IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-23-2018 (O&M)
Date of decision: 29.09.2023

M/s Parsvnath Developers Ltd.

...Appellant

Vs.

State of Haryana and another

...Respondents

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

Present: Mr. Sandeep Goyal, Advocate,
for the appellant.

Ms. Mamta Singla Talwar, DAG, Haryana.

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Ritu Bahri, J.

1. The instant appeal, under Section 36 of the Haryana VAT Act, 2003, is against the order dated 01.09.2017 (Annexure A-9) passed by the Haryana Tax Tribunal, whereby appeal filed by the appellant-assessee against the order dated 18.08.2015 (Annexure A-6), has been dismissed.

2. The appellant is a builder engaged in the business of construction of flats for prospective buyers, which are sold after completion. For the assessment year 2008-2009, the appellant-assessee filed all its returns in compliance with the provisions of Haryana VAT Act. The appellant had opted for lumpsum contract under Section 9 of the Haryana Vat Act. Assessment for the year 2008-2009 was framed vide order dated 17.02.2011 (Annexure A-1). The Joint Excise and Taxation Commissioner-cum-Revisional Authority, Gurgaon, vide notice dated 16.04.2014

(Annexure A-2), initiated the revisional proceedings. The said notice was challenged before this Court by filing CWP-4747-2015. Vide order dated 17.03.2015 (Annexure A-3), this Court stayed the revisional proceedings. Vide order dated 29.04.2015 (Annexure A-4), the said petition was disposed of in view of the judgment dated 22.04.2015 passed in ***CHD Developers Ltd., Karnal vs. The State of Haryana and others,*** CWP-5730-2014. Thereafter, appellant received various notices for revision of the assessment order, which were challenged by filing CWP-17754-2015. The said petition was disposed of by this Court vide order dated 14.09.2015 (Annexure A-5) in view of the order passed in CWP-14586-2015, wherein the petitioner along with other assesses was directed to file reply to the notices within one month. The respondent-authorities were also directed to decide the same within next one month. Meanwhile, the Revisional Authority, vide order dated 18.08.2015 (Annexure A-6), revised the assessment order and raised a demand of Rs.1,86,80,950/- on the ground that the appellant is a lumpsum contractor and validity of Section 9 read with Rule 49 of HVAT Act/Rules has been upheld by this Court in CWP-5730-2014. Aggrieved by the said order, the assessee filed an appeal (Annexure A-7) before the Haryana Tax Tribunal. The said appeal, was later on, amended by filing an application (Annexure A-8) on 29.03.2017. The Haryana Tax Tribunal, vide order dated 01.09.2017 (Annexure A-9) dismissed the appeal of the appellant on the ground that the revisional order was not barred by limitation and the appellant was liable to pay tax before 16.05.2010, as it had opted for lumpsum payment and the judgment passed by this Court in ***Dhingra Jardine Infrastructure Pvt. Ltd. vs. The State of Haryana and others,*** CWP-20788-2015 (decided on 30.01.2017) was not applicable in the present case.

3. Learned counsel for the appellant has argued that in the present case, for the assessment year 2008-2009, the assessment was framed vide order dated 17.02.2011 and the same was received by the appellant on 11.04.2012. As per Section 34 of the HVAT Act, the assessment order can be revised within a period of three years from the date of receipt of the order. Hence, limitation, in this case, would expire on 10.04.2015. He further argued that even after exclusion of 43 days taken before this Court, the last date for revising the assessment order was 23.05.2015. However, the Revisional Authority passed the impugned order on 18.08.2015 and therefore, it is barred by limitation. The writ petition i.e. CWP-4747-2015, filed by the assessee, was decided on 29.04.2015 and the case was taken up for hearing on 09.06.2015, which was after the expiry of the limitation period i.e. 23.05.2015.

4. Learned counsel for the appellant further argued that the Tribunal was not justified in invoking 2nd proviso to Section 34 for extending the period of limitation. The provision of extending the limitation could have been invoked by the Revisional Authority itself, which was not done in the present case. Once the Revisional Authority itself had not invokved the extended period of limitation, the Tribunal could not invoke the same on its own to bring the order of the Commissioner within limitation. Finally, he has argued that the appellant was not liable to pay lumpsum take/payment prior to 17.05.2010, as the lumpsum tax under Section 9 of the HVAT Act, is payable by the dealer only in lieu of tax payable under the said Act. The validity of Rule 9 read with Rule 49 of the HVAT Act/Rules has alrady been upheld. In this backdrop, the appellant

cannot be charged with tax liability prior to 17.05.2010. He has further argued that the interest could be levied by the Revisional Authority only from the date of revisional order and not from the assessment year.

