Neutral Citation No.2023:PHHC:069226-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226

1. **VATAP No.178 of 2017 (O&M)**

Excise and Taxation Commissioner,
Haryana ... Appellant

Versus

M/s Gannon Dunkerley & Co., Ltd.,
Gurugram and another ... Respondents

2. **VATAP No.148 of 2018 (O&M)**

Excise and Taxation Commissioner,
Haryana ... Appellant

Versus

M/s Gannon Dunkerley & Co., Ltd.,
Gurugram and another ... Respondents

3. **VATAP No.128 of 2019 (O&M)**

Excise and Taxation Commissioner,
Haryana ... Appellant

Versus

M/s Sahdev Kumar Contractor
and another ... Respondents

4. **VATAP No.281 of 2018 (O&M)**

Excise and Taxation Commissioner,
Haryana ... Appellant

Versus

M/s Neeraj Builders, District Hisar
and another ... Respondents

5. **VATAP No.267 of 2019 (O&M)**

Excise and Taxation Commissioner,
Haryana ... Appellant

Versus

M/s New India Construction Co.
and another ... Respondents

Date of Decision: 19.04.2023

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Ms. Mamta Singla Talwar, DAG, Haryana,
for the appellant.

Mr. Sandeep Goyal, Advocate,
for respondent No.1 in VATAP No.178 of 2017 and
VATAP No.148 of 2018.

Dr. Malkiat Singh, Advocate,
for respondent No.1 in VATAP No.128 of 2019 and
VATAP No.281 of 2018.

Dr. Malkiat Singh, Advocate,
Mr. Narinder Sindher, Advocate,
Mr. Rajat Turka, Advocate and
Mrs. Rakasha Raghav, Advocate,
for respondent No.1
in VATAP No.267 of 2019-M/s New India Construction Co.

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MANISHA BATRA, J.

1. The aforementioned appeals have been preferred under Section 36 of Haryana Value Added Tax Act, 2003 (hereinafter referred to be as "Act, 2003") by the revenue against the orders passed by the Haryana Tax Tribunal, Chandigarh (for short "the Tribunal") on 24.03.2017, 16.03.2018, 11.10.2018, 16.03.2018 and 13.11.2018 respectively whereby the orders passed by the revisional/appellate authorities had been set aside and the appeals filed by the respondent-assesses had been allowed. As common questions of law have arisen in

this group of appeals, therefore all these appeals are decided and disposed of together, by this common judgment.

2. For the sake of convenience, VAT Appeal No.178 of 2017 arising out of impugned order dated 24.03.2017 passed by the Tribunal is treated as the lead appeal.

3. The relevant facts of the aforementioned VAT Appeal No.178 of 2017 in brief are that the respondent-Company M/s Gannon Dunkerley & Co., Ltd. which is an assessee under the Act, 2003 is engaged in the business of executing works contract for different companies. It furnished quarterly returns as well as annual returns in time for the Assessment Year (for short "A.Y.") 2010-11. The returns were filed claiming deduction on account of labour services and other like admissible expenses including depreciation in plant and machinery. The assessing officer while framing assessment for the relevant year had allowed certain deductions. However, the revisional authority, Gurugram while exercising its powers requisitioned the assessment record of the respondent and a notice was served on 14.11.2014 calling upon the respondent to show cause on the ground that it had claimed excess deductions on account of expenses and profit elements. Vide order dated 10/11.06.2015, the revisional authority observed that deduction on account of depreciation of plant and machinery was wrongly allowed by the assessing officer and it revised the order of assessing officer thereby

disallowing deduction on account of depreciation in plant and machinery.

4. Feeling aggrieved, the respondent-assessee filed appeal before the Tribunal challenging the order of revisional authority whereby additional tax had been levied for the A.Y. 2010-11. The Tribunal vide order dated 24.03.2017 allowed the appeal.

