

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1580 of 2011

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COMMISSIONER OF INCOME TAX-IV....Appellant(s)

Versus

G K PATEL & CO....Opponent(s)

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Appearance:

MS PAURAMI B SHETH, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 27/11/2012

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue is in appeal against the judgement of the Income Tax Appellate Tribunal dated 9.9.2011. Following questions have been presented for our consideration :

"[A] "Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs. 28,77,867/- made u/s 40A(2)(b) in respect of payment made to G.K. Engg.?"

[B] "Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs. 1,86,020/- made on account of site wise material consumption?"

[C] "Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs. 6,37,504/- made on account of vehicle/diesel oil-grease expenses?"

[D] "Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs. 4,79,165/- made on account of machinery hire expenses?"

[E] "Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs. 1,24,831/- made on account of machinery repairs/spares expenses?"

[F] "Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs. 86,384/- made on account of Site & Rasoda Expenses?"

[G] "Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs. 32,68,650/- made on account of suppression of receipts?"

[H] "Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs. 56,44,787/- made on account of labour expenses?"

[I] "Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs. 46,75,572/- made on account of transport contractors expenses?"

[J] "Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance of Rs. 38,12,667/- made on account of claim of expenditure for rendering transportation services to Shri Manoj K. Agrawal?"

2. We would take up the discussion question-wise.

3. Insofar as question(A) is concerned, the Assessing Officer had made disallowance of

Rs.28.77 lakhs(rounded off) under section 40A(2) (b) of the Act pertaining to payment made to one M/s. G.K. Engineering. Such disallowance was deleted by the Commissioner(Appeals), upon which the Revenue approached the Tribunal. Tribunal by impugned judgement confirmed the view of the CIT(Appeals) observing that the assessee had explained before the Assessing Officer the circumstances in which the payment was made to sister concern and there was nothing unreasonable about such payments. In fact the Commissioner(Appeals) had noted that the Assessing Officer without referring to any comparable case to find out what is the fair market value of similar services and what would be the reasonable amount for such work, had made disallowance. Tribunal further confirmed this view observing that the Assessing Officer had accepted the same payments in earlier years and no efforts were made in this regard in the present year to bring any comparable case of fair market value.

We are of the opinion that view of the Tribunal is unassailable. Tribunal had placed reliance on decision of the Apex Court in case of Upper India Publishing House P. Ltd. v. Commissioner of Income-tax Lucknow reported in 117 ITR 569 in which it is observed that question whether expenditure is excessive or unreasonable is essentially a question of fact. Such question is

therefore, not required to be considered.

4. With respect to question (B), we notice that the Assessing Officer had made disallowance of Rs.86 lacs(rounded off) out of Rs.1.86 lakhs(rounded off) towards site wise consumption of material. Commissioner(Appeals) as well as the Tribunal both on facts held that there is bound to be some pilferage and wastage while dealing with the cement. CIT(Appeals) and the Tribunal therefore, had granted reasonable deduction on such account. Issue is clearly factual besides involving relatively small amount. Such question is therefore, not considered.
5. Question (C) pertains to disallowance of Rs.6.37 lakhs(rounded off) made by the Assessing Officer towards vehicle/diesel oil-grease expense. Commissioner(Appeals) deleted such disallowance observing that in absence of any specific material, the Assessing Officer was not justified in disallowing 10% of the expenses. It was noted that there was inflation in diesel price and higher expenditure was therefore, justified. It was this view of the CIT(Appeals) which the Tribunal confirmed observing that all the vouchers were maintained by the assessee for expenditure and the Assessing Officer without pointing out any defects in bills and vouchers made ad-hoc disallowance.

We are of the opinion that entire issue is based on facts. When the Tribunal and CIT(Appeals) correctly on appreciation of evidence opined that disallowance was not justified, in our view, no question of law arises.

6. Question no.(D) pertains to disallowance of Rs.4.79 lakhs(rounded off) on account of machinery hire expenses. Here also CIT(Appeals) deleted the same. Tribunal confirmed the view of the CIT(Appeals) observing that the Assessing Officer without pointing out any specific defects in the bills and vouchers made ad-hoc additions. Tribunal approved the observations of the CIT(Appeals) that without such service, the assessee could not have completed the work assigned. Issue is entirely factual, based on appreciation of evidence. No question of law arises.

7. Question(E) pertains to disallowance of sum of Rs.1.24 lakhs(rounded off) made by the Assessing Officer on account of machinery repairs/spares expenses. CIT(Appeals) deleted such disallowance. Tribunal confirmed the same observing that the Assessing Officer had not pointed out any defects in the vouchers and had made ad-hoc addition. Additionally, we also notice that the amount involved is also not substantial. We see no reason to entertain the question.

8. Question (F) pertains to disallowance of Rs.86,000/-(rounded off) on account of Site and kitchen expenses. CIT(Appeals) and the Tribunal concurred that such disallowance was wrongly made. Tribunal in particular, observed that the expenses were supported by the evidence on record and the assessee had produced all the bills and vouchers which were verified by the Assessing Officer and no discrepancy was found. Additionally, we also notice that the amount involved is also not substantial. No question of law arises.

9. Question (G) pertains to addition of Rs.32.68 lakhs(rounded off) made by the Assessing Officer which was deleted by the CIT(Appeals) and the Tribunal. The Assessing Officer had made such addition on the premise that the assessee had suppressed the receipts to above extent. Apparently, the assessee and one M/s. K.M.Patel & Co. had jointly undertaken the construction service road of canal and other related construction for Sardar Sarovar Narmada Nigam Ltd. The Assessing Officer apportioned the payments made by the SSNNL between M/s. K.M.Patel & Co. and the assessee in ratio of 60:40. Since the assessee had shown receipt it was allowed by 32.68 lakhs(rounded off). Considering the said ratio, addition was made.

Tribunal while confirming the view of the CIT(Appeals) observed that :

"11.2 On consideration of the rival submission, we do not find any merit in this ground of appeal of the revenue. The AO referred to the terms of the JV agreement in the assessment order in which it was also provided that the division of individual scope of work may be worked out mutually by both the parties to the JV agreement though both are jointly and severally liable to the employer for the whole work. Both the parties specifically undertaken to carry out separate work and shall be responsible for their acts. The information supplied by M/s. K. M. Patel & Co. supports the version of the assessee that M/s. K. M. Patel & Co. through the bills received Rs. 2,71,55,374/-. Therefore, the balance was rightly accounted for by the assessee in its books of accounts on the basis of the bills provided to the employer and the amount settled. The AO merely on presumption combined the receipt of the assessee and M/s. K. M. Patel & Co. and wrongly divided in the ratio of 60% and 40% for making the addition. Since, both the parties could have worked out the work mutually decided by them as per JV agreement: there was nothing wrong if the parties mutually agrees to divide the work accordingly. There is nothing on record to show that assessee actually understand or suppressed the receipts. There is no infirmity in the order of the learned CIT(A) in deleting the addition. We confirm his findings and dismiss this ground of appeal of the revenue."

We are of the opinion that entire issue is based on appreciation of evidence on record. CIT(Appeals) as well as the Tribunal concurrently held that addition was not justified. Learned counsel for the Revenue however, vehemently contended that the assessee and M/s. K.M.Patel & Co. had agreed to share the receipts in ratio of 60:40. They could not have thereafter, modified

such arrangement without any written contract.

From the record it however, emerges that assessee and M/s. K.M.Patel & Co. agreed to make investment in such proportion for carrying out construction work jointly undertaken by them. If out of their relation and robust undertaking, the receipts were divided in a certain ratio which was not strictly in proportion of 60:40 percentage of investment made by them respectively, the same cannot be a ground for any addition in hands of the assessee that too without any additional material of the assessee actually having received additional payments not reflected in the books. Such question is therefore, turned down.

10. Question (H) pertains to addition of Rs.56.44 lakhs(rounded off) made by the Assessing Officer towards transportation services. The Tribunal while upholding the view of CIT(Appeals) observed as under :

"13.2 On consideration of the rival submission, we do not find any merit in this ground of appeal of the revenue. It is undisputed fact that the AO recorded statements of above persons in post survey inquiry in which they have admitted to have done work for the assessee. The assessee produced sufficient materials before the authorities below to prove that genuine payments have been made for the purpose of business. The learned CIT(A) therefore, rightly appreciated that the AO proceeded merely on presumption that proper persons were not produced before the then AO. Since the parties accepted the payment and sufficient material was produced before the

authorities below to justify the payment for the business purposes, therefore, the learned CIT(A) on proper consideration of facts and material rightly deleted the part of the addition. No infirmity has been pointed out in the order of the learned CIT(A) through any contrary material or evidence on record. In the absence of the material in favour of the revenue on record, we do not find any justification to interfere with the order of the learned CIT(A). This ground of appeal is accordingly dismissed."

Additionally we notice that all the contractors whose statements were recorded had admitted having done work for the assessee for which payments were made. The entire issue is thus based on appreciation of evidence on record. No question of law arises.

11. Question (I) pertains to addition of Rs.46.75 lakhs(rounded off) made by the Assessing Officer which also pertained to payments made for transportation services. CIT(Appeals) and Tribunal both found that the assessee had established genuineness of the payments. It was found that the parties receiving the payment had rendered services to the assessee which work was genuine. No question of law arises.

12. Question (J) pertains addition of Rs.38.12 lakhs(rounded off) made by the Assessing Officer once again for transportation services. Such addition was deleted by the CIT(Appeals). This was confirmed by the Tribunal in following manner :

"17.2 on consideration of rival submission, we do not find any merit in this ground of appeal of the revenue. The learned CIT(A) found that the same party carried out work for the assessee in the preceding assessment year and payment made to him was found to be genuine. He is assessed to tax and all details have been noted with regard to the same party. Therefore, such party cannot be treated as non-genuine. The learned CIT(A) on proper appreciation of the facts rightly deleted the addition. This ground is accordingly dismissed."

Here also the issue is entirely factual in nature. No question of law arises.

13. In the result, Tax Appeal is dismissed.

(AKIL KURESHI, J.)

(Ms.SONIA GOKANI, J.)

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