

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.187 OF 2017

The Commissioner of Income, International Taxation-1, Mumbai	...	Appellant
versus		
Bechtel International Inc.	...	Respondent

Mr. Charanjeet Chanderpal, for Appellant.

Dr. Sunil M. Lala with Mr. Rohan Deshpande, Mr. Bhavya Sundesha, for Respondent.

**CORAM: AKIL KURESHI &
 S.J. KATHAWALLA, JJ.**

DATE: 4TH JUNE, 2019

P.C.:

1. This Appeal is filed by the Revenue to challenge the order of the Income Tax Appellate Tribunal. The following question is presented for our consideration :

(i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in holding that incomes arising on account of contractual work performed before termination of contract and pendency of litigation and on account of demobilization and winding up of site operation costs have not accrued to the assessee where in fact the economic event on the basis of which these claims are made have already occurred during the year and the assessee has already raised invoices on these accounts ?

2. Brief facts are as under :

The Respondent is a Company engaged in construction work. For the

Assessment Year 2002-03, the Respondent had filed a Return of Income. While carrying out the scrutiny assessment of the said Return, the Assessing Officer questioned the Assessee about the non-inclusion of two amounts of Rs.26.47 Crores (rounded off) and Rs.59.51 Crores (rounded off), for which Assessee had raised the bills, but not accounted for in its income. The Assessing Officer rejected the Assessee's contention that these amounts had not accrued to the Assessee and therefore, even on the basis of mercantile system of accounting, the same do not have to be offered to tax. The Assessing Officer was of the opinion that since the Assessee had raised the bills whether payments were made or not would not be relevant in view of the fact that the Assessee followed mercantile system of accounting. In Appeal, Commissioner of Income Tax (Appeal) granted partial leave to the Assessee. In relation to the amount of Rs.59.51 Crores, the Commissioner was of the opinion that the same could not have been brought to tax since the bill pertained to mobilization and site operation costs, which bill was raised after termination of contract. However, with respect to the sum of Rs.26.47 Crores, the Commissioner of Income Tax (Appeals) did not grant relief primarily on the ground that the bill raised by the Assessee pertained to construction work already carried out before the termination of the contract. We may however, record that to the limited extent of Rs.2.43 Crores, out of the said amount, the Commissioner granted relief on the ground that the same was already taxed in the earlier year. The Assessee carried the matter further before

the Appellate Tribunal.

3. The Department also filed independent Appeal to the extent the decision of the Commissioner of Income Tax, (Appeal) were against the Revenue. The Tribunal by the impugned common Judgment allowed the Assessee's Appeal and dismissed the Revenue's Appeal.

4. The Tribunal noted the peculiar facts that the Assessee was awarded the contract for construction work of one Dabhol Power Company (DPC). It was the project undertaken by Enron International, which had run into several legal disputes. The Tribunal confirmed the view of the CIT (Appeals) with respect to the sum of Rs.59.51 Crores on the ground that the bill was raised after the termination of the contract and the bill was not even accepted by the DPC. The income had therefore never accrued to the Assessee.

5. With respect to the sum of Rs.26.47 Crores, the Tribunal noted that the parent Company was in severe financial crisis; the assessee could not receive any payment for a long time; eventually after delay of nearly four years, the Assessee could recover only 8.58% of the total claim. Interalia on such factors, the Tribunal applied the theory of real income and deleted the addition.

6. We may note that in the meantime, the Assessee had also in the later year, claimed same amount by way of bad debts. The Tribunal while giving relief to the Assessee ensured that such claim of bad debts would stand deleted. We are broadly in

agreement with the view of the Tribunal. With respect to the larger amount of Rs.59.51 Crores, the claim was for damages for pre mature termination of the contract. The bills were raised after the termination of the contract and the contracted party did not even accepted the bills. With respect to the remaining amount of Rs.26.47 Crores, the Tribunal has applied relevant facts and held that in view of the real income theory, no income tax can be levied on the Assessee at the relevant time. Any further, examination of the issue would be wholly academic in nature since in any case, the Assessee could have claimed the said amount by way of bad debts. Infact, such a claim was allowed, but in view of the further development, pursuant to the impugned decision taken by the Tribunal, such claim was ordered to be adjusted. In the result, the above Income Tax Appeal is dismissed.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)