

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.01 to 03/NAG/2019
निर्धारण वर्ष / Assessment Years : 2008-09 to 2010-11

The Income Tax Officer,
Ward – 1, Akola

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Balkrishna Traders,
C/o G.M. Kothari, Vaidya Nagar,
Akola-444001

PAN : AAAAB5741J

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanjay C. Thakar
Revenue by : Shri Kailash G. Kanojiya

सुनवाई की तारीख / Date of Hearing : 18-10-2023
घोषणा की तारीख / Date of Pronouncement : 31-10-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These three appeals filed by the Revenue against the common order dated 26-10-2018 passed by the Commissioner of Income Tax (Appeals)-1, Nagpur [‘CIT(A)’] for assessment years 2008-09, 2009-10 and 2010-11.

2. Since, the issues raised in all these appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we

proceed to hear all these appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No.01/NAG/2019 for A.Y. 2008-09.

4. The Revenue raised three grounds of appeal amongst which the only moot question arises for our consideration is as to whether the CIT(A) justified in deleting the addition made by the AO for violation of non-deduction of tax u/s. 194C, consequently making disallowance u/s. 40(a)(ia) of the Act.

5. We note that the assessee is an AOP and civil contractor. The assessee filed its return of income declaring a total income of Rs.2,91,670/- which was processed u/s. 143(1) of the Act vide order dated 04-11-2009. Thereafter, the said assessment was reopened by issuing notice u/s. 148 of the Act and the reasons of which the AO reproduced the at pages 1 and 2 of the assessment order. On perusal of the same, we note that the AO found an amount of Rs.3,27,97,031/- was debited to the profit and loss account and credited to the account of the members of the assessee. For non-deduction of TDS on such payment to members, the AO added an amount of Rs.3,27,97,030/- to the total income of the assessee for non-deduction of tax u/s. 194C of the Act. We note that during the course of assessment proceedings, it was explained that the assessee was formed as a joint venture by M/s. Oberai Constructions and M/s. G.M. Kothari to obtain tender for road construction. It was decided that the road construction work will be executed by the members of the assessee

vide memorandum of understanding. The said memorandum of understanding was also filed before the AO and contended no relationship of contractor and sub-contractor between the assessee and its two members, no applicability of the TDS provisions u/s. 194C of the Act. However, the AO found the said explanation as not acceptable and held that the assessee and its members are different entities for the purpose of Income Tax Laws and the payment made by the assessee to its members is a contract and covered u/s. 194C of the Act. The CIT(A) opined by verification of agreement between the members and held that the assessee was formed only to procure work contract and members therein executed the work in accordance with the memorandum of understanding as per their own risk, held the said relationship is of principle to principle but not as a principle to agent, or of employer – employee, or of contractor – sub-contractor. The CIT(A) by arriving such conclusion held deduction of TDS on the payments made by the assessee to its members does not arise. The ld. AR placed on record memorandum of understanding dated 30-12-2006 and reiterated the same submissions as made before the AO by referring to above said memorandum of understanding. We note that the CIT(A) also examined the same in detail which is evident from para 6.11 of the impugned order. Further, the ld. AR placed on record order dated 28-11-2014 passed by this Tribunal in batch of cases, lead case being Shradha & Mahalaxmi Joint Venture in ITA No. 942/PN/2013 and submits that the facts and circumstances of the said case are identical to the facts of the present case and referred to para 10 of the said order. On perusal of the same, we note that the issue raised therein is as same as the issue raised in the present appeal where an amount was disallowed for violation of section 40(a)(ia) of the Act. Further, it is noted that the assessee therein

also an AOP had received contracts which in turn was executed by the two members of the AOP. A contention was raised that the said assessee AOP was established for obtaining work and receiving payments against the work done by the members of AOP. The said payment was to be distributed in the agreed ratio between the two members of the AOP for carrying out the work. The Co-ordinate Bench held no deduction of TDS is warranted on the payments between the assessee and its members and deleted the addition made by the AO for violation u/s. 40(A)(ia) of the Act by placing reliance in the case of M/s. Swapnali RDS Joint Venture in ITA No. 771/PN/2011 vide order dated 26-09-2012.

6. Coming to the facts on hand as discussed above, we are of the opinion the facts and circumstances of the present case are as same and identical to the facts in the case of Shraddha & Mahalaxmi Joint Venture (supra) and by following the order of Tribunal in the said case, we agree with the reasons recorded by the CIT(A) in paras 6.9 to 6.11 of the impugned order. Therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, the grounds raised by the Revenue fails and are dismissed.

ITA Nos. 02 & 03/NAG/2019, A.Ys. 2009-10 & 2010-11

7. We find that the issues raised in the appeal and the facts in ITA Nos. 02 & 03/NAG/2019 are identical to ITA No. 01/NAG/2019 except the variance in amount. Since, the facts in ITA Nos. 02 & 03/NAG/2019 are similar to ITA No. 01/NAG/2019, the findings given by us while deciding the appeal of Revenue in ITA No. 01/NAG/2019 would *mutatis mutandis*

apply to ITA Nos. 02 & 03/NAG/2019, as well. Accordingly, both the appeals of Revenue are dismissed.

8. In the result, all the appeals of Revenue are dismissed.

Order pronounced in the open court on 31st October, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st October, 2023.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nagpur
4. The Pr. CIT-1/2/3, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune