

OD-29

ITAT/181/2018
IA NO: GA/2/2018(Old No.GA/1354/2018)
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-4, KOLKATA
VERSUS
M/S. MACKINTOSH BURN LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 30th November, 2021

Appearance :-

Mr. P.K. Bhowmick, Adv.
... For Appellant
Mr. Ananda Sen,
Mr. Arnab Chakraborty,
Ms. Pragya Bhowmick, Adv.
... For Respondent

The Court : This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 7th June, 2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA No.1489/Kol/2014 for assessment year 2010-11. The appellant has raised the following questions of law for consideration :-

"(i) Whether on the facts and circumstances of the case the Learned Tribunal was justified in law in deleting the addition of

retention money without having any evidence in hand to warrant such decision?

(ii) *Whether on the facts and circumstances of the case, the Learned Tribunal was justified in law in accepting the proposition of the assessee that such retention money reserved as security deposit by the principal contractor was duly offered to tax in the year of billing i.e. in the year income against job booked?*

(iii) *Whether on the facts and circumstances of the case, the Learned Tribunal was justified in law in accepting the proposition of the assessee that such retention money reserved as security deposit by the Principal Contractor was duly offered to tax in the year of billing i.e. in the year income against job i.e. in the year of Income against job was booked only on the basis of sample journal entry?"*

We have heard Mr. P.K. Bhowmick, learned Standing Counsel appearing for the appellant revenue and Mr. Ananda Sen, learned Counsel appearing for the respondent assessee.

The respondent assessee is the Government of West Bengal Enterprise engaged in construction and development of infrastructure facilities and matters connected therewith. In the business undertaken by the assessee, the practice is that the parties on whose behalf the assessee is undertaking the construction activities may retain certain sum of money as security deposit which will be released on satisfactory completion of the project and/or fulfilment of certain pre-fixed terms and conditions as mutually agreed between the

parties. The assessee has been following the mandatory accounting standard/AS-VII and booked the gross value of progressive running account bills as income in the year in which the bills were raised on customers irrespective of whether payments were received from them or not. The gross value of the running account bills was explained to include amount retained by the customers as security deposit/retention money on such bills. The assessee contended that the retention money though retained by customers, were credited by the assessee to its profit and loss account as income in the year in which the bills were raised. Hence, as and when the security deposit/retention money was refunded by the customer to the assessee, the same was not considered as income by the assessee. This was not accepted by the Assessing Officer and his view was upheld by the Commissioner of Income Tax (Appeals). The Tribunal on appeal by the assessee tested the contention advanced by the assessee and took note of the explanation offered by the assessee in respect of the books of accounts and held as follows :-

“5.1 It was submitted that the security deduction by clients account is clubbed under ‘Loans & Advances’ and the same is disclosed in the asset side of the balance sheet. Subsequently, when security deposit is refunded by the customers, the following entry is passed in the books:-

<i>Bank Account</i>	<i>Dr</i>
<i>To Security Deduction by Clients Account</i>	<i>Cr</i>

(Entry passed at the time of refund of security deposit by customers)

6. *We find from the aforesaid entries passed, there is absolutely no case made out by the revenue for making an addition towards the retention money in the sum of Rs. 3,25,03,665/- on the ground of under-reporting of sales. We find that the sales are always reflected only at the gross value and a portion of it (which is retained as retention money) is reflected in Loans & Advances and the same is knocked off as and when the same is received from customer. Hence it does not in any way affect the sales account warranting any addition. In fact the gross sales were duly offered to tax in earlier years which included the retention money component also. The ld. AR also stated that no such addition was made by the ld AO either in the earlier years or in the subsequent years. Hence we have no hesitation in holding that the revenue had grossly erred in making this addition towards retention money in the sum of Rs. 3,25,03,665/- in the facts and circumstances of the case. Accordingly, the grounds raised by the assessee are allowed.”*

On a perusal of the above finding, we are of the clear view that the Tribunal has taken note of the fact situation and confirmed that the sales are always reflected only at the gross value and a portion of it which is retained as retention money is reflected in loans and advances and the same is knocked off as and when the same is received from the customer. Therefore, the Tribunal on facts was satisfied that it does not in any way affect the sales account warranting any addition. Furthermore, the Tribunal noted that the gross sales were duly offered to tax in the earlier years which included

the retention money and no addition was made by the Assessing Officer for the earlier year or in the subsequent year and the assessment year under consideration (A.Y. 2010-11) appears to be only year during which the Assessing Officer took a different view. Thus, we find that there are no questions of law arising for consideration in this appeal, much less substantial questions of law. Consequently, the appeal fails and is dismissed.

The finding given by the Tribunal if needs to be upset, it would amount to a case of double taxation.

With the dismissal of the appeal, the connected application is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)