Cit Vs. Akash Deep Promotors and Developers (P) Ltd.

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Court : Delhi

Decided On : Feb-03-2005

Reported in : (2005)196CTR(Del)99; [2005]146TAXMAN389(Delhi)

Appeal No. : IT Appeal Nos. 162 & 777 of 2004 3 February 2005

Appellant : Cit

Respondent : Akash Deep Promotors and Developers (P) Ltd.

Advocate for Pet/Ap. : Ms. Prem Lata Bansal,;for the Revenue; None,;for the assessed

Judgement :

Swatanter Kumar, J.

In this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), the assessed challenges the legality and correctness of the order dated 29-4-2004 passed by the Tribunal for the assessment year 2000-01. The Tribunal while relying upon its earlier order passed in the case of Delhi Towers & Estates (P) Ltd., one of the associate companies of the same developer company, held that the assessed- company is entitled to deduction of income-tax (sic) paid to the developer company.

2. Necessary facts are that the respondent-company was engaged in real estate business and for the relevant year W filed a return declaring the loss of Rs. 82,030. According to the assessed it had paid additional service charges of Rs. 5,37,732 to one of its associate companies M/s APIL. The assessing officer found that it had entered into a collaboration agreement with the developer company on 3-12-1991 including various other companies. Relying upon the terms of the agreement, the assessing officer was of the view that out of the sale proceeds, the assessed-company was deducting the cost of the land, arrear of cost of development and service charges payable. After deduction of these expenses notional expenses were further deducted by the assessed so as to restrict the amount of profit to Rs. 20,000 per acre. The nature and character of these notional additional service charges was not disclosed. After invoking the provisions of section 40A(2)(b) of the Income Tax Act, the assessing officer was of the opinion that the services to be rendered by the developer company was not explained in the agreement for which additional charges were to be paid, as such this was not allowed as an expenditure within the provisions of the Act. Disallowing the charges of Rs. 5,37,732 this was added as part of the income. Against the said order of assessment the assessed filed an appeal wherein the CIT(A) deleted the addition made by the assessing officer against which department preferred an appeal before the Tribunal which has already dismissed the appeal while relying upon its earlier orders.

3. On the above facts the department in the present appeal has argued that substantial question of law arises in the present case particularly as to whether the order of the Tribunal is perverse in law and on facts as it did not contest the expenditure on the touchstone of section 37(1) or section 40A(2) or section 60 (sic) of the Income Tax Act and as such the deletion of the added amount was totally unjustified. At the very outset we may refer to the relevant part of the order passed by the Tribunal which reads as under:

'Learned counsel filed a paper book and submitted that the issue is squarely covered in the case of the assessed by the order of the Tribunal in the case of Delhi Towers and Estates (P) Ltd., 115, Ansal Bhawan, 16 K.G. Marg, New Delhi, for assessment year 1992-93. A copy of the Tribunal's order dated 18-6-2003 in

IAA No. 3388/Del/1997 has been filed at pp. 62 to 64 of the paper book. Learned counsel submitted that additional service charges have been paid by the said company, M/s Delhi Towers & Estates (P) Ltd. to the respondent-companies and deduction of such expenses has been duly allowed in the said case by the Tribunal. Learned counsel further submitted that such additional service charges have been allowed by the CIT(A) for the immediately preceding assessment year 1999-2000 as per copy of the order placed at pp. 58 to 61 of the paper book. In the said order, CIT(A) has duly taken note of the fact that addition on similar grounds have been deleted the cases of associates Companies for various assessment years. Learned Departmental Representative who is present before me, has not been able to rebut the aforesaid submissions of the learned counsel.

5. Respectively following the aforesaid order of the Tribunal and in view of the identical facts and circumstances of the same, I am inclined to concur with the finding of the learned CIT(A) in both the cases. The appeals of the revenue are dismissed.'

4. As is clear from bare reading of the above findings of the Tribunal it is apparent that the expenses incurred as additional service charges paid by the company to other companies were permitted to be deducted for the year 1999-2000 and the said order has attained finality. The order passed by the Tribunal in the case of Asst. CIT v. Delhi Towers & Estates (P) Ltd. ITA No. 3388/1997, for the year 1992-1993, it was held that in the absence of any evidence, the revenue authorities had failed to prove that the payment fell within the provisions of section 40A(2) of the Act. Thus, the additional service charges added by the assessing officer was deleted. The judgment of the Tribunal dated 18-6-2003, passed in that case was subject-matter of an appeal before the High Court in IT Appeal 162 of 2004 which was dismissed by a Division Bench of this court vide its order dated 30-4-2004.

5. We have no reason to differ with the view taken by another Division Bench of this court. The principle of consistency would require that the court should take similar view which has been taken by another Division Bench unless the decision of the court was contrary to law or there were compelling circumstances for taking a different view. The facts of the present case are similar to that of Delhi Towers &

Estates (P) Ltd. (supra) and following the law of precedence, we would also dismiss this appeal in liming.

6. The appeal is dismissed.