IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.09.2016

Coram:

The Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO
AND
The Hon'ble DR. Justice P.DEVADASS

TAX CASE APPEAL No.350 of 2016

Commissioner of Income Tax
Chennai. .. Appellant

Versus

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

Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 28.08.2015 in ITA No.2038/Mds/2014.

For Appellant .. Mr.J.Narayanasamy,
Senior Standing Counsel

For Respondent .. Mr.M.P.Senthilkulmar

JUDGMENT

(Judgment of this Court was delivered by
NOOTY. RAMAMOHANA RAO, J)

This Tax Case Appeal is preferred by the Revenue under Section 260A of the Income Tax Act, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai, dated 28.08.2015 in ITA No.2038/Mds/2014. The Substantial Question of Law raised in this Tax Case Appeal is as follows:-

> "Whether on the facts and in the circumstances of the case the tribunal was right in holding that the expenditure of Rs.2.381 Crores claimed by the assessee as payment made towards sub-contractors can be allowed as deduction, even though the assessee had not filed any supporting bills or any other evidence for the expenses debited in the assessees books of accounts."

2. The Assessee is engaged in manufacturing/trading of 'material handling equipment' like belt conveyors, screw conveyors, elevators, pipe conveyors and other similar products. The Assessee has claimed certain expenditure incurred by it by way of payments made to M/s. Erection India and M/s. Tekno Conveyor, with whom a sub-contracting arrangement has been already, worked out. The Assessing Officer has come to the conclusion that the payments made to the above two sub-contractors are not genuine transactions but they are mere accommodation entries made on paper and the same was indulged in with a view to return reduced quantum of profits and hence it was evident that these entries were made in the books of account towards the end of the Financial Year as

Convenient/Adjustment entries which are normally resorted to for reporting less quantum of profit arising out of business/ trading activity undertaken by the Assessee. On the above basis, the Assessing Officer has disallowed the amount of little more than 2.38 Crores.

3. The Assessee preferred an appeal to the Commissioner of Income Tax (Appeals). During the course of consideration of the appeal, the Assessee has presented certain additional evidence in support of his claim that there is nothing to suspect with regard to the payments made to the two sub-contracting agencies by it. Taking into account and considering the additional material supplied by the Assessee, the Appellate Authority has called for a fresh finding of fact and the Assessing Officer submitted his remand report on 20.12.2013, lending legitimacy to the claim of the Assessee, a copy of which was made available to the Assessee to offer his comments thereon. It is thereafter, the Appellate Authority has held that the material additionally produced by the Assessee is acceptable as the Assessee has produced the proprietaries of both the sub-contracting agencies namely M/s. Erections India and M/s. Tekno Conveyor for examination, who have confirmed that they have carried on sub-contract work for the Assessee in the project entrusted by the principal to the Assessee.

In the face of such material and also in view of the fact that the TDS deducted by the Assessee while making payments to the subcontractors has matched and the account of payments made to the respective sub-contracting agencies being accurate, when viewed from the perspective of the books of account of the sub-contractors, accepted the plea of the Assessee and allowed the appeal. It is against the said order in appeal passed by the Commissioner of Income Tax (Appeals), the Revenue has approached the Income Tax Appellate Tribunal.

4. The fact which is required to be noticed at the very outset is that during the course of execution of the project, the two sub-contracting agencies have intimated, from time to time the running work progress details to the Assessee which contained the details of quantity of structural steels of the executed work, for the verification and approval of the Assessee. Any such arrangement pre-supposes the existence of a sub-contracting agency as otherwise there was no necessity for the so called sub-contractors to make available the data of the works executed by them, to the Assessee. It is not the case of the Revenue that the execution of work by the Assessee incidentally involves supervision or coordination of work of the subcontractors. In

the event the sub-contract and execution of work by the so called sub-contractors has no proximity to the work required to be executed by the Assessee vis-a-vis its principal, calling for running work progress details by the Assessee from some other third parties would not have arisen at all. In the instant case, the principal of the Assessee namely M/s. Vedanta have issued Mechanical Completion and Commissioning Completion certificate to the Assessee in respect of Bauxite Grinding and Modification conveyors work, a part of the said work is what turned out to have been subcontracted by the Assessee. Some of the payments made by the Assessee are found through the banking channels and hence the Tribunal accepted the same as payments made to a subcontractor.

5. Sri.J.Narayanasamy, learned Senior Standing Counsel for the Revenue would strenuously urge before us that the reasoning which weighed with the Tribunal that since payments made to the sub-contractors have 'passed through bank channels' they need not be doubted, is not a sound proposition nor can such a process be a tilting or deciding factor. He would add on further that an accommodating party can also extend necessary help by way of receiving payments through a banking channel and hence such a process of payments is

not a substitute method for proving the same as genuine payment, which is required to be established. Though we see considerable force behind the submission of Sri.J.Narayanasamy, the payments made through banking channel are not a substitute method for establishing the genuineness of the payment so made, but, however, the same is a strong indicating circumstance of the existence of an obligation to make payment at the first instance. In the instant case, the obligation that arose on the part of the Assessee to make such payment can be easily gathered from the fact that it kept on receiving, from time to time, the running progress schedule of erection work by the sub-contractors. As was already noticed by us, if there is no proximate relationship between the work to be executed by the Assessee and the sub-contractors executed work, which the Assesssee was required to execute towards its principal, the question of taking note of the progress of running work by the Assessee from a third party would not have arisen. So long as the said running work details are not discredited as totally unconnected to the work which the Assessee was required to execute towards its principal, the theory of subcontracting that part of the work, set up by the Assessee gains credibility. Though for all practical purposes and intent, it is safe to make payment through banking channel, for the sake of accounting convenience, but any such payment would pass muster as a genuine payment, if the obligation to make such payment springs out of subcontracting a part of the work, undertaken by the Assessee for execution. In the instant case, the work said to have been executed by the subcontractors is not found as unconcerned or unconnected to the work undertaken by the Assessee and hence the claim of payment made for such work by the subcontractors deserves to be accepted as a genuine expenditure incurred by the Assessee.

6. We are also conscious that all payments made through banking channel need not be treated as genuine automatically or their face value. Each such transaction ought to be independently examined and considered and no formal conclusion can be drawn about the genuineness regarding the obligation to effect the said payment merely because the payment was effected through a banking channel. In the instant case, we are satisfied that the Assessee has produced necessary material before the Commissioner of Income Tax (Appeals), during the course of hearing of the appeal against the order of the Assessing Officer, relating to subcontracting a part of his work. There

is nothing to doubt, in such circumstances, regarding the genuineness of payments effected through banking channels in favour of the two sub-contracting agencies.

7. In such view of the matter, we find no merit in the appeal. The conclusion drawn both by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal are sustained, though for different reasons assigned by us today. Hence, the appeal fails and accordingly is dismissed. Costs made easy.

(N.R.R.,J) (P.D.S., J)
07.09.2016

gr.

T.C.A.No.350 of 2016