

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' D' BENCH : CHENNAI

**श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री चंद्र पूजारी, लेखा सदस्य के समक्ष।**

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No. 2038/Mds/2014

निर्धारण वर्ष /Assessment year : 2010-2011

The Assistant Commissioner
of Income Tax,
Company Circle VI(1),
Chennai

Vs.

M/s. SVE Engineers P. Ltd,
12/1, Soundaryam Enclave,
United India Colony,
4th Cross Road, Kodambakkam,
Chennai 600 024

(अपीलार्थी/Appellant)

[PAN AAECs 3211Q]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. Das Gupta, IRS, JCIT.
: Shri. Philip George, Advocate

सुनवाई की तारीख/Date of Hearing

: 23-07-2015

घोषणा की तारीख /Date of Pronouncement

: 28-08-2015

आदेश / ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by the Revenue is directed against the order of the Commissioner of Income-tax (Appeals)-VI, Chennai, dated 30.04.2014 for the assessment year 2010-2011.

2. The Revenue has raised the following ground

'2.1 The learned Commissioner of Income Tax (Appeals) erred in deleting the disallowance made by the Assessing Officer of ₹2,38,11,190/- under the head disallowance of contractor expenses'.

3. The facts of the case are that the assessee is engaged in manufacturing /trading of material handling equipment like belt conveyors, screw conveyors, elevator, pipe conveyor and its related products. The assessee claimed direct expenditure paid to M/s. Erection India and M/s. Tekno Conveyor. The Assessing Officer observed in assessment order that the expenses claimed as payments made to the above two parties are bogus, accommodation entries and same was done to reduce the profit of the company while finalizing its accounts as it was evident from the journal entries made at the fag end of the financial year. Accordingly, the Assessing Officer disallowed an amount of ₹2,38,11,190/- paid to those two parties. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. During the course of first appellate authority, the assessee field additional evidences and the Commissioner of Income Tax (Appeals) forwarded the same to the Assessing Officer and called for remand report from the Assessing Officer. The Assessing Officer

submitted remand report on 20.12.2013. The Commissioner of Income Tax (Appeals) gave a copy of the remand report forwarded by the Assessing Officer to the assessee for comments. After considering the assessee's comments, the Commissioner of Income Tax (Appeals) also considered the submissions of the Id. Authorised Representative for assessee and also the findings of the Assessing Officer in the order of assessment, the remand report and observed that the Assessing officer in the assessment order was that the sub-contractors viz. Teckno Conveyor and Errections India were accommodating concerns for claiming contract expenses without actually involving in the business and therefore disallowed the claim of expenditure. In the remand proceedings, the assessee produced proprietor of Teckno Conveyor and proprietor of Errections India before the Assessing Officer. These sub-contractors have confirmed that they have carried on sub-contract for the assessee in the Vedanta project. In the remand report, the Assessing Officer having noted the fact that these sub-contractors have confirmed that they have carried on sub-contract for the assessee in the Vedanta project has neither disputed this fact nor alleged/held that it was not true. However, the Assessing Officer having accepted that they have in fact carried out this work has merely submitted in the remand report that without

payment to labourers how the work was carried out and observed that sub-contractors have not deducted tax at source on such accrued labour charges. The undisputed established facts of the case are that the projects were awarded by M/s. Vedanta. In order to execute the project, the Assessee had engaged sub contractors viz. M/s. Teknoconveyor and M/s. Erections India. This was confirmed by the sub-contractors in course of remand proceedings. The sub-contractors executed the project and raised running bills in respect of the executed work. The site engineers of the assessee have verified the actual execution the work at site and certified and approved running bills. Since there was delay in such approval, the Sub-contractors have raised invoices at the end of the Financial year and declared the same as income on accrual basis in their respective hands. The Assessee had deducted tax at source in respect of the amount payable to the sub contractors; The Assessee had raised invoices against M/s. Vedanta in respect of the executed work and duly accounted the same; M/s. Vedanta had issued completion certificate; Assessee had made part payments to the sub contractors in subsequent assessment years as and when it received payment from M/s. Vedanta.

4.1 The Commissioner of Income Tax (Appeals) further observed that the materials placed on record and as submitted by the assessee, it was found that the sub-contractor Teknoconveyor was engaged by the assessee for execution of the service projects of fabrication of Bauxite Handling system, Modification of conveyor and Reversible conveyor and Erections India was engaged by the assessee for execution of the service project of fabrication of Bauxite Grinding system. While executing the project these sub-contractors have intimated the running work progress details to the assessee with the details of quantity of structural steels of the executed work for the verification and approval of the assessee. This was duly verified by the site engineers of the assessee with regard to the quantity and on the basis of such approval, the invoices were raised by the sub-contractor. The projects in respect Bauxite Grinding and Modification conveyors, M/s.Vedanta had issued Mechanical completion and Commissioning Completion certificate. Therefore, the sub-contractors have executed the projects. Further it was found that the assessee had been paying the dues to sub-contractors in the subsequent years as and when it received amounts due from Vedanta. Most of the payments made by assessee in subsequent years are through banking channels. From

the circumstances and the materials on record, it was further found that the assessee could not have executed these projects without engaging these sub- contractors.