5. Feeling dissatisfied, the VAT Appeal No.178 of 2017 has been preferred by the revenue on the grounds that the order passed by the Tribunal was liable to be set aside as the fact that depreciation on plant and machinery could not be allowed as deduction as it did not involve overflow of cash from receivables, was overlooked. Learned counsel for the revenue submitted that the depreciation on machinery or tools was not eligible for any deduction in computation of taxable turnover on works contract as the value of depreciation on plant and machinery for the purpose of execution of works contract was a part of expenditure only which the assessee would have otherwise incurred, if it would have hired such machinery from an outside source and for which the contractor had to necessarily pay the hiring charges.

6. It was further argued that the Act, 2003 did not expressly enable the respondents to claim deduction of this nature and further that the legislature would have specifically provided so in the Act/Rules if deduction for a claim in the nature of depreciation of plant and machinery was intended by it. It was, therefore, urged that the Tribunal was not

justified in permitting the deduction of this nature. To fortify her argument, learned counsel for the revenue relied upon authority cited as **State of Kerala v. Thampi & Company**, (2011) 41 VST 107 (Kerala), wherein it was observed by High Court of Kerala that depreciation on machinery and tools was not eligible for deduction in computation of taxable turnover on works contract. She also submitted that the findings given in the above mentioned case had attained finality as Special Leave Petition filed against the decision of High Court of Kerala had been dismissed.

7. Per contra, it was argued by learned counsel for the respondent-assessee that the respondent-assessee was certainly entitled for exemption not only on the charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract but also on the amounts spent by it on such machinery as a consequence of using them for the execution of works contract. He submitted that the value of the goods involved in execution of works contract was to be determined by taking into account several factors which included charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract and, therefore, those charges were deductible. To fortify his argument, learned counsel for the respondent placed reliance upon authorities cited as **Veeaar Constructions v. State of Andhra Pradesh**, (2011) 45 VST 352W (AP), **State of Jharkhand and others v.**

Voltas Ltd., (2007) 7 VST 317 (SC), **Larsen & Toubro Limited, Rep. by its Manager v. The State of Karnataka**, **Rep. by its Commissioner of Commercial Taxes**, ILR 2010 KAR 3154 and **Gannon Dunkerley & Co. and others v. State of Rajasthan and others**, (1993) 88 STC 204 (SC).

8. It is in the background of the submissions as made above that we are required to examine the questions involved in these appeals. The common question that falls for consideration in all these appeals is whether the respondent-assessee who executed the works contract was entitled for deduction of amounts pertaining to depreciation in plant and machinery and whether such depreciation fell under the head of "labour services" and deduction thereof could be allowed. In this context, it will be relevant to refer to the ratio of law as laid down by Apex Court in **Gannon Dunkerley & Co.'s** case (Supra) before proceeding further. It was observed by Hon'ble Apex Court in this case that the value of the goods involved in the execution of a works contract will have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover:-

(a) labour charges for execution of the works;

(b) amount paid to a sub-contractor for labour and services;

(c) charges for planning, designing and architect's fees:

(d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

(e) cost of consumable such as water, electricity, fuel, etc., used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract;

(f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(g) other similar expenses relatable to supply of labour and services;

(h) profit earned by the contractor to the extent, it is relatable to supply of labour and services.

It was further held by Apex Court that the amounts deductible under these heads will have to be determined in the light of the facts of a particular case and on the basis of the material produced by the contractor.

9. On giving due deliberations to the contentions raised by learned counsel for both the parties, we are of the opinion that the arguments as raised by the revenue cannot be accepted, in view of the fact that though undoubtedly, the Hon'ble Apex Court while laying down the above discussed principles in **Gannon Dunkerley & Co.'s** case (Supra) had not been specifically mentioned that the

