

(2009) 11 KL CK 0086

High Court Of Kerala

Case No: IT Appeal No"s. 2, 9 and 12 of 2005

Samurai Techno Trading Co. (P)
Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision: Nov. 4, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 144, 145(3), 260A, 28, 44AD

Citation: (2011) 197 TAXMAN 144

Hon'ble Judges: V.K.Mohanan, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: V. Ramachandran, for the Appellant; P.K.R. Menon and Jose Joseph, for the Respondent

Final Decision: Dismissed

Judgement

C.N. Ramachandran Nair, J.

The appeals filed by the Assessee arise from the common order of the Tribunal disposing of the appeals of the Assessee for the years 1993-94, 1994-95 and 1995-96.

2. We have heard senior Counsel Sri V. Ramachandran appearing for the Appellant/Assessee and the standing Counsel appearing for the Respondent department.

3. The Assessee was engaged in both as a consultant and contractor for setting up of acqua farms for various parties. The Assessee has not maintained any books of accounts and whatever records produced in the course of assessments were found to be unreliable. Therefore, the assessment was completed after rejecting the books of accounts and on estimation basis. The assessments were modified in the first appeal and the Tribunal again modified the same by granting further relief with regard to estimation of income. It is against these orders the Assessee. has come up

before us with these appeals filed u/s 260A of the Income Tax Act (for short the Income Tax Act).

4. Senior Counsel appearing for the Assessee contended" that the Tribunal was not justified in confirming the rejection of books of account and estimation of income for all the years. In the appeal filed in the assessment year 1993-94, the questions raised are several in number which really relate to two issues. One is with regard to the disallowance of Rs. 2 lakhs sustained by the Tribunal and another pertains to addition of Rs. 6 lakhs sustained by the Tribunal, both by reversing the order of the first appellate authority. The Tribunal found that even though the Assessee was engaged in consultancy work, it was also executing civil work. The Assessee has not maintained separate books of accounts for both the activities. Therefore, the Tribunal found that what is required is only reasonable allocation of expenditure between civil work and consultancy work. The assessing officer had in fact treated the entire expenditure of Rs. 4,01,414 as attributable in civil work and when net income was estimated from civil work, there is no scope for granting further deduction and therefore, based on this principle, the assessing officer disallowed the claim. In the first appeal, the appellate authority deleted the disallowance only because of his view that the entire expenditure claimed is related to consultancy work. The Tribunal, noticing that separate accounts are not maintained, treated the expenditure as attributable to both civil work as well as the consultancy work and accordingly allotted Rs. 2 lakhs towards civil work and disallowed only so much of the balance of Rs. 2,01,414 pertaining to consultancy work. Counsel for the Assessee though contended that the disallowance is arbitrary could not establish before us that the accounts are correct and complete. Details of expenditure and the purpose for which it was spent, were also not available on record. Therefore, in our view, the Tribunal rightly disallowed a sum of Rs. 2 lakhs towards civil work and allowed at least 50 per cent of the claim attributable to consultancy work. We find, no substantial question of law involved in the finding of the Tribunal. Therefore, we answer this question in favour of the revenue and against the Assessee.

5. The next question raised by the Assessee pertains to addition of Rs. 6 lakhs confirmed by the Tribunal by reversing the order of the first appellate authority. An amount of Rs. 6 lakhs was received by the Assessee from M/s Kirloskar Pneumatic Co. Ltd. during the previous year 1992-93. In fact, this is a fee received by the Assessee from the company for implementation of a project which was not in fact carried out by the Assessee. Even though the Assessee maintained that the amount received does not constitute income, the fact remains that the Assessee had not shown it as repayable to the said company nor has he repaid the amount to the said company. The question raised is, whether the amount received by the Assessee for execution of the work, if materialised, can be treated as income. The Assessee has no case that the amount is repaid or repayable. The Tribunal rightly found that it is business income assessable u/s 28(i)/(iv) of the Income Tax Act. We find no justification to interfere with the order of the Tribunal, We therefore answer this

question also against the Assessee. Consequently, appeal for the year 1993-94 will stand dismissed.