4.2 The Commissioner of Income Tax (Appeals) further observed that while considering the claim of business expenditure in the hands of assessee, all that have to be seen is that whether such expenditure accrued was in the course and for the purpose of its business. Outstanding dues to labourers/hire charges by the Sub-contractors of the assessee and non deduction of tax at source by the sub-contractors of the assessee, cannot be taken as reasons for disallowing the claim of the assessee. In this case, it is established from the undisputed facts and my findings above that the sub- contractors have executed the work for the assessee. The assessee had incurred expenditure to its sub contractors for execution of the project undertaken by the assessee with Vedanta, and Vedanta had issued completion certificate in respect of four projects. Once it is established that the assessee had incurred the expenditure for the purpose of its business, the same had to be allowed in the hands of the assessee. From the details submitted by assessee, it is seen that 57% of the labour charges, 13% of the machinery charges were

paid by subcontractor M/s. Erections India & 7% of the labour charges were paid by subcontractor M/s. Techno conveyer for executing work & balance remained to be payable to them due to delay in the payments to the assessee by Vedanta. The reasons given by the assessee for delay in payments made to labourers are plausible. Under the facts & circumstances of the case, it cannot be said that payments made to sub contactors are accommodating entries. Therefore, the Commissioner of Income Tax (Appeals) agreed with the contention of the assessee that the contract expenses are genuine and further held that sub-contract expenditure accrued on this account in the course of execution of the project was an allowable business expenditure. Hence, the Commissioner of Income Tax (Appeals) allowed the claim of the assessee. Against this, the Revenue is in appeal before us.

5 We have heard both the parties and perused the materials on record. In this case, the Assessing Officer doubted the genuineness of the expenditure paid to M/s. Erection India and M/s. Tekno Conveyor as the entry was passed by the assessee in its books of accounts by way of journal at the fag end of the financial year. He was of the opinion that it was made so as to reduce the profit of the assessee. In our opinion, there cannot be any doubt of this kind when the entry

has been made towards the expenditure at the fag end of the financial year. "Expenditure" is not necessarily confined to the money which has been actually paid out. It covers a liability which has accrued or which has been incurred although it may have to be discharged at a future date. However, any expenditure primarily denotes the idea of spending or paying out, it may, in given circumstances, also covers an amount which has gone out of the assessee's pocket but which is all the same, an amount which the assessee has had to give out. It also covers a liability which the assessee has incurred in praesenti although it is payable in future. A contingent liability that may arise in future is, however, not "expenditure". It would also cover not just a one time payment, but the liability spread out over number of years. Wherein a provision is made for liability and that amount so provide will be deductible as an expenditure while computing business income of the assessee. In the present case, the assessee carried on the contract and declared income generated from that contract to tax and paid tax thereof. There is no allegation by the Assessing Officer that the assessee has not completed the project and declared profit therefrom. There is no also allegation that profit declared by the assessee from the business is low as compared to the earlier assessment years. Once the assessee completed the contract and declared profits therefrom, it is to be construed that the assessee was

able to complete the contract only after incurring the expenditure. In the present case, sub-contractors carried on the work of fabrication of Bauxite Handling system, modification of conveyor and reversible conveyer and thereafter they sent running bills towards the work carried on by them at the fag end of the financial year and the payments were made through banking channel in subsequent years, and the payments made in the subsequent assessment years were not at all doubted by the authorities. Further, the parties who carried on the work confirmed before the Assessing Officer during the remand proceedings stating that they had carried out the work. In such circumstances, the Assessing Officer has no reason to doubt the expenditure incurred to carry on the business of the assessee. The only test for the deductability of the expenditure is whether the expenditure has been incurred solely and exclusively for the purpose of the business. If the reality of the payment is challenged or is in dispute different considerations arise; so also in case where the tax authorities are able to point to some consideration other than the purpose of the business as accounting for any portion of the payment made. In such cases, of course, such portion of the amount claimed, which is either not held to have been paid or is held to have been paid for reasons other than business expediency, could and should be disallowed; but the reason for disallowance is because either the

portion disallowed is not paid, or because the expenditure is not solely and exclusively for the business, and not on the ground that in the opinion of the Assessing Officer the expenditure is "unreasonable" either because the expenditure was not incurred or not disclosed to be incurred or because the assessee would have reduced it. In our opinion, the assessing authority having no material in hand cannot doubt the incurring expenditure and once there is positive material to show that there are positive facts which may justify incurring the expenditure for the purpose of business, the assessing authorities cannot challenge reasonableness of the expenditure or incurring the expenditure. Thus, in our opinion, the Assessing Officer cannot substitute his own standard of reasonableness of expenditure for that of the assessee, as the assessing authority has not brought anything to show that the assessee adopted colourable or illusory or fraudulent means to reduce the profits to show the expenditure. In our opinion, in the present case the assessee proved the genuineness of the payment by producing cogent evidence including identity of the parties alongwith payment details and the burden cast upon the assessee was discharged as there is no evidence to suggest the bogus nature of the expenditure and the conclusion of the Assessing Officer is based on the presumption to reach the conclusion that the payment are not genuine it cannot be upheld. Further, the assessee is able to show the

commercial expediency to incur the expenditure for the purpose of business and incurring of expenditure also confirmed by the respective sub-contractors and they have received payments through banking channel in subsequent assessment years. Hence, we have no hesitation in confirming the order of the Commissioner of Income Tax (Appeals) and the ground of the Revenue is rejected.

6. In the result, the appeal of the Revenue in ITA No.2038/Mds/2014 is dismissed.

Order pronounced on Friday, 28th day of August, 2015, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:28.08.2015

KV

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |