

Credit of TDS won't be denied to a contractor even if entire work has been sub-contracted to others

Summary – The High Court of Andhra Pradesh in a recent case of IVRCL-KBL (JV)., (the Assessee) held that where assessee, a joint venture, executing civil contract works, having received contract by Irrigation Department of State Government, assigned same to one of its constituents on back to back basis, since income from contract entered into with State Government was assessable only in hands of assessee and not in hands of sub-contractor, credit for tax deducted at source from bills of assessee was required to be given to assessee alone and same could not be denied by invoking Rule 37BA(2)(i) of Income-tax Rules, 1962, on ground that no real work was carried on by assessee

Facts

- The assessee was a joint-venture executing civil contract works. It was awarded contracts by the Irrigation Department of the State Government. The assessee gave said contracts subsequently on sub-contract basis to one of its constituents without any margin.
- The assessee filed its return claiming refund of tax deducted at source from bills paid by the State Government.
- The assessing authority held that, from the agreement signed between the assessee and the constituent, it was clear that the assessee was just a procedural device used for submitting the bid; all the contract works were to be executed only by the constituent member; the very purpose of forming a assessee-joint venture was to act as a connecting link between the Irrigation Department and the joint-venture constituent, and to handover the contract work received from the former to the latter; the assessee never intended to execute any work whatsoever; admission of gross receipts in their profit and loss account by the assessee was only to transfer the same to their constituent; as no real work was carried on by the assessee, no income had accrued to it; and, therefore, credit for TDS was not allowable in the hands of the assessee in terms of Rule37BA(2)(i) of the Income Tax Rules, 1962.

Held

- In the present case, there are two distinct and independent contracts. While it does appear that the joint venture was constituted only for it to enter into a contract with the Government, and for one of its constituents to execute the work, the fact remains that there is no privity of contract between the Government and the constituent of the assessee, i.e. the sub-contractor. The rights and obligations under the first contract are only that of the Government and the assessee; and those, in the second contract, are only that of the assessee and the sub-contractor. The contractual obligation, to execute the work for the Government, is that of the assessee joint venture alone, and not that of the constituent member of the JV *i.e.* the sub-contractor. Any action which the State Government could have taken, for breach of the terms and conditions of the first contract, was only

against the assessee JV and not its constituent. While the sub-contractor, no doubt, executed the work, they did so in terms of the second contract entered into between them and the assessee-JV. It is evident, therefore, that the contractual receipts under the first contract is only that of the assessee; and the income, arising out of the said contract, is assessable only in their hands, and not in the hands of the sub-contractor. The sub-contractor is assessable to tax on their income earned from the amounts received by them from the assessee in terms of the second contract, and not in terms of the first contract between the State Government and the assessee. As noted hereinabove, not only did the State Government deduct tax at source from the assessee's bills, the assessee, in turn, while making payment to the sub-contractor, also deducted tax at source from the bills of the latter. Credit for the tax deducted at source, by the assessee from the bills of the sub-contractor, was given to the sub-contractor as such income was assessable in their hands. Likewise credit for the tax deducted at source, from the bills of the assessee, was required to be given to the assessee alone as the income, from the contract entered into between them and the State Government, was assessable only in their hands, and not in the hands of the sub-contractor.

- Thus, to the limited extent the assessing authority denied credit to assessee, for the tax deducted at source from their bills by the Government, the impugned assessment orders/rectification orders are set aside. The assessing authority shall determine the quantum of credit for TDS which the assessee is entitled to and refund the amount so computed to assessee in accordance with law.