

Chaudhary Builders Vs. Asstt. Cit

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Court : Madhya Pradesh

Decided On : Mar-18-2002

Reported in : (2002)174CTR(MP)574

Appeal No. : IT Appeal No. 3 of 2001 18 March 2002

Appellant : Chaudhary Builders

Respondent : Asstt. Cit

Advocate for Pet/Ap. : G.M. Chafekar with Milind Phadke, *for the Assessee*

Judgement :

By the court

Heard Shri G.M. Chafekar, learned senior advocate with Shri Milind Phadke for appellant on the question of admission.

2. This appeal is an appeal under section 260A of the Income Tax Act, 1961, at the instance of the assessee, against the order of Tribunal, Indore, passed on 30-8-2000. The appeal before the Tribunal was preferred at the instance of revenue, against the order of Commissioner (Appeals), Indore. The Tribunal had formulated the following questions, which were required to be answered by it. The said are reproduced hereinbelow :

(1) On the facts and in the circumstances of the case, the learned Commissioner (Appeals) has erred in allowing the loss claimed by the assessee as business loss instead of speculation loss as determined by the assessing officer.

(2) On the facts and in the circumstances of the case, the learned Commissioner (Appeals) erred in deleting the addition of Rs. 4,69,97,222 made by the assessing officer on account of unexplained investment made in construction of building.

(3) On the facts and in the circumstances of the case, the learned Commissioner (Appeals) has erred in allowing deduction of Rs. 35,00,000 on account of compensation paid for breach of agreement even though the same is not allowable as business expenditure.

For the sake of convenience, the Tribunal had taken up questions No. 1 and 3 together and answered. After consideration of the matter from all angles the Tribunal has allowed the appeal of the revenue and set aside the order of the Commissioner (Appeals) and restored that of assessing officer on these counts. It is against this order the assessee had preferred this appeal.

3. After having heard the learned counsel for the appellant at length and after perusal of record we find no merit and substance in this appeal.

4. Brief facts material for deciding the said appeal are given hereinbelow :

Appellant is a private limited company and is basically engaged in the business of construction activities. Only for the assessment year 1992-93 it had entered into an agreement with M/s. Soya Udyog Ltd. the another company for supply and crushing of Soyabean to the tune of 14,000 M.T. The said agreement was entered into on 11-10-1991, between the appellant and M/s. Soya Udyog Ltd. The said agreement further contemplates that in case of any breach of the agreement, the appellant would be paying a sum of Rs. 35 lakhs to M/s. Soya Udyog Ltd. as damages. It also has an arbitration clause being clause No. 19 of the said agreement. According to appellant, it failed to fulfil the part of the obligation resting on it and, therefore, it became liable to pay the stipulated damages of Rs. 35 lakhs to M/s. Soya Udyog Ltd.

It may be pertinent to mention here that for the assessment year 1992-93 the appellant had otherwise incurred a huge profit out of its construction business. Only out of the said profit earned from construction business appellant ventured to invest in Soya Udyog Ltd. and according to it since it failed to fulfil the obligations resting on it, it has fully paid the stipulated amount of damages of Rs. 35 lakhs to M/s. Soya Udyog Ltd. Consequently, and in the result, the amount of profit of appellant was considerably reduced and the amount of profit was converted into amount of loss. Thus, the return for loss was filed by the appellant of Rs. 58,542. On consideration of all these facts and circumstances of the case and the manner in which the agreement had been entered into only for that assessment year by the appellant, the Tribunal came to the conclusion that everything was shrouded with doubts. The genuineness of the agreement was also doubted.

It is further necessary to mention here that without there being any adjudication of the actual loss said to have been incurred by M/s Soya Udyog Ltd. the appellant paid the stipulated amount of loss, amounting to Rs. 35 lakhs to M/s. Soya Udyog Ltd.

5. We were not able to find out anything from record that any such demand was also made by the said Soya Udyog Ltd., calling upon the appellant to pay the damages. From para 8 onwards the Tribunal has discussed all these questions at length and only after an elaborate examination of the facts and features of the case it has arrived at a conclusion that the order of the Commissioner (Appeals) cannot be sustained in law. In this view of it has set aside the same and has restored the order of the assessing officer.

Against such findings of fact recorded by the Tribunal, we find no substantial question is involved. The appeal is indeed devoid of any merit and substance. It is accordingly hereby dismissed summarily.