

Marg Constructions Ltd. Vs. Assistant Commissioner of Income Tax

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Court : Chennai

Decided On : Feb-12-2014

Judge : The Hon'ble Mrs.Justice CHITRA VENKATARAMAN

Appellant : Marg Constructions Ltd.

Respondent : Assistant Commissioner of Income Tax

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :

12. 02.2014 Coram The Honourable Mrs.Justice CHITRA VENKATARAMAN and The Honourable Mr.Justice T.S.SIVAGNANAM T.C.A.No.977 of 2006 and T.C.M.P.No.1560 of 2006 MARG Constructions Ltd., 501, Apex Chambers, 20, Thiagaraja Road Chennai 17 rep. By its Managing Director Mr.G.R.K.Reddy ... Appellant -vs- The Assistant Commissioner of Income Tax Company Circle IV(1), Nungambakkam High Road Chennai 600 034 ... Respondent Civil Miscellaneous Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 24.03.2006 in ITA No.023/MDS/2005. For Appellant : Mr.Vijay Narayan, Senior Counsel for Mr.C.V.Shyam Sundar For Respondent : Mr.T.R.Senthilkumar

JUDGMENT

(The Judgment of the Court was made by T.S.SIVAGNANAM, J.) This appeal by the assessee is directed against the order passed by the Income Tax Appellate Tribunal in ITA No.237/Mds/2005 dated 24.03.2006, for the assessment year 2001-2002.

2. The above appeal has been admitted on the following substantial questions of law:- (1) Has not the Tribunal erred in disallowing the depreciation claimed by the assessee without examining the evidence let in by the appellant at all the stages and by merely relying on the evidence collected by the assessing officer behind the back of the appellant?.

(2) Has not the Tribunal erred in viewing the entire transaction in a suspicious manner to the disadvantage of the assessee?.

(3) Has not the Tribunal failed to appreciate that no business can be effectively conducted in the manner as demanded by the tribunal and business can be done only on trust and also by word of mouth which would not necessitate any paper work and there is no mandate in any law to bind the assessee to conduct its affairs as demanded by all the lower authorities?.

(4) Has not the Tribunal failed to first of all see that PESL had raised invoices on the assessee for all the 5000 lanterns purchased by the assessee and on that sole ground the suspicion on the transaction has to fail?. At any rate this did not breach any statutory rule or provision and the tribunal basing this as a ground for disallowing depreciation is erroneous both in law and on facts?. 3.1 The assessee filed its return of income on 31.10.2001 declaring total income of Rs.50,09,340/-. The return was processed under Section 143(1) of the Income Tax Act (hereinafter referred to as ("the Act)). Thereafter, notices under Sections 143(2) and 142(1) of the Act along with the questionnaire were served on the assessee. The Managing Director, Financial Manager, Senior Executive Accounts were issued notices and in response to that they have filed certain details. The assessee claimed that they have purchased 5000 solar phot voltaic lanterns ("Lanterns".) during the last week of March 2001 from M/s Photon Energy Systems Ltd (hereinafter referred to as the (PHOTON), which is a Hyderabad based company, said to be the manufacturer of non-conventional energy devices. The rate at which the lanterns were purchased

is stated to be at Rs.4260/- per lantern. The assessee further claimed that these lanterns were leased out to various parties in remote places and they were given on lease to 6 agencies viz.,

1) Kizhakethil Agencies, Kerala

(2) Sunline Energy Solutions, Hyderabad

(3) Energy Management Society, Kerala

(4) Catholic Charities, Bihar

(5) Bhagalpur Social Service Society, Bhagalpur and

(6) Solar Alternatives, Bihar. The assessee capitalized assets (lanterns) worth Rs.2.13 crores during the financial year 2000-2001 and claimed depreciation @ 50% of Rs.1.05 crores in the assessment year 2001-2002 on the ground that they used the same for less than 180 days. 3.2 A survey under Section 133 A of the Act was conducted in the business premises of the assessee on 20.02.2004. Statement was recorded from the Managing Director with regard to the purchase and lease transactions as stated by them. On the same day, a survey was also conducted in the business premises of PHOTON and a statement was recorded from the Chief Executive Officer of the said Company. The Department noticed that the assessee had received loan from IREDA vide sanction letter dated 14.02.2001, placed purchase order on PHOTON for purchase of 5000 lanterns @ Rs.4260 per lantern by purchase order dated 19.03.2001. The lease agreements with the lessees were entered at Chennai on various dates between 23.03.2001 and 31.03.2002 against the invoices raised by the supplier PHOTON and on various dates from 24.03.2001 to 31.03.2001 for sale of lanterns. The assessee claimed that they took delivery of the goods at a godown which was taken on rent at Hyderabad by PHOTON, which was under the control of PHOTON for the period from March to July 2001. 3.3 It is the further case of the assessee that the employees of PHOTON were authorised by them to take delivery of the lanterns at the godown and undertook marketing of the lanterns on lease basis and the lanterns were despatched to the end users after May 2001 and the freight charges

for delivery of the lanterns to the end users were borne by PHOTON. Further, the invoices/delivery challans were raised by PHOTON and the Chief Executive Officer of PHOTON was orally authorised by the assessee to give invoices under the name of assessee. It was noticed that no payments were made during the financial year 2000-2001 towards the purchase of lanterns and in the financial year 2001-2002, the assessee paid Rs.34.5 lakhs as margin money and the balance amount of Rs.172.4 lakhs was paid by IREDA for purchase of lanterns and the payment was made by IREDA directly to PHOTON in the financial year 2001-2002. 3.4 Further it came to light that the assessee received major part of the lease rentals in advance during the financial year 2001-2002 and they credited these advance lease rental amount of Rs.1,51,18,057/- and debited the individual account of lessees. During the financial year 2001-2002 and 2002-2003, the assessee received Rs.1,40,49,304/- and Rs.6,22,000/- respectively from the lessees. The balance amount of Rs.4,46,753/- was shown as outstanding as on 31.03.2003. 3.5 The department found that though in the books of accounts it was shown by the assessee that the lease rentals were received from the lessees, in actuality, the alleged lease rentals were received from PHOTON. The margin money collected by PHOTON was remitted back to the assessee. The assessee offered 1/5th of the advance lease rentals as income for the financial year 2001-2002 and subsequent year. 3.6 The assessee purchased lanterns at Rs.4260/- per piece and as per the lease deed, it was leased out at Rs.3,000/- for a period of five years. It was claimed that the lanterns were distributed to the end users at subsidized rate and the assessee could make good the loss on account of 100% depreciation availed and on account of low rate of interest i.e., 2.5% on the IREDA loan. The assessee produced copies of invoices raised by PHOTON towards the sale of lanterns. 3.7 The Assessing Officer, on perusing the details of challans which were placed for consideration, by pointing out certain serious discrepancies, held that "(a) the assessee had no role to play in the so called purchase and lease transactions; (b) the assessee made payments to PHOTON towards its margin money during April and May 2001 and they claimed to have received the entire lease rentals in advance during the financial year 2001-2002. However, on enquiry, it was found that payment was made by PHOTON towards advance lease rentals through the account maintained at Dena bank, Secunderabad; (c) it came

