

Sum paid to unrelated party via banking route after deduction of tax at source couldn't be treated as bogus

Summary – The High Court of Gujarat in a recent case of Mundra Port and SEZ Ltd., (the Assessee) held that where payment had been made through banking channels and tax was deducted at source and party was also not found to be related to assessee, Assessing Officer could not treat expense as bogus expense.

ORDER

Following substantial question of law has been proposed for our consideration in this Tax Appeal:

"Whether the Appellate Tribunal is right in law and on facts in considering the consultancy charges of Rs.65 lacs as incurred for the purpose of business in absence of substantive evidences?"

The present Tax Appeal has been preferred by the Revenue against the order of the Income Tax Appellate Tribunal ('the Tribunal' for short) dated 12th April 2013.

The question is with regard to consultancy charges of Rs.65 lacs which according to the Assessing Officer was bogus expenditure claimed by the assessee. Such disallowance was made by the Assessing Officer on the ground that the report that was obtained had noted that it issued letters to all the parties which was stated to have been introduced by N.M. Consultants to the assessee and no reply was received from the parties to whom such letters were issued. Only one party responded to the same stating that no work had been done by N.M. Consultants. The assessee had declared loss of Rs.78,60,41,250/-. After making disallowance to the tune of Rs.65 lacs. loss was assessed by the Assessing Officer.

CIT (A) deleted such additions by cogent reasons:

"5.4 I have considered the submissions of the A.R. carefully. I find that the payment of Rs.65 lakhs has been made to N.M. Consultants through banking channel and tax was deducted at source on the said payment. The said party has confirmed having received the payment and the appellant has given the names and addresses of the parties who had been introduced to the appellant by N.M. Consultants. The payment has been made to N.M. Consultants who is not a party related to the appellant and is an outside party. Further the payment is found to be reasonable as compared to the total income received by the appellant from operations during the year of Rs.111.04 crores. Further, there is no finding by the A.O. that any part of the payment has come back to the appellant. In view of the above facts, the payment of consultancy charges is held to be genuine and the disallowance made by the A.O. is deleted.

When the issue travelled to the Tribunal, it extensively dealt with the issue and concluded in favour of the assessee. It would be profitable to reproduce some of the relevant observations made by the Tribunal:

"12. Now we examine the applicability of the judgment of Hon'ble Gujarat High Court cited by Id. A.R. i.e. judgment rendered in the case of Heir and legal representatives of *Late Laxmanbhai S Patel (supra)*. This judgment is with regard to not providing the assessee to cross examine the 3rd person. In the present case, the assessee had requested the A.O. to provide opportunity to cross examine the 3rd party but the same was not allowed by the A.O. But without going on this basis, we find that otherwise also no case was made out by the authorities below for making the disallowance when the assessee had provided the names of the parties introduced by N M Consultants to the assessee and the A.O. has simply made this allegation that specific details were not furnished by the assessee to establish the extent of services which means that the rendering of service by N M Consultants is not in doubt and the doubt is only about quantum of service. Moreover, we have also noted that the assessee had reported a loss of Rs.7860.41 lacs and the assessment was completed by the A.O. at a loss of Rs.7795.45 lacs even after making this disallowance of Rs.65 lacs. This is also the claim of the assessee that the assessee is eligible for deduction of 100% u/s. 80-IA(4) even if the assessee is having income in a future year. Under these facts, it is very difficult to believe that any person will claim bogus expenditure. Considering all these facts, we do not find any reason to interfere in the order of Ltd. CIT(A)."

We do not see any reason to interfere in the findings given by the Tribunal for the reason that the Tribunal has taken into account substantiating material produced before it to conclude that it was difficult to believe that any assessee would claim such bogus expenditure more particularly when it is eligible for 100% deduction under section 80IA of the Act and even otherwise, on the basis of other material on record, the services rendered by N.M. Consultants were not found doubtful, doubt was only with regard to the quantum of service. However, when payment was through the channel of bank and tax also was deducted at source and N.M. Consultants is not found to be related to the respondent assessee, both the authorities concurrently and rightly addressed the issue.

Essentially based on facts when no perversity is visible in the order, we find no question of law much less substantial question of law arises in this appeal. The same is therefore dismissed.