

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

INCOME TAX APPEAL NO.273 OF 2017

Principal Commissioner of
Income Tax-16

.... Appellant

versus

Wadia Ghandy & Co.

... Respondent

.....

- Mr.Suresh Kumar, Advocate for Appellant.
- Mr.Hussain Dholkawala i/b. Ganesh & Co., Advocate for Respondent.

**CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 09th APRIL, 2019.**

P.C. :

1. This Appeal is filed by the revenue to challenge the judgment of Income Tax Appellate Tribunal. Following question is presented for our consideration;

“Whether, on the facts and the circumstances of the case and in law, the ITAT was justified in allowing the deduction on account of payments made to the legal heir of the deceased partner Shri Anand Bhat, as admissible

expenditure under the provisions of the partnership deed?”

2. The Respondent-Assessee is a partnership firm. The assessee paid certain amount to a retired partner on the basis of the provisions made in the partnership deed. The deed provided that the partner whose share is determined on account of resignation, retirement or death, shall also be paid by the continuing partners of the firm, a sum equivalent to one and a half times the share of the profits and remuneration received by him in the last accounting year immediately preceding the date of determination of his share. This was primarily based on the premise that the partner of the firm during his tenure would render service to the clients for which bills may have been raised, but payments in full may not have been received and would be received after the partner retires, dies or resigns. The assessee claimed such payment by way of a deductible expenditure. The revenue objected the same. The tribunal by the impugned judgment by relying upon the judgment of this Court in case of *CIT Vs. Crawford Bayley & Co. reported in 106 ITR 884*

(*Bom.*), held in favour of the assessee, upon which the present Appeal has been filed.

3. Learned Counsel for the revenue fairly pointed out that such an issue had come up before this Court on earlier occasions, where the revenue's Appeals have been dismissed. We may refer to one recent order dated 12/02/2019 passed by this Court in Income Tax Appeal No.1696/16. While dismissing the revenue's Appeal, the Court made following observations;

“2. The respondent assessee is a Partnership Firm engaged in providing legal services. During the course of scrutiny of the assessed return for the assessment year 2007- 2008, the Assessing Officer objected to the claimant for deduction of a sum of Rs. 3.68 Crores which was paid by the assessee firm to its retired partner. The assessee pointed out that the payment was made in terms of clause 23.5 contained in partnership agreement. By further elaborating the stand before the Assessing Officer, the assessee pointed out that the amount was paid by way of compensation to the outgoing partner

towards the appreciation in the value of the immovable properties held by the assessee firm to the extent of his share of the partnership and also for the work done during the period of partnership, which was in progress on account of the fact that the work had not been completed and therefore the clients could be charged for the same. The assessee pointed out that in the partnership agreement itself there was formula to compensate the outgoing partner for his share of those profits of the firm in relation to the period during which he was a partner and which profits had not been realized by the firm on account of non-completion of the work during the tenure of the partner. The assessee firm further pointed out that it would be paying taxes on the entire fees received by it in the year in which the bills would be raised. This was also including capital gains on the sale of the immovable properties, without claiming any depreciation in those years in respect of which payments to the outgoing partner were made.

- 3. The assessing officer did not accept the stand and disallowed the expenditure. The assessee carried the matter in appeal. Tribunal by impugned judgment referred to and relied upon the earlier decisions on*

the point to accept the assessee's stand. It appears that the assessee had taken both the grounds namely, that the expenditure was made to discharge the obligation undertaken by the firm as per the relevant clause of the partnership agreement and further that essentially this was a case of diversion of income at source.

4. *We notice that similar questions have been considered by this Court on numerous occasions. In case of Commissioner of Income-tax v. Mulla and Mulla and Craigie, Blunt and Caroe reported in 190 ITR 198 the concept of diversion of income at source by overriding title was discussed at length under somewhat similar circumstances. The Court made the following observations:-*

“In the present case, the assessee-firm was under a legal obligation in terms of the deed of partnership dated September, 1, 1967, and the clauses in the two subsequent partnership deeds to pay out standing fees for the work done up to and during the period when the deceased partners were partners. This was also an instance of the source of income being subject to an obligation. We are in agreement with the Calcutta decision and hold that the amounts so paid by the assessee-firm to the heirs of the deceased partners cannot be assessed as the income of the firm.”

5. *The decision in the case of Mulla and Mulla and Craigie, Blunt and Caroe (supra) was followed by this Court in Income Tax Appeal No.2277 of 2013 in the case of Commissioner of Income Tax-11, Mumbai v. M/s Kanga & Co. (ITXA 2277/2013) decided on 1st February, 2016. The Court observed as under:-*

3. *“The only issue in this appeal is the exclusion from the income of the firm, the amounts relatable to the retired/deceased partner/s share by diversion on account of overriding title in favour of the ex-partner/s or their heirs/executors by virtue of the partnership deed.*

4. *We find that the impugned order of the Tribunal has dismissed the Revenue's appeal by inter alia recording the fact that in the order of the Commissioner of Income Tax (Appeals) (CIT A)) had only followed the consistent view of the Tribunal in the assessee's own case for the earlier Assessment years. In fact, the impugned order of the Tribunal has further placed reliance upon the decision of this Court in Income Tax Appeal No.860 of 2009 dated 19/6/2009 rendered in the respondents-assessee's own case as well as decision of this Court in the case of CIT vs. Mulla and Mulla and Craigie, Blunt and Caroe, (1991) 190 ITR 198 while dismissing the Revenue's appeal.*

5. *In view of impugned order of the Tribunal merely following the orders of this Court, we are of the view that the appeal does not raise any substantial question of law.”*
6. *It is not necessary to refer to long line of decisions of this Court and other High Courts taking a similar view in the similar circumstances. Only to summarize, undisputed facts are that the partnership firm envisaged payment to a outgoing partner on the basis that the partner would have rendered service during his tenure as a partner of the firm but could not enjoy the fruits thereof on account of the fact that the work having remained incomplete, the concerned client had not been billed for the work already done. In similar circumstances, the courts have held that payment to the partner would amount to diversion of income at source by overriding title. No substantial question of law arises for our consideration. The income tax appeal is dismissed.”*
4. In the result, the Appeal is dismissed.

(SARANG V. KOTWAL, J.)

(AKIL KURESHI, J.)