to light that the payments made by the assessee towards margin money for purchase was received back instantaneously as advance lease rental on the very next day of the remittance by the assessee to PHOTON and (d) the money that was received by PHOTON from IREDA was remitted back to the assessee towards lease rentals". 3.8 Thus from the above sequence of events, the Assessing Officer concluded that there is no nexus between the receipt of lease rentals and payment of the same to the assessee towards advance lease rentals. However, with respect to the loan received from IREDA or margin money, it was noticed that as soon as the money was received, the same was transferred to the assessee within two days. 3.9 Further, the purchase orders were placed on PHOTON on 19.03.2001 and PHOTON sold lanterns in the last week of March 2001. The lease agreements were said to have been entered into during the last week of March 2001 between the assessee and various parties and the delivery of the lanterns was after May/June 2001. However, the payments made by various lessees were even before the finalisation of the lease agreements and placement of purchase order by assessee on PHOTON. 3.10 As regards the lease rentals received from PHOTON, the Managing Director of the assessee in his statement has accepted that he was unable to produce any covering letter regarding the receipt of money towards lease rental and stated that there was no communication or instruction from PHOTON, linking the receipt of money towards lease rentals to a particular period. Similarly in respect of other transactions, the Managing Director had given a statement which was brought on record by the Assessing Officer in paragraph No.6.1 of the order of assessment. 3.11 The Assessing Officer on going through the above facts observed that the assessee having claimed depreciation for the assessment years 2001-2002 and 2002-2003, the onus is on the assessee to prove beyond doubt that the transaction was genuine, it was the owner of the assets and the assets were put to use during the relevant years. In view of the gross inconsistencies and discrepancies which were found, when the findings were put across to the Managing Director, the Managing Director was unable to explain to the various queries raised in this regard. Further, three parties who were said to have taken lanterns on lease have stated that they have no transaction of lease or purchase with the assessee. 3.12 On the basis of the above evidence which was gathered, discrepancies and inconsistencies

noticed as well as the statement given by the Managing Director, show cause notice was issued to the assessee as to why the entire purchase and lease transactions should not be held as ".sham". and depreciation claimed should not be disallowed. 3.13 The assessee in their reply submitted that PHOTON had taken the responsibility of marketing the lanterns on behalf of the assessee on lease basis and the marketing was started in August 2000 and PHOTON started collecting lease rentals in advance. This was done in anticipation of the loan application of the assessee being approved by IREDA and giving an impression that it is likely to sanction the loan at any time. Further, the lease rentals were utilized by PHOTON for working capital needs, since no margin money was received from the assessee and since the advance rentals utilized by PHOTON, the margin money received from the assessee returned to them later. 3.14 The assessee stated that the sale transactions are fairly reflected in the books of PHOTON and the said company had delivered the lanterns on the respective dates of invoices at the Godown hired at Hyderabad and the dominion or title on the lanterns had been effectively transferred from PHOTON to the assessee. Further, the genuineness of purchase of lantern is fortified by the fact that the assessee has obtained insurance policy for the theft and burglary from the New India Insurance Co. Ltd., for lanterns stored and the assessee had produced confirmation from certain parties as regards the lease transactions. Further, the assessee placed reliance on the loan which was extended by IREDA, which is a Government of India Organization. 3.15 The Assessing Officer, issued summons under Section 131 of the Act to the six concerns which were said to be the lessees of the assessee. Two of the parties returned the summons and another party had shifted to a new address and the assessee furnished the telephone number of those two agencies which were found to be different from the telephone numbers submitted in their earlier letter. One of the so called lessees viz., Catholic Charities stated that they had not purchased the lanterns from the assessee and they had no transaction with them, but, subsequently gave a confirmation that they had procured the lanterns from PHOTON and two other parties stated that they purchased lanterns only from PHOTON. The assessee was unable to produce the books of accounts and bank transaction with respect to the said six parties in order to verify the treatment of assets in their books and to verify the transaction in

