IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1237 OF 2014

The Commissioner of Income-Tax-10, ... Appellant
Mumbai.

Vs.

Alfa Beta Engineering Construction .... Respondent
Co. Pvt. Ltd., Mumbai.

Mr. Arvind Pinto for the Appellant.
Mr. Balkrishna V. Jhaveri for the Respondent.

CORAM : S.V. GANGAPURWALA AND G.S. KULKARNI, JJ.

DATE : 7 JUNE, 2017

PER COURT :

The Appeal relates to Assessment Year 2004-2005.

2 This is an appeal of the Revenue against the order dated 9th October, 2013 passed by the Tribunal. The Revenue has formulated following questions stated to be substantial questions of law for our consideration :

“a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT could be said to be perverse in ignoring the fact that no evidence was produced at the stage of assessment as also at the stage of the Remand but the claims of the Respondent company were admitted.

b) Whether on the facts and in the circumstances of the case and in law, the decision of the Tribunal to uphold the deletion of Rs.50.00 Lacs is justified on merely a statement made by the Company that the money was utilised by the head office that was not backed by any evidence or proof.

c) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in upholding the orders of the CIT (A) limiting the amount of cash payments to only 10% in the absence of any bills to indicate the nature of the payments made.

d) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in confirming the disallowance of unproved purchases to only Rs.2.00 Lacs in the absence of details and the source of these purchases.

e) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in restoring to the file of the CIT (A) the issue regarding the outstanding cash purchases of Rs.54,00,168/- since this was booked in the profit and loss account and therefore there was no ambiguity in the same.

2 Mr. Pinto, the learned counsel for the Appellant strenuously contends that the observations of the Tribunal are perverse. The same are based without any evidence on record. The Tribunal was not justified to uphold the deletion of Rs.50.00 Lacs merely by the statement of the respondent that the money was utilised by Head Office without any proof. In absence of any material evidence on record, the Tribunal could not have passed the impugned order. No record was produced before the Assessing Officer or the Commissioner of the Appeals. In view of that the

argument on the substantial question of law is that when no evidence was produced at the stage of assessment so also the stage of remand, whether the deletion of Rs.50.00 Lacs is justified and the Tribunal was justified in confirming the dis-allowance restricted only Rs.2.00 Lacs in absence of details of source of these purchasers.

3 We have also heard learned counsel for the respondent, who supports the order passed by the Tribunal.

4 On perusal of the order passed by the Tribunal, it appears that the dispute is factual in nature. The Tribunal has observed in the order that the assessee has incurred total sub-contract payment of Rs.2,19,02,968/- out of which Rs.2,06,96,216/- was paid by cheques and whatever payment was made by cash, TDS was deducted. The payment details submitted from pages 33 to 40 of the paper book shows that 95% payments were made by cheques. The Tribunal has also observed that as far as the cash payment of Rs.50.00 Lacs is concerned, it is not a payment made by the assessee to the parties on account of sub-contact payments but the said amount represents the remittance of various amounts made by the assessee to it's branch office at Chennai for the purpose of work carried out at various sites. The Tribunal has referred to the details given at pages 10 and 11 of the paper book.

5 As far as third aspect is concerned in respect of the same, the matter has been remitted by the Tribunal.

6 In the light of the above discussion, we find that the appeal does not give rise to any substantial questions of law. The appeal is dismissed. No costs.

(**G.S. KULKARNI, J.**) (**S.V. GANGAPURWALA, J.)**