depreciation on plant and machinery used for works contract was liable for deduction but these principles had been interpreted in **Voltas Ltd.'s** case (Supra) wherein the assessee was engaged, inter alia, in the execution of works contract of designing, supplying, installing, fabricating, testing and commissioning of air-conditioning plants. The assessing authority while acknowledging that the contract was works contract had held that only the material supplied in the execution of the works contract was liable to sales tax. While relying upon **Gannon Dunkerley & Co.'s** case (Supra), it was held that while imposing sale tax in case of works contract from the value of the entire work, the charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract were also to be deducted. Reliance can further be placed upon **Larsen & Toubro Limited's** case (Supra), wherein the Tribunal had disallowed the claim made by the assessee towards proportionate depreciation of machinery and tools to the extent to which they had been exclusively used for execution of the works contract and owned by the dealer. It was held that notwithstanding the fact that the word "depreciation" itself did not figure in either of the deductions mentioned in the course of the judgment of Hon'ble Supreme Court in **Gannon Dunkerley & Co.'s** case (Supra), but the deductions towards ppoportionate depreciation of machinery and tools to the extent to which they had been exclusively used for the execution of the works contract, deserved to be allowed. In **Veeaar Constructions's** case (Supra), the High Court of Andhra Pradesh while dealing with similar issue had observed that the assessee was entitled for exemption not only on the charges for obtaining on hire or otherwise machinery and tools used for execution of works contract but also on the amounts spent by it on such machinery as a consequence of using them for the execution of works contract including the value of proportionate wear and tear of the machinery which was otherwise identified as depreciation on the premise that it was equivalent to hire charges spent otherwise. It was held that the dominant idea for exempting the said charges was use of the machinery for the execution of the works and the amounts spent by contractor on such machinery and otherwise there was no necessity to use the word "or otherwise" by Apex Court in **Gannon Dunkerley & Co.'s** case (Supra). On going through the observations as made in the above cited authorities, it is crystal clear that notwithstanding the fact that there was no specific provision in the Act, 2003 qua deduction of depreciation in plant and machinery while computing taxable turnover on works contract at the relevant time still, keeping in view the principles as laid down in **Gannon Dunkerley & Co.'s** case (Supra) which had been interpreted by different High Courts in the above cited authorities, the said provision is to be interpreted to mean that the deduction for a claim in the nature of depreciation on account of use of plant and machinery was in contemplation of the discussion before Apex Court in **Gannon Dunkerley & Co.'s** case (Supra). We also consider it relevant to mention here that the principles of law as laid down in **Gannon Dunkerley & Co.'s** case (Supra) were not discussed in **Thampi & Company's** case (Supra). Therefore, the Tribunal while allowing the appeal filed by the respondent-assessee and allowing deduction on account of depreciation of plant and machineries made by the respondent-assessee by observing that the said deduction would cover charges for obtaining on hire or otherwise machineries of the assessee cannot be held to be at any fault and therefore the order passed by the Tribunal deserves to be upheld. Since this question of law had been raised in all the five instant appeals, therefore, the same stands answered in favour of the respondents-assesses of these appeals and against the appellant.

10. In VAT Appeal No.128 of 2019, VAT Appeal No.267 of 2019 and VAT Appeal No.281 of 2018, deductions had been allowed by assessing officer on financial expenses like bank interest, postage charges, telephone, fuel and lubricants and other relatable expenses, which had been disallowed by the revisional/appellate authority but had been allowed by the Tribunal. In our opinion, the deductions in the nature of interest, postage charges, telephone and telex expenses incurred by the assessee and fuel and lubricants charges paid in respect of vehicles exclusively used by the assessee in execution of the works contract also

came within the scope of cost of establishment of the contractor to the extent to which the same were relatable to supply of labour and services claimed and at any rate these were all expenses in the nature of expenses as covered in different principles as laid down in **Gannon Dunkerley & Co.'s** case (Supra). Accordingly, we have no hesitation to hold that the Tribunal had rightly allowed these deductions. Therefore, no ground has been made out to interfere with the orders passed by the Tribunal qua these deductions, which are accordingly upheld.

11. In view of the discussion as made above, the appeals as filed by the appellant fail and are hereby dismissed.

12. Miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

19.04.2023
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No