totality. 3.16 The Assessing Officer pointed out that the sale took place directly between PHOTON and buyers, but, to enable the assessee to get the benefit of depreciation and long term finance from IREDA, PHOTON and the assessee colluded in making a facade of PHOTON raising invoices on the assessee, assessee delivering the lanterns to the buyers and assessee entering into lease agreements with buyers etc. and this is only some paper work done by PHOTON and the assessee to defraud revenue and to hoodwink IREDA to lend money to them. All the paper work is not reflecting the true intentions of the actual transaction and they are meant only to be ignored as mere pieces of paper. 3.17 The Assessing Officer further pointed out that the assessee never produce lessees for examination inspite of repeated opportunities; no correspondence with the lessees with regard to the payment of advance lease rental was produced and the lease agreements were not terminated and therefore, held that the it is the big question whether the so called lessees executed the alleged lease agreements or the assessee prepared them as it own to suit its convenience. 3.18 The Assessing Officer, after taking note of the facts and after analysing the role of assessee in the matter held that the assessee could not produce any details and concluded that the transaction between the assessee and the PHOTON is a 'sham' transaction with a view to avoid tax and the claim of depreciation to the tune of Rs.1.05 crores was disallowed and added back to the returned income and since the assessee had not despatched the goods at the end user, the assets have not been put to use before 31.03.2001, the assessee is not entitled for depreciation. 3.19 The next issue was regarding the addition made in the return of income as regard the transaction with M/s Das Laserway Windforms Ltd. (DLWL). 3.20 The facts related to this dispute are that the assessee entered into a contract with DLWL for execution of Civil and Electrical work in Andhra Pradesh for installation of wind mills. The work was completed in two phases in March 1999 and March 2000 and the other related works like substation etc., were carried out during the period March 2000 and March 2001. The assessee received remittances from DLWL during the financial year 1999-2000 and 2000-2001 and showed a part of it as advance in its books as on 31.03.2001 and only a part of it was shown as its income. As on 01.04.2000, a sum of Rs.2,79,00,000/- was outstanding as credit. In the financial year 2000-2001, the assessee received Rs.1.58 lakhs from DLWL

and offered only Rs.98 lakhs as income and the balance of Rs.185.9 lakhs was shown as outstanding as credit as on 31.03.2001, whereas the assessee was receiving payments on regular basis, only a part of the amount was shown as advance. The money was received by the assessee on regular basis on bills raised upto October 2000. Thereafter, the money was received consequent to signing of MOU dated 11.07.2001. The assessee claimed that the advance was received but due to dispute, the work could not be completed and hence the money was shown as liability. 3.21 The Assessing Officer did not agree with the stand taken by the assessee and observed that the assessee had completed the entire work and taxed the amount of Rs.1,85,92,269/-. Further, the Assessing Officer noticed that in the TDS certificates filed along with the return of income, the contract amount credited by DLWL and the income offered by the assessee in the return of income was not reconciled. The assessee stated before the Assessing Officer that DLWL was following accrual basis of accounting and the assessee is recognising the income as per the Accounting Standard issued by the ICAI and further stated that the income was recognised based on the stages of completion of each project and thus there was mismatch between the contract amount shown in the TDS certificate and the income offered in the income tax return. The Assessing Officer further noticed that on 01.04.2000, the assessee had shown receipt of Rs.279 lakhs which should have been offered as income in the financial year 2000-2001. 3.22 When the Assessing Officer called upon the assessee to confirm with regard to the transaction between the assessee and DLWL, the assessee stated that because of the dispute with DLWL, they were not able to obtain any information from DLWL. 3.23 Therefore, notice was issued to DLWL under Section 133(6) of the Act and in response to such notice, DLWL by reply dated 31.03.2004 stated that no money or material is due from the assessee and no money or material is due to the assessee and payments have been made for the work carried out by the assessee as per the MOUs dated 11.07.2001 and 01.04.2002 and final settlement against the bills have already been made. 3.24 Taking note of all these facts into consideration, the Assessing Officer confirmed the addition proposed in the show cause notice. 3.25 Aggrieved by such order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, by a speaking order dated 13.12.2004 dismissed the same, confirming the

order of the Assessing Officer. Aggrieved against such order, the assessee preferred an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal). 3.26 Before the Tribunal, two issues were raised for consideration viz.,

(1) Whether the lease transactions entered by the assessee with 6 parties are sham transactions or genuine transactions for allowance of claim depreciation in the given facts and circumstances of the case. And further whether the asset was purchased by the assessee before 31.03.2001 and put to use?.

