HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

ITTA.No.672 of 2017

Date:15.11.2017

Between:

Principal Commissioner of Income Tax,

Rajahmundry.

..... **Appellant**

And:

M/s Nara Constructions,

Eluru.

....**Respondent**

Counsel for the appellant: Mr. B.Narsimha Sarma

The Court made the following:

JUDGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

In this appeal, by the Revenue against order, dated 21.4.2017, in ITA.No.246/Vizag/2015 on the file of the Income Tax Appellate Tribunal, Visakhapatnam Bench, Visakhapatnam (for short 'the Tribunal'), the following substantial questions of law have been raised:

> "1. In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in upholding the deletion of addition made on account of difference between the gross receipts admitted in the books of account and gross receipts as per TDS certificates without deciding the effect of non-compliance of Rule-46A(3) of the Income Tax Rules by the Appellate Commissioner and insufficient material facts?
>
> 2. In the facts and circumstances of the case, whether the finding of the Hon'ble Tribunal (ITAT) that there is no difference in turnover admitted by the respondent-assessee in the books and the turnover as per TDS Certificate is not illegal, perverse and liable to be set aside?"

The brief facts, as could be culled out from the record, are that the respondent-assessee is a sub-contractor. For the Assessment Year 2007-08, he has declared a total income of Rs.32,62,850/-. His case was selected for scrutiny through the Central Unit (CASS) and the assessment was completed under Section-143(3) of the Income Tax Act, 1961 (for short 'the Act') determining the total income of the assessee at Rs.39,38,566/-.

Thereafter, the case was reopened under Section-147 of the Act on the ground that income chargeable to tax has escaped assessment. The Assessing Officer (AO) has issued notice to the assessee to the effect that gross receipts to a tune of Rs.78,32,354/- were not included in the returns and therefore, the said amount is to be treated as income chargeable to tax.

During the course of assessment proceedings, the assessee has filed TDS Certificates and also Books of Accounts apart from the certificate issued by the principal Contractor-M/s G.V.Reddy & Company. The assessee has taken the stand that while paying the material advances, the principal Contractor has deducted TDS and that, later when the Running Account bills were submitted, the principal contractor has deducted TDS on gross value of contract including recovery towards the material advances which were paid earlier.

The AO after rejecting the assessee's plea, referred to above, added a sum of Rs.78,32,354/- to the total income of the assessee and accordingly, re-assessed the tax. On appeal filed by the assessee, the Commissioner of Income Tax (Appeals) {for short 'CIT(A)'}, on examination of the Books of Accounts and the Reconciliation Statement along with the certified statement of bills paid by the principal Contractor, has accepted the plea of the assessee and directed deletion of the amount of

Rs.78,32,354/-. Feeling aggrieved by the said order, the Revenue filed ITA.No.246/Vizag/2015 before the Tribunal. Partly aggrieved by the order of the CIT (A), the assessee also filed Cross-Objections bearing No.33/Vizag/2015 before the Tribunal. The Tribunal, after considering the record and the respective submissions of the parties, dismissed the appeal filed by the Revenue and the Cross-Objections filed by the assessee. Feeling aggrieved by the said order, the Revenue filed the present Appeal.

We have heard Mr. B.Narasimha Sarma, learned senior Standing Counsel for Income Tax Department, and perused the record.

As noted hereinbefore, the issues that fell for consideration before both the appellate fora are (1) whether there was double deduction of TDS towards the material advances as well as the gross payments made to the assessee; and (2) Whether the principal Contractor failed to show the recoveries made from the assessee towards the material advances paid earlier.

On perusal of the record such as the Books of Accounts, verification of the material advances, Running Account Bills, Ledger Extracts and the letter issued by the principal Contractor, the CIT (A) has accepted the plea of the assessee. While reconsidering the entire case, the Tribunal rendered the following findings:

> "Having heard both the sides and considered material on record, we find that the A.O. has made additions solely on the basis of TDS certificates and turnover admitted in the books of accounts without verifying the material advancess received by the assessee on which TDS has been deducted. The assessee has filed a paper book containing details of running bills, ledger extracts, letter issued by the principal contractor-M/s G.V.Reddy and Company and TDS certificates. On verification of the details filed by the assessee, we find that the assessee has received material advances on 4 occasions on which the principal contractor has deducted TDS. We further observed that while verifying the gross contract receipts, the principal contractor has recovered material advancess paid in the earlier occasion, however, deducted TDS on gross contract, receipts, because of which there is a difference in turnover admitted in the books of accounts and turnover as per P&L account. The assessee has filed a reconciliation explaining the reasons for difference in turnover as per books of accounts and turnover as per TDS certificates. The difference in turnover is mainly on account of TDS deducted twice on material advancess. If the material advances has been excluded from the gross contract receipts, the gross contract receipts admitted by the assessee in the books of accounts and gross contract receipts as per TDS certificates are matching. Therefore, we are of the view that there is no difference in turnover admitted by the assessee in the books of accounts and turnover as per TDS certificates issued by the principal contractor. The CIT (A) after considering the relevant

details has rightly deleted additions made by the A.O. We do not find any infirmity in the order of the CIT (A), hence, we are inclined to uphold CIT (A) order and dismiss appeal filed by the Revenue."

In our opinion, the issue decided by both the appellate authorities squarely fall within the realm of appreciation of facts based on record and therefore, no question of law, much less substantial question of law, arises for consideration before the Court in this appeal.

For the afore-mentioned reasons, the appeal is dismissed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE CHALLA KODANDA RAM

15th November 2017
DR