



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO.29 OF 2019

Ramesh Harbibhau Gawli
Age: Major, Occu.: Business,
R/o. 107, Samartha Apartments,
Swami Samartha Mandir,
Ahmednagar (M.S.).

.. Appellant

Versus

The Income Tax Officer,
Ward-1, Ahmednagar.

.. Respondent

...

Mr. R. M. Sharma, Advocate for the appellant.
Mrs. Kalpalata Patil Bharaswadkar, Advocate for respondent – State.

...

CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.

DATE : JANUARY 04, 2024.

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present appeal has been filed under Section 260-A of Income Tax Act, 1961 to challenge the order dated 11.04.2018 passed by the Income Tax Appellate Tribunal, Pune in ITA Appeal No.1013/PUN-2015 for the Assessment Year 2010-2011 arising out of order dated 30.01.2015 passed by C.I.T.(A-2, Pune) against the Assessment order under Section 143(3) of the Income Tax Act passed on 20.03.2013 by Assessing Officer i.e. Income Tax Officer, Ward-1, Ahmednagar.

2. Heard learned Advocate Mr. R. M. Sharma for the appellant and learned Advocate Mrs. Kalpalata Patil Bharaswadkar for the respondent, at the stage of admission. In order to cut short, it can be said that both the learned Advocates have made submissions in support of their respective contentions.

3. The appellant contends that he is a contractor undertaking civil work as a construction contractor. He had declared his income in his returns of income for the assessment year 2010-2011 at Rs.14,50,480/-. It was selected for scrutiny. After receiving the notice, the relevant information in respect of books of account etc. furnished by the appellant. After scrutiny, the Income Tax Officer passed assessment order on 20.03.2013 and disallowed the expenses to some extent and the income was determined at Rs.2,85,15,890/-. It was challenged by the appellant in Appeal No.PN/CIT(A)-2/ITO wd-1 An/An/77/2014-2015. His appeal was partly allowed and some relief was granted to him by order dated 30.01.2015. The other grounds were not considered and, therefore, he further preferred appeal to Income Tax Appellate Tribunal, Pune. During the pendency of the appeal, separate additional ground was incorporated in the appeal in respect of disallowance of payment of Rs.2,24,63,228/- as it was stated that there never existed any relationship between the appellant and the payee as contractor and sub-contractor. Learned Income Tax Appellate Tribunal,

Pune partly allowed the appeal on 11.04.2018 and hence, this appeal.

4. The record which has been produced by the appellant would show that he has tried to contend that he has made certain payments to the sub contractors and it has been shown as expenses. Further, he has also not deposited the TDS. Certain expenses are not connected to the contract undertaken. It was tried to be demonstrated on behalf of the petitioner that how these expenses are connected to the contract, which he had undertaken. It was submitted on behalf of the petitioner that the matter needs to be admitted, as it is raising substantial question of law.

5. The first and the foremost fact to be noted is that the present appeal has been filed under Section 260-A of the Income Tax Act. Sub-section (1) of Section 260-A of the Income Tax Act provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. Only after arrival of the conclusion that the appeal involves a substantial question of law, then as per sub-section (3) of Section 260-A of the Income Tax Act, this Court needs to formulate the said substantial question of law. It is the bounden duty of the appellant approaching this Court under Section 260-A of the Income Tax Act to show the substantial question of law. The substantial question of law, which the appellant has tried to formulate, is totally based on the fact. It is his contention that the

genuine expenses have not been considered and allowed to be shown. The three authorities in this case have considered the books of accounts and the explanation given by the appellant and have come to the conclusion that those expenses are not connected and cannot be allowed.

6. Here, if we consider the order passed by the Assessing Officer, it can be seen that initially the notice under Section 143(2), 142(1) along with the questionnaire dated 21.08.2012 was not even responded by the appellant. Time and again, notices have been issued to the appellant and it appears that he has responded partly. The appellant had undertaken civil contract from two companies and the work was widening and strengthening of existing road, repairing widening of road side shoulders etc. and in that connection the purchases were shown at Rs.15,49,684/-. Then it was stated that there was sub contract of Rs.2,24,63,228/- and the TDS liability was Rs.2,41,846/-. The list of subcontractors went upto 25 persons and it appears that he had deliberately avoided to furnish the details of subcontractors. Each and every entry appears to have been considered by the Assessment Officer. Being dissatisfied with the assessment order, when the petition was preferred, the first appellate authority had partly allowed the appeal and genuine expenses were considered. Reasoned orders have been given as to why they have been considered and why they have not been considered. Again the appeal was

preferred by the appellant before Income Tax Appellate Tribunal, Pune. After giving hearing to the appellant, that appeal has also been partly allowed. Few more expenses were allowed to be shown as expenses, but what has been disallowed is that the parties in whose names the cheques were alleged to be issued by the appellant have deposed on oath that the signature on the back side of the cheques and the rubber stamps were not of their business establishments and they have neither encashed the cheques from the bank, nor received the amount from third parties i.e. to the extent of Rs.13,10,000/- as it was claimed by the appellant that he has spent that amount on purchase of marble. It was found that the expenses incurred were bogus expenses. We have made inquiry with the learned Advocate for the appellant as to why the marble was purchased for construction of roads. He made a submission that the appellant has made the construction/repairing work of the office of the highway authority, where the marble has been put. In fact, we could not find any such document on record, which showed that contract of construction of such office was also given to the appellant. Certainly, the said expenses appear to be not connected to the work undertaken and, therefore, it has been said to be the bogus expenses. Further, as regards the additional ground that was raised, by a reasoned order, learned Income Tax Appellate Tribunal has considered it to the extent of Rs.1,45,00,000/- (rounded off only) and it is rightly to be so as it covered the partly allowed claim of the appellant by

learned CIT(A) and taking into consideration the TDS deposited by the assessee on 15.10.2010 but the amount was debited from the bank account of assessee on 20.10.2010, it came to be partly allowed and, therefore, it is said that it is the part claim, but that part which has been granted is in favour of the appellant. A reasoned order has been passed for allowing or disallowing the claim of the appellant. There is no question of substantial question of law when all the facts have been considered and, therefore, as no substantial question of law is arising, the appeal deserves to be dismissed at the admission stage. Accordingly, the appeal stands dismissed.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm