



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Income Tax Appeal No. 50/2018

Pr. Commissioner Of Income Tax, Udaipur.

-----Appellant

Versus

M/s Grace Colonizers Pvt. Ltd., 26-Nyay Marg, Udaipur Rajasthan

-----Respondent



For Appellant(s) : Mr. K. K. Bissa.
For Respondent(s) : -

**HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE DINESH MEHTA**

Judgment

04/01/2019

The appellant has preferred the present appeal under Section 260-A of the Income Tax Act, 1961 impugning the order dated 23.05.2017, passed by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred to as the 'Tribunal').

The appellant has portrayed the following substantial question of law to be involved in the present appeal and prayed that the same be decided in its favour and the order passed by the Assessing Officer be restored :

“Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT was justified in deleting the disallowances of provision made for project expenses amounting to Rs.4,87,00,000/- particularly when the bills of the expenses purportedly incurred were not even raised for the reason of some dispute



with the contractor company and the liability remained uncertain?”

The facts in a nutshell relevant for the present appeal are that the respondent-assessee filed its return of income declaring total income of Rs.1,64,94,358/- for the assessment year 2011-12. The respondent's case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer showed his concern regarding a provision made by the assessee for project expenses to the tune of Rs.4.87 crores. The assessee came forward with an explanation that the said amount was in relation to work already performed by the contractor qua development of its on going project and the same was duly included in the closing stock of Rs.37,64,07,367/-, while giving complete details of the closing stock.

The Assessing Officer, however, did not agree with the explanation put forth by the assessee and held that the said expenses were in nature of doubtful contingent liability and thus not allowable expenses under the provisions of Income Tax Act, and disallowed the same while passing the assessment order on 31.03.2014.

Feeling aggrieved by the said assessment order, the respondent-assessee preferred an appeal which came to be allowed by the Commissioner of Income Tax (Appeals), Udaipur vide its order dated 31.07.2014. While setting aside disallowance of the provision for the project expenses, the learned Appellate Authority firstly observed that the provision of Rs.4.87 crores cannot be said to be a contingent liability and secondly held that since the very amount of Rs.4.87 crores has been included in the closing stock, it would have no impact on the profit.



The department assailed the order of Commissioner (Appeals) before the Income Tax Appellate Tribunal by way of Appeal No.493/JODH/14. The learned Members of the Tribunal dismissed the same vide its order dated 23.5.2017 and upheld the order of Commissioner (Appeals).

Impugning the order of Commissioner (Appeals) dated 31.7.2014, duly affirmed by the Tribunal vide its order dated 23.05.2017, Mr. Bissa learned counsel for the appellant submitted that provision of Rs.4.87 crores made by the respondent-assessee was on the basis of estimation and there was no crystallised liability for which the amount debited in the profit and loss account under the head "provision for expenses" was not permissible. He contended that the Assessing Officer was justified in making addition of Rs.4.87 crores, as the aforesaid amount of Rs.4.87 crores was in the nature of contingent liability and it was not allowable expenditure.

We have heard learned counsel for the appellant and perused the material available on record.

A perusal of the record reveals that pursuant to the notice given by the Assessing Officer, the assessee had pointed out that the provision had been made in view of the work done by the contractor in its on-going project worth Rs.12 crore. The assessee stated that though the work had been completed by the contractor, but bills were not raised in wake of some dispute with the contractor for the quality of construction. The liability in respect of work already done had been determined on the basis of contract/prevalent rates and past experience, asserted the assessee.



In view of the facts obtaining in the present case, as long as as work done is not in dispute, the respondent-assessee was justified in making estimation of work already done and make a provision in this regard. It is also to be noticed that the said amount of Rs.4.87 crores has duly been included in the closing stock of the respondent-assessee. As such the amount of Rs.4.87 crores, which had been debited in the profit and loss account, as "provision for project expenses" has duly been credited in the profit and loss account in the closing stock at Rs.12,47,37,972/- under the caption of building project expenses, which stood increased as a result of inclusion of this amount. That apart the respondent-assessee had deducted TDS on the amount/provision made, hence it cannot be said that the liability was a contingent liability.

There is neither any substance in the appeal nor any substantial question of law involved.

The appeal being frivolous, is being dismissed in limine.

(DINESH MEHTA),J

(SANGEET LODHA),J

58-A.Arora/-