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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 257/2018 & CM APPL.7810/2018

BLK NCC CONSORTIUM ..... Appellant
Through Mr. Arvind Kumar and Mr. Harsh Vardhan Sharma, Advs.

versus

JCIT RANGE – 22 ..... Respondent
Through Mr. Ruchir Bhatia, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **27.02.2018**

In this appeal by the assessee, the concurrent finding of the Income Tax Authorities is questioned. The Assessing Officer (AO) had disallowed a sum of ₹33,67,081/- on the ground that it was excessive and unreasonable.

The brief facts are that the assessee entered into a consortium agreement with one Nagarjuna Construction Company Ltd. (NCC). The consortium was awarded the contract for a total value of ₹58,50,00,000/- by Delhi Metro Rail Corporation (DMRC). In terms of the consortium agreement, NCC was entitled to 5% of the receipts for which according to the understanding of the parties, specific instructions were issued to the banker concerned. This facilitated automatic deduction of 5% of the amounts received by the consortium account on pro-rata basis and its payment to NCC. During the year in question (AY 2011-12), the AO brought to tax the amount involved after noticing that the payment made to NCC was over and above the amount that was paid as VAT component to the consortium partner. The AO held that VAT payment cannot form part of trading receipts representing contractual payments and therefore, the entire amount claimed was not admitted. The amount of ₹33,67,081/- was therefore disallowed.

The Appellate Commissioner concluded that 5% of the gross receipt was payable on pro-rata from RA bill which included mobilisation advance and other payments received from the employer. The assessees's argument that VAT upon such payments was like other payments and therefore, deductable was held to be unfounded. The ITAT to which the assessee appealed, further concurred with the order of the CIT(A).

Ld. counsel argued that the lower appellate authorities fell into error in not noticing that clause 3 of the consortium agreement was an example of inarrogant drafting. He relied upon the standing instructions given to the banker and submitted that the payout made to NCC was in the course of business and formed an integral part of the contract and in these circumstances, the deduction was unwarranted. It was further argued that the AO nowhere invoked any provision of the Act to disallow the sums that he brought to tax.

A reading of ITAT-as in the assessment order which is part of the record would show that tax authorities took note of and incorporated the contents of the consortium agreement. The *inter se* payments, in its terms is controlled by clause 3. That term of the contract nowhere obliges the appellant/assessee to make the payments which it ultimately did to its consortium partner. Concededly the department did give credit to the VAT payments made, pursuant to the contract with DMRC.

The Court is of the opinion that the assessee's arguments with respect to absence of any mention of any provision of the Act, is inconsequential given that the AO expressly rejected the expenditure, on the ground that it was excessive and unreasonable. This expression found mention in Section 40A (2)(a) of the Act.

In view of the above discussion, there is no merit in the appeal. The appeal is dismissed. All the pending applications also stand disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 27, 2018
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