ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction
[Income Tax]

ORIGINAL SIDE

ITA No. 164 of 2009

S.R. BATLIBOI & ASSOCIATES

Versus

COMMISSIONER OF INCOME TAX, WEST BENGAL- XIX, KOLKATA

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 9th February, 2015.

Mr. R. N. Bajoria, Sr. Adv.
Mr. A. Gupta, Adv.

Mr. R. Sinha, Adv.

The Court : The assessing officer in disallowing an expenditure of a sum of Rs.1,26,90,998/- advanced the following reasons:

"*The assessee could not explain the business expediency of incurring such expenses at this abnormal rate. The assessee also failed to co-relate the payment of such expenses to its sister concern S. R. Batliboi & Co. with the revenue in the form of fees received during the year to justify its payment to the sister concern. Considering the above facts an amount @ 10% of such claim of Rs.12,69,09,983/- (74,83,853 + 11,94,26,130) or*

Rs.1,26,90,998/- is disallowed and added back being not for the purpose of business. This addition is also called for in view of the provisions of Sec.40A(a)(2)."

The order was successfully assailed before the CIT(A) by the assessee.

Aggrieved by the order of the CIT(A), the revenue preferred an appeal. The learned Tribunal reduced the amount and restricted disallowance to a sum of Rs.1,10,00,000/- for the following reasons:

" We have carefully considered the submissions of the ld. representatives of both the parties and the orders of the authorities below. We have also perused the details of the break-up of the expenses claimed by the assessee on account of conference and seminars aggregating Rs.74,83,853/- placed at pages 161 to 173 of the paper book. We have also gone through the details of the professional expenses placed at pages 174 to 180 of the paper book. We observe that the assessee has paid Rs.8,00,00,000/-, Rs.1,00,00,000/- and Rs.2,00,00,000/- as per Sl. No. 36, 37 and 38 at pages 177 of the paper book, but the only narration given is "being amount paid as additional manpower supply fees payable to S.R. Batliboi & Co.". No further details have been given to justify as to whether the said payment has been made by the assessee to its sister concern S.R. Batliboi & Co. wholly and necessarily for business purposes. We observe that the A.O. has also stated in the assessment order that the assessee failed to correlate the payment of such expenses to its sister concern S. R. Batliboi & Co. The A.O. has also observed that the assessee could not explain the business expediency of incurring such expenses at this abnormal rate. The Hon'ble Apex Court has held in the case of CIT –vs.- Calcutta Agency Limited [19 ITR 191] that if assessee fails to establish the fact necessary to support his claim for deduction under section 37(1), the claim is not admissible. The Hon'ble Andhra Pradesh High Court has also held in the case of CIT –v-s Transport

Corporation of India [256 ITR 701] that unsupported payment is not deductible. Considering the above cases and the facts of the case, we are of the considered view that the decision of the Hon'ble Delhi High Court cited by the ld. A.R. (supra) is not applicable to the facts of the case before us. Further, the assessee has also not given the details of the services rendered by its sister concern S.R. Batliboi & Co. against which the assessee had paid the sum of Rs.11,00,00,000/- to it. Considering the totality of the facts before us and the details of the expenses aggregating Rs.74,83,853/- on account of conference and seminar expenses at pages 161 to 173 of the paper book and the payment of Rs.11,94,26,130/- towards professional services, details given at pages 174 to 180 of the paper book, we are of the considered view that it will be reasonable to restrict the disallowance of the claim of the assessee to the payment of Rs.11,00,00,000/- to its sister concern S.R. Batliboi & Co. instead of making the disallowance of 10% of the total claim of the assessee aggregating to Rs.12,69,09,983/-. Hence, we modify the orders of the authorities below by restricting the disallowance of 10% of Rs.11,00,00,000/-, which comes to Rs.1,10,00,000/- as against Rs.1,26,90,998/- made by the A.O. and the entire amount deleted by the ld. CIT(A). Accordingly, the Ground No.4 of the appeal taken by the Department is allowed in part by restricting the disallowance to Rs.1,10,00,000/- out of the payment of Rs.11,00,00,000/- made by the assessee to its sister concern S.R. Batliboi & Co."

Challenging the aforesaid order, the present appeal was filed. The appeal was admitted on 12th August, 2009 and the following questions of law were framed:

"i] *Whether order of the tribunal, disallowing Rs.1,10,00,000/- out of the payment made to S.R. Batliboi and Company for services rendered by them is arbitrary and perverse as there are no material whatsoever in support thereof and such findings* *have been arrived at by ignoring the relevant materials and on mere surmises and conjectures ?*

ii] Whether the tribunal was justified in law to uphold disallowance of 10% of the amount paid to S. R. Batliboi and Company ?"

It is not in dispute that the assessee debited a sum of Rs.11 crores and the only narration given in the books of account was "*being amount paid as additional manpower supply fees payable to S.R. Batliboi & Co"*. It is on this basis that the assessee wanted the assessing officer to allow the aforesaid expenditure of Rs.11 crores, which the assessing officer refused to do and the learned Tribunal affirmed to the extent of 10% of the total sum of Rs.11 crores. The admitted position is that the revenue, for the relevant year earned by the assessee, increased by 26% whereas expenditures were enhanced by almost 150%. The assessee merely on the basis of the aforesaid entry indicating that the sum of Rs.11 crores was paid as additional manpower supply fees could not have claimed the deduction. The sum of Rs.11 crores must have been arrived at on some basis. There must be appropriate record for that. It is on the basis of the records and calculation the amount must have been arrived at and paid. The entry relied upon is a mere piece of secondary evidence. What is a secondary evidence? Secondary evidence in substance means that better remains behind. What is the better that remained behind? Better in this case were the pieces of evidence which contained the particulars of services rendered and rates applied thereto on the basis whereof the sum of Rs.11 crores was calculated. Those were the pieces of primary evidence which also was the best evidence available with the assessee which should have been adduced to show that the assessee had in fact incurred the sum of Rs.11 crores for business expediency. The assessee did not do any such thing nor even any attempt was made to do so. Naturally, the assessing officer disallowed the expenditure and the Tribunal upheld it, if we may say so correctly. Mr. Bajoria, learned senior advocate, submitted that misunderstanding on the part of the assessee was at the root of the matter which is why the appropriate evidence could not be brought to the notice of the assessing officer. He submitted that an opportunity should be granted to the assessee to produce all relevant evidence to show that the sum of Rs.11 crores was incurred by the assessee for appropriate reasons.

This question of fact, we are inclined to think, may be enquired into further for the purpose of examining the grievance of the assessee, if any.

For that limited purpose, the matter is remanded to the assessing officer. He shall permit the assessee to adduce such evidence as the assessee wants to rely upon and shall consider the matter in accordance with law.

The appeal is thus disposed of.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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