

ITAT allows deduction of payments to sub-contractors as it was genuine payment made via banking channel

Summary – The High Court of Madras in a recent case of SVE Engineers (P.) Ltd., (the Assessee) held that where assessee was engaged in manufacturing of conveyors, etc. and it secured conveyors work from a party and entrusted part of work to sub-contractors and made payments to them through banking channel, since work executed by sub-contractors was not found as unconnected to work undertaken by assessee, payment made to sub-contractors was a genuine expenditure incurred by assessee

Facts

- The assessee was engaged in manufacturing/trading of material handling equipment like belt conveyors, screw conveyors and other similar products. During the year, it secured conveyors work from a party [principal] and entrusted part of work to two sub-contractors. It made payments to the said sub-contractors through banking channel and claimed deduction of same.
- The Assessing Officer disallowed the payments made to the sub-contractors on the plea that the same were not genuine transactions but they were mere accommodation entries made on paper.
- Both the Commissioner (Appeals) and the Tribunal accepted the payments made to the sub-contractors as a genuine expenditure incurred by the assessee and allowed the appeal.
- On appeal to High Court by revenue:

Held

- During the course of execution of the work, the two sub-contracting agencies have intimated, from time to time, the running work progress details to the assessee, which contained the details of quantity of structural steels of the executed work, for the verification and approval of the assessee. Any such arrangement presupposes the existence of a sub-contracting agency as otherwise there was no necessity for the so called sub-contractors to make available the data of the works executed by them to the assessee. It is not the case of the revenue that the execution of work by the assessee incidentally involves supervision or coordination of work of the sub-contractors. In the event the sub-contract and execution of work by the so called sub-contractors has no proximity to the work required to be executed by the assessee *vis-a-vis* its principal, calling for running work progress details by the assessee from some other third parties would not have arisen at all.
- Though there is considerable force in the submission of the revenue that the payments made through banking channel are not a substitute method for establishing the genuineness of the payment so made. However, the same is a strong indicating circumstance of the existence of an obligation to make payment at the first instance. In the instant case, the obligation that arose on the part of the assessee to make such payment can be easily gathered from the fact that it kept on

receiving, from time to time, the running progress schedule of erection work by the sub-contractors. If there is no proximate relationship between the work to be executed by the assessee and the sub-contractors executed work, which the assessee was required to execute towards its principal, the question of taking note of the progress of running work by the assessee from a third party would not have arisen. So long as the said running work details are not discredited as totally unconnected to the work which the assessee was required to execute towards its principal, the theory of sub-contracting that part of the work set up by the assessee gains credibility. Though for all practical purposes and intent, it is safe to make payment through banking channel for the sake of accounting convenience, but any such payment would pass muster as a genuine payment, if the obligation to make such payment springs out of sub-contracting a part of the work, undertaken by the assessee for execution. In the instant case, the work said to have been executed by the sub-contractors is not found as unconcerned or unconnected to the work undertaken by the assessee and hence the claim of payment made for such work to the sub-contractors through banking channel deserves to be accepted as a genuine expenditure incurred by the assessee.

- Hence, the appeal filed by the revenue was liable to be dismissed.