(2) Whether the amount received from Das Lagerway Windfarm Ltd. (DLWL), being claimed as advance is income of the assessee for the relevant assessment year or not, in the given facts and circumstances of the case?. 3.27 By order dated 24.03.2006, the Tribunal dismissed the appeal filed by the assessee. Aggrieved by the same, the assessee preferred this Tax Case Appeal and the appeal was admitted on the substantial questions of law referred to above. 4.1 Mr.Vijay Narayan, learned Senior Counsel appearing for the assessee submitted that the assessee paid Rs.34.5 lakhs as margin money and a sum of Rs.172.4 lakhs was paid by IREDA for the purchase of lanterns and the payments by IREDA was made directly to PHOTON in the financial year 2001-2002 and therefore, the finding of the Assessing Officer, the First Appellate Authority as well as the Tribunal that the transaction was a sham transaction is an incorrect one. 4.2 Further, the learned Senior Counsel for the petitioner contended that the lanterns having been received by the assessee were given on lease to six agencies, whose names were mentioned in the order of assessment and the income received by way of lease rentals has been shown in the return for a period of 5 years. 4.3 It is further reiterated by the learned Senior Counsel that the Tribunal erred in coming to the conclusion that the transaction is a sham transaction without taking into consideration the fact that it is a loan transaction with IREDA, which is a Government of India Undertaking, which could not have been doubted. 4.4. The learned Senior Counsel for the petitioner further contended that the Tribunal erred to appreciate the adverse inference in respect of the transaction in which one of the parties has not been examined by the department.

5. Though four questions of law have been framed at the time of admission of the appeal, particularly there are only two issues viz., (i) whether the lease agreements entered by the assessee with the six concerns are sham transactions and if the answer to such question is in the negative, whether they are entitled for a claim for depreciation and whether the assets purchased by the assessee before 31.03.2001 were put to use and (2) whether the amount received by the assessee from DLWL, which was claimed by the assessee as advance, is income of the assessee for the relevant assessment year?.

6.1 The facts of the case have been elaborately set out in the preceding paragraphs. The Tribunal, after noticing all the facts has pointed out that the money received by PHOTON from the assessee was remitted back to the assessee on the very next day. It is seen that the payments were made by the assessee to PHOTON in the month of April and May 2001 and the advance lease rentals were received by the assessee from PHOTON only in April and May. Further, the Tribunal pointed out that the money received by PHOTON from IREDA was remitted back to the assessee towards lease rentals only in the month of May, June and November 2001 and the same was received by the assessee from PHOTON as advance rentals received. Therefore, it was pointed out that this would establish that the assessee secured a soft loan from IREDA and utilized the same for making paper entries to show that the lanterns were leased out to six concerns, when as a matter of fact the lanterns were supplied to those six concerns by PHOTON and not by the assessee.

6.2 Further, the Tribunal, had referred to the survey conducted in the business premises of the assessee and the statement of the Managing Director, wherein the Managing Director has stated that he was not aware of these transactions except that they have purchased lanterns in the financial year 2000-2001 and leased out to six parties. In fact, the Tribunal has extracted the answers given by the Managing Director with regard to the various questions which were posed to him during the search conducted. In the answers he had stated that the lanterns have been purchased from PHOTON and the same were distributed to the end users on lease basis and PHOTON is regular in touch with the parties for servicing of the lanterns and the required information is available with them and all the correspondence were done by PHOTON with the said lessees and further he has stated that it is only PHOTON had contact with the said lessees and the entire

