
Commissioner of Income Tax Vs Dev Musco Lighting P. Ltd.

Income Tax A. No. 1677 of 2006

Court: Delhi High Court

Date of Decision: May 2, 2008

Acts Referred:

Income Tax Rules, 1962 " Rule 46A

Citation: (2009) 316 ITR 209

Hon'ble Judges: Manmohan Singh, J; Madan B. Lokur, J

Bench: Division Bench

Advocate: R.D. Jolly, for the Appellant; S. Krishnan, for the Respondent

Judgement

1. The Revenue is aggrieved by an order dated March 3, 2006, passed by the Income Tax Appellate Tribunal, Delhi Bench "G", in I.T.A. No.

2338/ Del/2001 relevant for the assessment year 1996-97.

2. The assessee had entered into an agreement with an American company called Musco to assist in the execution of a project. The project was

for lighting the cricket stadium at Mohali. Musco had entered into an independent agreement with the Punjab Cricket Association for this purpose.

In terms of the agreement between the assessee and Musco, the assessee was to act as an intermediary and a local supervisor for execution of the

project. Any amounts that were to be paid by the Punjab Cricket Association to Musco were routed through the assessee. The remuneration that

the assessee was to receive for the services rendered by it from Musco was Rs. 8 lakhs.

3. According to the Assessing Officer, the entire contracted amount (less expenses incurred) between Musco and the Punjab Cricket Association

was the income of the assessee and he sought to tax it accordingly. This amount was Rs. 19,21,264 (Rs. 93.75 lakhs minus expenses). The

assessment order was set aside in appeal by the Commissioner of Income Tax (Appeals) ("the CIT(A)") and the appellate order was upheld by

the Income Tax Appellate Tribunal ("the Tribunal"). The Commissioner of Income Tax (Appeals) noted the contention of the assessee that it was

merely an intermediary and it had no dominion over the contractual amount between Musco and the Punjab Cricket Association and that its

income was only limited to Rs. 8 lakhs for the services rendered by it.

4. To clear the controversy and confirm the stand of the assessee, the Commissioner of Income Tax (Appeals) directed the assessee to produce a

certificate from Musco to the effect that the only remuneration that it was entitled to was a sum of Rs. 8 lakhs. On the basis of the direction given

by the Commissioner of Income Tax (Appeals), the assessee obtained a certificate from Musco to the effect that it was only entitled to an amount

of Rs. 8 lakhs towards its remuneration. The grievance of the Revenue is that in terms of Rule 46A of the Income Tax Rules, 1962, the

Commissioner of Income Tax (Appeals) could not have taken the additional evidence into account and if it was necessary to take additional

evidence into account, an opportunity should be given to the Assessing Officer to deal with the additional evidence.

5. We find that it is not as if additional evidence was produced by the assessee on its own. The certificate was produced by the assessee as a

result of a direction given by the Commissioner of Income Tax (Appeals).

6. We are also of the opinion that the production of the certificate cannot strictly be treated as additional evidence having been produced on the

direction of the Commissioner of Income Tax (Appeals). This is because the Commissioner of Income Tax (Appeals) has clearly mentioned in his

order that it is only to confirm the stand taken by the assessee that the certificate was required. It appears to be quite clear that the Commissioner

of Income Tax (Appeals) merely wanted to play safe and, therefore, required the certificate from Musco clarifying the stand of the assessee

because even otherwise, without the certificate, the Commissioner of Income Tax (Appeals) could very well have taken a decision on the merits of

the matter.

7. This being the position, in our opinion, it was not necessary for the Commissioner of Income Tax (Appeals) to obtain the Assessing Officer's

response on the facts of this case. In our opinion, no substantial question of law arises for consideration.

8. The appeal is dismissed.