

HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT:
AT JABALPUR

INCOME TAX APPEAL No.100/2014

Commissioner Income Tax

Versus

M/s Prism Cement Unit

INCOME TAX APPEAL No.101/2014

Commissioner Income Tax

Versus

M/s Prism Cement Unit

INCOME TAX APPEAL No.102/2014

Commissioner Income Tax

Versus

M/s Prism Cement Unit

INCOME TAX APPEAL No.103/2014

Commissioner Income Tax

Versus

M/s Prism Cement Unit

Present:

Hon'ble Shri Justice Rajendra Menon
Hon'ble Shri Justice Sushil Kumar Gupta

Shri Sushrut Dharmadhikari, learned counsel for the appellant.

Shri Sumit Nema, learned counsel for the respondent.

ORDER
(18/08/2015)

As common questions of law and facts are involved in all these 4 appeals filed under Section 260-A of the Income Tax Act by the revenue, they are being disposed off by this common order except the fact that the assessment quarter are different, all other the facts and questions of law are identical.

2. A show cause notice was issued by the Assessing Officer to the respondent assessee under Section 201(1) read with 206 C(7) as to why the assessee should not be treated as a defaulter under Section 201(1) on account of the short deduction made on interest under Section 201(1A) of the Income Tax Act i.e. in the matter of deduction of Tax at source and interest.

3. The Assessing Office found that the respondent assessee has not deducted the interest and TDS for various purchases made for the unit in question the order of assessment was passed and challenging the same appeals were filed before the

Commissioner Income Tax Appeal. The Commissioner Income Tax Appeal vide his order dated 19/12/2011 came to the conclusion that the assessee was not liable to deduct TDS and therefore, deleted the addition. Appeal was partly allowed on various other grounds. Further appeal filed by the revenue having also being dismissed by ITAT, Jabalpur by the impugned order passed on 28/03/2014 this appeal by the revenue. It is the case of the revenue that as the contract in question is a composite contract in the nature of a works contract, the deduction under Section 201(1) and 201 (1A) was required and as the addition made on account of such statutory violation has been deleted by the appellate authorities, the substantial question of law as framed in the memorandum of the appeal arises for consideration. In rebuttal, Shri Sumit Nema invites our attention to the order passed by the appellate authorities concurrently, the admission made by the Assessing Officer in his remand report submitted before the appellate authority, and points out that the assessee has two units and for both the units i.e. Unit No.I & unit No.II two different contract were entered into. As far as the present appeals are concerned, they pertain to unit No.1 and for the said unit a contract was entered into with certain foreigners concern for the purpose of purchase of injunction pipes and various other items. This contract was not a composite contract, it was a simple purchase contract for procurement of certain items on prices fixed from a foreign company and therefore in view of the law laid down by the Supreme Court in the case of

GE India Technology Cen. (P) Ltd. Vs. Commissioner of Income Tax (2010) 193 TAXMAN 234 (SC) the appellate authorities have not committed any error. Shri Sumit Nema points out that under the misapprehension and misconception that the agreement for unit No.2 which is composite works contract has also been executed in unit No.1 also a error was committed by the Assessing Officer and when he admitted the error the appellate authorities have taken note of the same and permitted the deduction. In doing so, he argues that the appellate authorities have not committed any error and on the basis of this admitted factual position no question of law arises for consideration as the purchase in question made is beyond the purview of the deductions. As contemplated under Section 195(2) of the Income Tax Act as is laid down by the Supreme Court in the case of **GE India Technology (Supra)**.

4. We have considered the rival contentions and on going through the reply filed the respondent so also the material on record, we find that an agreement was entered into by the assessee for the purchase of certain items vide quotation No.210.62 dated 04/05/2006 a purchases made from M/s Marine Power International, Dubai so also various other purchase contract similar in nature. This was not a composite contract, it was a simple purchase contract for purchase of certain items, all these purchase agreements were made for unit No.1 and are beyond the purview of deductions contemplated under Section

195(2), however, the assessee also has a separate unit known as unit No.2 which has a separate TAN and PAN and assessment for this unit is also done separately and for this unit a worthy contract was entered into with Koppert Germany for supply, purchase and installation of certain machinery i.e. a composite works contract. The Assessing Officer in his remand note has admitted this position and the order passed by the Commissioner Appeals in para 4.9, these aspects have been taken note of and it is specifically held that the contract on the basis of which the AO made the addition by treating the appellant company in default is for unit No.2 and not for unit No.1. If that be the factual position, it is clear that for unit No.1 the contract in question for which addition has been made was one for which the provision of Section 195(2), 201(1) and 201(1A) is not attracted as the contract for the said unit was not a composite contract. Accordingly, if the principle laid down in the case of **GE India Technology (Supra)** are applied in the facts of the present case, no question of law arises for consideration and in view of the aforesaid, we find no error in the concurrent orders passed by the appellate authorities, the same being in accordance with law, we find no question of law for consideration, the appeal is therefore, dismissed.

(Rajendra Menon)
Judge

(Sushil Kumar Gupta)
Judge