transaction was carried out by PHOTON on behalf of the assessee and they have no role in the transaction and that he would contact PHOTON and furnish further details. 6.3 After referring to various answers given by the Managing Director, in respect of the queries, some of which have been extracted in the order passed by the Tribunal, it is evident that the Managing Director was not aware of any of the transactions and he was not able to give any explanation and he was unaware of the payments received by the assessee from PHOTON and the payments made by the assessee to PHOTON, which clearly shows that these payments were paper transactions and the assessee is not aware about the six lessees. 6.4 Taking note of all the above facts, the Tribunal held that the primary burden is on the assessee to establish that it has leased out the lanterns and only after their satisfactorily discharging the burden cast upon them, then only the burden will shift on the revenue. 6.5 Further, while rejecting the contention raised by the assessee regarding the genuineness of the lease transaction, the Tribunal after examining the nature of transaction pointed out that the assessee has already received the advance lease rentals even before entering into lease transactions and adjusted the advance sale consideration against the advance lease rentals and therefore came to the conclusion that the lease agreements were never intended to be implemented and there was no need for such agreements as the money was already received and the buyers received the goods and the entire lease rentals payable over a period of 5 years were received or adjusted mostly much before the delivery of lanterns. 6.6 In the light of the above factual finding, which have been elaborately dealt with by the Tribunal, the Tribunal, accepted the view taken by the Assessing Officer, as confirmed by the First Appellate Authority that the transactions were mere paper transactions and therefore, sham. The reasons assigned by the Tribunal is perfectly justified especially by taking note of all the facts and the conduct of the assessee.

7. The nature of events which have been elaborately culled out by the Assessing Officer and reiterated by the First Appellate Authority goes to show that the transaction has been so made so as to make it appear as if genuine and from the statement given by the Managing Director of the assessee as well as the records which were produced clearly establish that they were totally lacking in genuinity, more so while the funds came back to the assessee even within less than one or

two days.

8. In the light of the above facts, as noticed by the assessing authority, we have no hesitation in holding that the transaction is a fraudulent transaction by noticing the conduct of the assessee in the manner in which the lease transactions were finalised, much prior to the sanction of the loan by IREDA. Further, the certification of the lanterns were in the godown of PHOTON and not in the place where it was installed or in the premises of the so called lessees to whom it was stated to have been despatched. Therefore, we fully agree with the findings recorded by the Tribunal on the basis of records.

9. Accordingly, the first issue relating to the genuineness of the transaction is decided against assessee and therefore the assessee is not entitled to the claim for depreciation.

10. Dehors the above conclusion, if it is seen as to whether the assessee was entitled to depreciation it has to be seen that the assets were purchased by the assessee before 31.03.2001 and put to use as claimed by them for being entitled for depreciation. As pointed out by the Tribunal, the assessee purchased the assets for the so called lease and the lanterns were not delivered to the lessees on or before 31.03.2001. This fact has been established that these lanterns were despatched after 31.03.2001 and the Assessing Officer has clearly brought out the details regarding the testing of the assets having been done only in the godown of M/s PHOTON on 25.03.2001, 08.05.2001 and 27.05.2001. The various statutory forms was valid from 01.04.2001 to 31.03.2002 and further the way bills and lorry receipts submitted by the assessee show that the goods were transported only after May 2001 to various agencies. Therefore, the Assessing Officer, rightly concluded that the assessee having not despatched the goods to the end users, the assets having not been put to use before 31.03.2001, not entitled for any depreciation. The findings recorded by the Tribunal in this regard stands confirmed.

11. The next issue relates to the amount received from DLWL, claimed as advance in the income of the assessee for the relevant assessment year. 12.1 The case of the assessee is that they have entered into a contract with DLWL for

