCUTTA
(समक्ष)Before श्री महावीर सिंह, न्यायीक सदस्य एवं/and
Shri Mahavir Singh, Judicial Member.
श्री सी.डी.राव, लेखा सदस्य,
Shri C.D. Rao, Accountant Member.
आयकर अपील संख्या / ITA No. 178/Kol/2010

निर्धारण वर्ष/Assessment Year: 2006-07

Dy. Commissioner of Income-tax Circle-1, Durgapur	- वनाम - -Versus-	M/s. Elgie Engineering Works PAN: AAFE-7976R
(अपीलार्थी/APPELLANT)		(प्रत्यर्थी/RESPONDENT)
अपीलार्थी की ओर से/ For the Appellant:	श्री/Shri	S.K. Malakar, Id.DR
प्रत्यर्थी की ओर से/ For the Respondent:	श्री/S/Shri	R.K. Dutta & D.K.Saha, Id.ARs

सुनवाई की तारीख/Date of Hearing : 09-11-2011

घोषणा की तारीख/Date of Pronouncement :15-12-2011

आदेश/ORDER

श्री सी.डी.राव, लेखा सदस्य,
Shri C.D.Rao, Accountant Member.:

Revenue has filed this appeal against order dated 26-11-2009 of the learned Commissioner of Income-tax (Appeals), Kolkata for the assessment year 2006-07.

2. The only issue raised by the revenue is relating to deletion of addition/disallowance of Rs.36,57,034/- made by the Assessing Officer u/s. 40(a)(ia) of the I.T.Act'61.

3. Brief facts of this issue are that while doing the scrutiny assessment, the Assessing Officer has disallowed the disallowance by observing as under:-

“On examination of the books of accounts it is observed that no tax on such payment/credit has been deducted at source during the relevant previous year or within the time prescribed u/s.200(1) of the I.T Act'61. Accordingly, the said expenditure on the aforementioned total expenditure to the tune of Rs.64,36,384/- , comprising of sub-contractor payment of Rs.62,06,084/- and 'Transport

Charges” Rs.2,30,300/-, is, therefore, not deductible in computing total income chargeable under the head ‘Profits and gains of business or profession’ as per the provisions of Sec.40(a)(ia) of the I.T Act’61 read with proviso thereto.”

4. On appeal, the learned Commissioner of Income-tax (Appeals) by sending the written submissions filed by the assessee called for the remand report and again, taken assessee ‘s comments on the remand report. After going through these documents, the learned Commissioner of Income-tax (Appeals) confirmed the addition of Rs. 26,19,050/-. However, he deleted the addition balance amount of Rs.3,657,034/- by observing as under:-

“6. Coming to the assessee’s contention regarding payment made for sales contract, it is seen that the assessee made payments to 7 parties whose names are as under:

<i>1. MIRA ENGINEERING & CO.</i>	<i>Rs.535,733.00</i>
<i>2. J.E.W (INDIA) PVT. LTD.</i>	<i>“ 539,106.00</i>
<i>3. IND-TECH INDUSTRIES</i>	<i>“ 430,695.00</i>
<i>4. UPENDRA SHARMA</i>	<i>“ 541,895.00</i>
<i>5. BENGAL INDUSTRIES</i>	<i>“ 553,620.00</i>
<i>6. KALIMATA ENGINEERING WORKS</i>	<i>“ 490,279.00</i>
<i>7. EMINENT ENGINEERS</i>	<i>“ 565,706.00</i>
<i>TOTAL</i>	<i><u>Rs.3,657,034.00</u></i>