6. In the appeals filed for the years 1994-95 and 1995-96, we find that the common issue pertains to estimation of income from civil work at 8 per cent of the total contract receipts. Even though the assessing officer made estimation only because the Assessee's books of accounts were found to be unreliable and uncreditworthy, since, counsel appearing for the Appellants canvassed for acceptance of books of accounts, we have to necessarily refer to the reason for rejection of books of accounts at least for one year. It is seen that on examining the books of accounts, the assessing officer noticed that the Assessee has shown cash payment of Rs. 80.16 lakhs on a single day, i.e., on the last date of the previous year relevant for the assessment year 1994-95 i.e., on 31-3-1994. In order to verify the genuineness of the transaction, the assessing officer issued notice to the persons in whose names vouchers were prepared by the Assessee for having made the payments. The notices sent to some of the parties were returned stating that no such party exists and some of the persons who appeared before the assessing officer gave sworn statement stating that they have not received the amount from the Assessee. We have no doubt in our mind that the Assessee's account is absolutely unbelievable because on a single day, i.e., on 31-3-1994, the Assessee is stated to have given Rs. 19.2 lakhs towards tractor hiring charges, Rs. 3.71 lakhs towards water charges and Rs. 57.25 lakhs towards the labour charges for earthmoving. We do not know how labour charges got accumulated for the whole accounting year to justify payment of cash of Rs. 57.25 lakhs on the last date of the previous year. In our view, when the cash payment of Rs. 80.16 lakhs on a single day itself gave rise to doubt in the mind of the assessing officer, he rightly cross-checked the genuineness of the payments by issuing summons to the persons whose names were shown in the vouchers prepared by the Assessee. The result was that partly, vouchers were found to be bogus, and partly stand disproved. We do not know on what ground the Appellants can seek for acceptance of books of accounts which was found to be unworthy of credit by three lower authorities. In the absence of credible books of accounts, option of the assessing officer u/s 145(3) of the Income Tax Act is to make assessment on estimation basis in terms of Section 144 of the Income Tax Act. In this case, we find the order of the Tribunal is quite favourable to the Assessee because as against the estimation of 10 per cent made by the assessing officer, the Tribunal has reduced the estimation to 8 per cent of the total works turnover. There is logic and reason in estimation of income from civil construction work at 8 per cent because under the presumptive scheme, Section 44AD provides for assessment of income on civil construction work at 8 per cent where the contractors turnover is below Rs. 40 lakhs. Even though counsel for the Appellant contended that Section 44AD has no application as the contract amount is above Rs. 40 lakhs/we do not think, there is justification to interfere with the order of the Tribunal because in the first place, the Tribunal has granted part relief to the Assessee by reducing the

estimated income from 10 per cent to 8 per cent. Secondly, what the Tribunal has done, is only to follow Section 44AD as a guideline for estimation of income from civil work. We, therefore, find no justification to interfere with this part of the order of the Tribunal. It is worthwhile to note that while confirming the estimation of income at reduced percentage, the Tribunal cancelled separate addition made by the assessing officer under the head Other income which is a huge amount of Rs. 15,44,353. We are of the view that after getting deletion of addition of Rs. 15,44,353, the Assessee cannot canvass for "modification of other part of the order of the Tribunal confirming estimation of income at the reduced percentage of 8 per cent which is a reason for deleting the separate addition without considering it independently on merit.

7. So far as appeal for 1995-96 is concerned, the question raised is only on estimation of income for the reasons stated in the year 1994-95. While disposing of the appeal, the Tribunal reduced the income at 8 per cent. Since we have confirmed the order of the Tribunal for the year 1994-95, we confirm the order for 1995-96 as well. Consequently, the appeals for these two years are also dismissed.