5. The argumet raised by learned counsel for the appellant that the order passed by the Revisional Authority was beyond the period of limitation, is liable to be rejected. The Tribunal, after carefully considering the matter, observed that the revisional proceedings were adjourned from time to time on the requests of learned counsel for the assessee, after passing of the order dated 29.04.2015 when the writ petition filed by the assessee was disposed of. The revisional order was passed on 18.08.2015 and limitation to pass the same was till 23.05.2015. In between this period, as observed by the Tribunal, the assessee had itself taken a number dates. The case was adjourned to 31.03.2015, 09.06.2015, 29.07.2015, 03.08.2015 and 05.08.2015 by the Revisional Authority on the requests received on behalf of the assessee. On 05.08.2015, the case was adjourned to 07.08.2015, but none had appeared on behalf of the assessee and finally, notice was again issued to the assessee for 18.08.2015. On that date, written submissions were given to the Revisional Authority and the final revisional order was passed on the same day. Hence, in the present case, it was an exceptional circumstance, in which the Revisional Authority had taken time to decide the proceedings, as the dates were sought by the assessee itself. The delay of less than three months in passing of the revisional order has been explained satisfactorily. In this backdrop, the Tribunal has rightly held that the case fell in the exceptions of extending the period of limitation by invoking the provision of Section 34 of the HVAT Act. Hence, finding with regard to the extension of limitation has been rightly given by the Tribunal

keeping in view that the assessee had sought a number of adjournments before the Revisional Authority.

6. The second ground for challenge to the order passed by the Tribunal is that the assessee was not liable to lumpsum payment of tax. Even this argument is liable to be rejected as Section 9 read with Rule 49 of the HVAT Act already had a provision for payment option by a contractor/developer to pay lumpsum tax. Relevant portion of Section 9 of the Act is reproduced as under:-

> " 9. **Payment of Lumpsum in lieu of tax**
>
> (1) The State Government may, in the public interest andsubject to such conditions as it may deem fit, accept from any class of dealers, in lieu of tax payable under this Act, for any period, by way of composition, a lump sum linked with production capacity or some other suitable measure of extent of business, or calculated at a flat rate of gross receipts of business or gross turnover of purchase or of sale or similar other measure, with or without any deduction therefrom to be determined by the State Government, and such lump sum shall be paid at such intervals and in such manner, as may be prescribed, and the State Government may, for the purpose of this Act in respect of such class of dealers, prescrib e simplified system of registration, maintenance of accounts and filing of returns which shall remain in force during the period of such composition.
>
> (2) No dealer in whose case composition under sub-section (1) is in force, shall issue a tax invoice for sale of goods by him and no dealer to whom goods are sold by such dealer shall be entitled to any claim of input tax in respect of the sale of the goods to him.
>
> (3) A dealer in whose case composition under sub-section (1) is made and is in force may, subject to such restrictions and conditions, as may be prescribed, opt out of such composition by making an application containing the prescribed particulars in the prescribed manner to the assessing authority, and in case the application is in order, such composition shall cease to have effect on the expiry of such period after making the application as may be prescribed."

7. Further, Rule 49, before its amendment on 12.08.2014, was as

under:-

> " ....Rule 49. **Lump sum scheme in respect of contrctors.** - (I) A contractor liable to pay tax under the Act may, in respect of a works contract awarded to him for execution in the State, pay in lieu of tax payable by him under the Act on the transfer of property (whether as goods or in some other form) involved in the execution of the contract, a lump sum calculated at four per cent of the total valuable consideration receivable for the execution of the contract, by making an application to the appropriate assessing authority within thirty days of the award of the contract to him..........."

8. Hence, the appellant was liable to pay lump sum tax upto 16.05.2010.

9. In view of the above discussion, no ground is made out to interfere in the findings recorded by the Tribunal while passing the impugned order. No substantial question of law arises for consideration.

10. Resultantly, finding no merits, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

29.09.2023
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No