On perusal of the bills of these parties, it is seen that the payments are for manufacture and supply of items such as Buckstay Slings, Economiser coils, Lifting beams etc. The bills show that the price is inclusive of the material which indicates that the transactions were in the nature of sales contracts. I have perused the CBDT’s Guidelines in this regard as given in Circular No.681 dated 08.03.1994. Herein, it has been stated that where contractor undertakes to supply any article or thing fabricated according to specifications given by the Govt. or any other specified persons and the property in such article or thing passes to the Govt. or such person only after such article or thing is delivered, the contract will be a contract for sale and shall be outside the purview of section 194C. Further, reference is invited to the Punjab and Haryana High Court’s decision in the case of CIT vs. Deputy Chief Accounts Officer, Markfed, Khanna 304 ITR 17. In this case, the assessee had purchased printed packing material made according to its specifications but did not deduct tax at source. The Court held that the factum of such material carrying some printed work could only be regarded as the work executed by the supplier incidental to the sale made to the assessee. The raw material for the manufacturing of such packing material was not supplied by the assessee. It was, therefore, held that, the purchase of particular printed material by the assessee was a contract for sale and outside the purview of section 194C. In

the present case under appeal, the bills clearly show that material has not been supplied by the assessee in respect of the purchase of equipment/machinery. I, therefore, in view of these facts and the CBDT's Circular referred to above, hold that payment amounting to Rs.36,57,034/- made to 7 parties was for purchase of equipment/machinery and the assessee was not required to deduct tax u/s. 194C. The disallowance u/s.40(a)(ia) to the extent of Rs.36,57,034/- is, therefore, deleted.”

5. Aggrieved by this, now the revenue is in appeal before us.

6. At the time of hearing before us the ld. DR appearing on behalf of the revenue has relied on the order of the AO and contended that the order of the AO may be upheld.

7. On the other hand, the learned counsel appearing on behalf of the assessee has heavily relied on the order of the learned Commissioner of Income-tax(Appeals) and filed the copies of all purchase/work order, which were placed before the revenue authorities. He contended that since the assessee has supplied the material as per the specifications of all 7 parties as mentioned in the impugned order of the learned Commissioner of Income-tax (Appeals), the action of the learned Commissioner of Income-tax(Appeal) in deleting the same may be justified in the facts and circumstances of the case. Therefore, he requested to uphold the same.

8. After hearing the rival submissions, on careful perusal of the material available on record including the copies of the bills in respect of 7 parties, where the learned Commissioner of Income-tax (Appeals) has deleted the addition. We are of the view that all the works are relating to purchase of material with some specifications. It is further observed that the learned Commissioner of Income-tax (Appeals) has followed the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Deputy Chief Accounts Officer, Markfed, Khanna [304 ITR 17]. Therefore, we do not find any infirmity in the order of the learned Commissioner of. Income-tax (Appeals) in deleting the addition made by the Assessing Officer. We uphold the same.

9. In the result, the appeal of the revenue is dismissed.

यह आदेश खुले न्यायालय में सुनाया गया है
THIS ORDER IS PRONOUNCED IN OPEN COURT ON Dt.15-12-2011

Sd/-
(महावीर सिंह, न्यायीक सदस्य)
(Mahavir Singh, Judicial Member)

Sd/-
(सी.डी.राव, लेखा सदस्य)
(C.D. Rao ,Accountant Member)

(तारीख)Date: 15-12-2011

Pradip वरिष्ठ निजि सचिव आदेश की प्रतिलिपि अग्रेषित:/ Copy of the order forwarded to:

- 1.. **अपीलार्थी** / The Appellant : Asstt./Dy. Commissioner of Income-tax, Cir-1, Durgapur, Aaykar Bhawan, City Centre, Durgapur-713216.
- 2 **प्रत्यर्थी** / The Respondent- M/s. Elgie Engg Works, Nanchan Road, Benachity, Durgapur-13, Burdwan.
3. **आयकर कमिशनर**/The CIT, 4. **आयकर कमिशनर (अपील)**/The CIT(A),
5. **वभागिय प्रतिनीधी** / DR, Kolkata Bench
6. Guard file.

सत्यापित प्रति/True Copy, आदेशानुसार/ By order,

सहायक पंजीकार/Asstt Registrar.