installation of wind mills in Andhra Pradesh. The execution of civil and electrical work was completed in March 1999 and March 2000 and the assessee received certain remittances from DLWL during the financial year 1999-2000 and 2000-2001 and treated the remittances as advances in its books of accounts as on 31.03.2001. Part of the remittances were offered as income. 12.2 The Assessing Officer, after going through the records placed before him, assessed the amount of Rs.1,85,92,269/- as income of the assessee and this amount having been shown as the outstanding credit as on 31.03.2001. When the assessee was called upon to explain as to why this should not be treated as income of the assessee, it was stated that they are following accrual basis of accounting as recognized by ICAI and the guidelines issued as per accounting standards and the income is accounted for on the basis of stages of completion of each project. Further, the assessee contended that in view of certain disputes between the parties and pendency of civil cases these amounts were retained as advances. 12.3 The Assessing Officer noticed from the books of accounts that during the financial year 2000-2001, the assessee has shown credit as advances received as on 31.03.2001 amounting to Rs.1,85,92,269/-, the details of those amounts were brought out in the order of assessment, which has already been quoted by the Tribunal in paragraph No.34 of its order. 12.4 When the Assessing Officer called upon the assessee to explain the details, the assessee could not submit any reply. Thereafter, the Assessing Officer issued notice to DLWL under Section 133(6) of the Act. M/s DLWL, vide their reply dated 31.03.2004 stated that no money or material is due from or to the assessee and all the payments have been made for the execution of the civil and electrical work at Andhra Pradesh for installation of three wind mills for which the work was completed in two phases i.e., March 1999 and March 2000. Further, the DLWL referred to two memorandum of Understanding dated 11.07.2001 and 01.04.2002 regarding the payments effected, by way of settlement of accounts. 12.5 The Assessing Officer, on going through all these facts recorded the finding that the advances shown by the assessee are nothing but payment received on account of the completion of work executed by the assessee and the Assessing Officer made the addition. 13.1 Before the First Appellate Authority, the assessee submitted that the MOU dated 01.04.2002 has not been acted upon and the matter is pending in various Courts,

which was evidenced by a letter of an Advocate. Further, it was contended that a notice has been received from the Police Department with regard to the Crime No.989 of 2003 and the FIR has already been lodged on 06.12.2003 and therefore, it was contended that MOU was not acted upon. When such contention was reiterated before the Tribunal, the assessee did not dispute the facts. It was contended that there were certain cases pending in various Courts and a criminal complaint has already been registered. The Tribunal, after perusing the materials placed viz., the letter given by the counsel, copy of the FIR and the MOU, noticed that the assessee has received payments against the bills raised by various orders and shown part as advance in its books and offered a part as income. The facts and figures were not disputed by the parties and the assessee was regularly receiving payments on the basis of the bills raised and a part of the said amount was consistently shown as advance. Referring to clause (9) of the MOU dated 01.04.2002, the Tribunal pointed out that the assessee as well as DLWL agreed in full and final settlement on account of the transactions referred to in MOU. Therefore, factually it becomes clear that the assessee has completed the work and nothing is due from the assessee and there is no dispute on the said issue.

13.2 Further the FIR refers to the dispute relating to purchase of a flat and not regarding the payment of contract and the dispute was between the Managing Director of the assessee and an official of M/s Wescare India Limited. In fact, the Tribunal has also quoted the relevant portion of the FIR and on a perusal of the same, it appears that it pertains to certain construction of a flat, which according to complainant the construction has been left unfinished and the party remained elusive. Therefore, the criminal case pertains to purchase of flat and does not pertain to the contract between the assessee and DLWL for the purpose of civil construction works for the three wind mills project.

13.3 Thus, the Tribunal, after carefully analysing the entire facts and referring to the MOU and the FIR rightly held that payments received by the assessee and shown as outstanding in the accounts are to be treated as income and assessed to tax.

14. In the light of the above factual findings based on records, the second issue is also answered in negative and we do not find any ground to interfere with the same.

15. Accordingly, considering the factual findings rendered by the appellate authority confirming the assessment, we do not find any question of law much less substantial question of law to entertain this appeal by interfering with the findings of the Tribunal. Consequently, the tax case appeal is dismissed. No costs. Connected miscellaneous petition is also dismissed. (C.V.,J) (T.S.S.,J) 12.02.2014
Internet:Yes/ rg To 1. The Assistant Commissioner of Income Tax Company Circle IV(1), Nungambakkam High Road Chennai 600 034 2. The Income Tax Appellate Tribunal, Madras 'A' Bench, CHITRA VENKATARAMAN, J.

and T.S.SIVAGNANAM, J.

rg T.C.A.No.977 of 2006 12.02.2014

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