

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No. 1706 of 2016

Pr. Commissioner of Income-tax-22 ..Appellant.

Vs

M/s ITD Cemindia JV ..Respondent.

Mr. Suresh Kumar for the Appellant.

Mr. Tanzil Padvekar for the Respondent.

**CORAM : AKIL KURESHI &
B. P. COLABAWALLA, JJ.**

DATED :- 12TH FEBRUARY, 2019.

P.C. :

1 This appeal by the Revenue under Section 260-A of the Income Tax Act, 1961 challenging judgment of Income-tax Appellate Tribunal (for short “Tribunal”). The appellant Revenue urges following question for our consideration:-

“Whether on the facts and the circumstances of the case the ITAT is correct in law in deleting the additions made by the AO in disallowing the reimbursement of the salary and related expenses to the tune of Rs.5,67,80,664/- under Section 40 (a) (ia) of the Income Tax Act, 1961?”

2. The learned Counsel appearing for the parties pointed out that concerning this very assessee, a similar question was considered by this Court in revenue's Income Tax Appeal No. 1649 of 2016, which was dismissed by an order dated 23rd January, 2019 making the following observations :

2. Respondent assessee is a company registered under the Companies Act. For the assessment year 2010-11, the assessee had filed its return of income which was taken in scrutiny by the Assessing Officer. In the assessment order, the Assessing Officer made disallowance of expenses of Rs.4.33 Crore (rounded off) in terms of Section 40 (a) (ia) of the Income Tax Act, 1961 ("the Act" for short). The assessee filed appeal against the order of the assessment and resisted such disallowance. The Commissioner of Income Tax [Appeals] ("CIT (A)" for short) allowed the appeal noting that the expenditure related to salary and related expenses were paid to one ITD Cementation India Ltd., towards salary and related expenses in respect of employees deputed to work in the joint venture (assessee). The CIT (A) further noted that the assessee vide letters dated 12/2/2013 and 19/2/2013 had explained to the Assessing Officer that then payment was towards reimbursement of the salary expenses paid to ITD Cementation India Ltd. towards deputed employees and personnel for doing the work of ITD Cem India JV as per the contractual agreement in the Joint Venture Agreement. It was noted that ITD Cementation India Ltd had provided employees and personnel for doing the work the assessee company. In turn, ITD Cementation India Ltd. would raise debit notes relating too salary of the employees to the assessee. On the basis of said debit notes, the assessee would make the payment to ITD Cementation India Ltd. The employees working for the joint venture were actually the employees of ITD Cementation India Ltd. The assessee, therefore, contended that on such payments, deduction of tax

at source was not necessary. The CIT (A) accepted this view. The Tribunal also confirmed the view of the CIT (A) and dismissed Revenue's appeal.

3. Having heard the learned counsel and having perused the documents on record, we see no reason to interfere. The facts on record would suggest that the amount in question was paid by way of reimbursement of expenditure. The employees and personnel deputed by the company giving such workers on loan to the assessee company continued to be the employer, the assessee merely reimbursed the expenditure in terms of salary structure of the employees to the employer company. There was, therefore, no question of deducting tax at source while reimbursing such costs. We notice that the Tribunal by the impugned judgment relied on its decision in case of this very assessee for earlier assessment year. This issue had travelled before this Court in Income Tax Appeal No. 1826 of 2014 (CIT vs. M/s ITD CEM India Ltd) which was dismissed by the High Court on 4/9/2017.

4. In the above view, no question of law therefore arises. The tax appeal is dismissed.”

3. In the result, this appeal is also dismissed.

(B.P. COLABAWALLA, J.)

(AKIL KURESHI, J)