

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**TAXC No. 74 of 2019**

- Assistant Commissioner of Income Tax 3(1), Aaykar Bhawan, Civil Lines, Raipur C.G.

-----Appellant**VERSUS**

- Chhattisgarh State Civil Supplies Corporation Ltd., Avani Vihar, Raipur C.G.

-----Respondent

For Appellant : Mr. Amit Chaudhari & Ms. Naushina Ali,
Advocates

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per P.R. Ramachandra Menon, C.J.****13/02/2020**

1. The Revenue is before this Court. Grievance is against the Annexure A-1 order passed by Income Tax Appellate Tribunal, Raipur on 23-10-2018, whereby the appeal preferred by the Assessee against the order dated 30-11-2017 of the Commissioner of Income Tax (Appeal)-I, Raipur, in relation to the assessment year 2014-15, came to be allowed.
2. The assessment was finalized in terms of Section 143(3) of the Income Tax Act as per order dated 27-12-2016, by making an addition of Rs. 1,94,31,98,824/- to the income declared; which came to be challenged by filing an appeal before the Commissioner of Income Tax (Appeals)-I. The merit was considered, but interference was declined and the appeal was dismissed as per order dated 30-11-2017. This was taken up by the assessee by filing a further appeal before the Tribunal as aforesaid, which ultimately led to the order dated 23-10-2018 (Annexure A-1); which is put to challenge in this appeal; contending that the Tribunal has not properly appreciated the facts and figures in the light of relevant provisions of law and precedents and that there is miscarriage of justice.

3. It is in the said context that the Revenue has suggested some questions as questions involving substantial questions of law in terms of Section 260A of the Income Tax Act, 1961, which are in the following terms:

“1. Whether on points of law and on facts & circumstances of the case, the Ld. ITAT was justified in setting aside the order of CIT(A) who upheld the addition of Rs. 1,94,31,98,824/- made by the assessing officer, thereby ignoring the assessee's own admittance of change in the method of accounting adopted during the financial year in hand as was mentioned in Form 3CD at point no. 13(b), marked as 'Yes' and also in the note 1.4 of the change in accounting policy under 1 of Balance Sheet as on 31.03.2014, thereby rendering the decision which is perverse?

2. Whether on the facts & circumstances of the case and on points of law, the Ld. ITAT was justified deleting the addition of Rs.1,94,31,98,824/- upheld by the CIT(A) thereby ignoring the ratio of Ld. ITAT Delhi 'D' Bench in the case of Luxor Writing Instruments Pvt. Ltd. Vs DCIT, Circle-4(1), Delhi in ITA No. 3816/Del./2011 wherein the appeal of the assessee was dismissed by holding that “the income under the head “profit and gains of business or profession” or “income from other sources” shall be computed according with either cash or mercantile system of accounting regularly employed by the assessee and once the method has been chosen it should be employed regularly by the assessee and assessee may not be permitted to change it in the subsequent years?

3. Whether on points of law and on facts & circumstances of the case, the Ld. ITAT was justified in setting aside the decision of the CIT(A), thereby giving a sweeping general observation that since in subsequent years no contrary view was taken by the AO, thence the addition of Rs. 1,94,31,98,824/- in the financial year in hand cannot be upheld, thereby ignoring the fact that each income tax proceeding is separate and distinct and the precedent of Res-Judicata is not applicable to Income Tax proceedings, thereby ignoring the ratios judgment of the Hon'ble Supreme Court in the cases of New Jahangir Vakil Mills Co Ltd vs CIT (SC) 49 ITR 137 and Bharat Sanchar Nigam Limited and Anr Vs UOI & Ors (SC) 282 ITR 273?”

4. However, on going through the order passed by the Tribunal, it is evident that a meticulous analysis of the facts and figures in the light of the legal provisions and precedents has been done by the Tribunal. It would be worthwhile to note that the subsequent events, insofar as, the assessee is concerned, have also specifically noted in paragraph 21, with regard to the changed stand of the Revenue in respect of the assessment for the subsequent years. To avoid

repetition, we find it appropriate to extract paragraphs 20 & 21 of the order passed by Tribunal as part of the order so as to have a clear picture as to the course and events:

“20. We find the Ahmedabad Bench of the Tribunal in DCIT vs. Gujarat State Civil Supplies Corporation Ltd. in ITA No. 334/Ahd/2014 & CO No. 186/Ahd/2014, order dated 01.06.2017 has observed as under:-

'5. We have heard the rival contentions perused the material as per record. We have noticed that the assessee company was set up by the Government of Gujarat under the companies Act, 1956. The assessee company manage the public distribution system and other public welfare scheme on behalf of the Government of Gujarat. The Government of Gujarat has been providing handling commission as per the Government of Gujarat (GR) Government Resolution. We observed that the surplus which was earned by the assessee for the activities carried out on behalf of the Government of Gujarat belonged to the Government and payable to the Government along with interest after deducting of commission earned by the assessee. We further observed that the commission income earned by the assessee on the activities carried on behalf of the Government and other income from its own activities are taxable in the hand of assessee.

5.1 We have further noticed that in the earlier assessment year the assessing officer has accepted the similar accounting practices followed in the case of the assessee. We considered that surplus earned on behalf of the Government for carrying out function of Public Distribution System as agent of Government is not taxable in the hand of the assessee.

5.2 We have also perused the detail facts and findings elaborated in the order of the Ld.CIT(A) and considered that the Ld.CIT(A) is justified in deleting the addition made by the Assessing Officer by stating that surplus earned from functioning of PDS on behalf of Government cannot be taxed in the hand of the assessee. In view of the above stated facts and findings we uphold the order of the Ld.CIT(A).'

21. The various other decisions relied on by the Id. counsel for the assessee in the paper book also supports its case. The submission of the Id. counsel for the assessee that in subsequent years, since subsidy receipt has been accepted by the Revenue, although u/s 143(1), and no action u/s 147 or 263 has been taken could not be controverted by the Id. DR. We, therefore, are of the considered opinion that the concession component received by the assessee Government company in the course of implementing government projects of PDS as its agent, the surplus of which, if any, was refundable or adjustable in future was not income of

the assessee. We, therefore, set aside the order of the CIT(A) and the grounds raised by the assessee are allowed.”

5. After hearing learned standing counsel for the appellant/ Revenue, we do not find any reason to take a different view, especially in the context as discussed by the Tribunal in detail.
6. There is no substantial question of law, so as to call for interference of this Court. Appeal fails and it is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge