

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI

887

BEFORE SHRI C.L. SETHI, JUDICIAL MEMBER &
SHRI K.D. RANJAN, ACCOUNTANT MEMBER

ITA No. 6233/Del/1996
Assessment Year : 1993-94

M/s. Dumez Sogea Borie-SAE
C/o Flat 10, Shankar Market,
Connaught Circus,
New Delhi.
(Appellant)

DCIT
Special Range-24,
New Delhi.
Vs.
(Respondent)

Appellant by : Smt. Rano Jain, C.A. &
Shri Venkatesh, C.A.
Respondent by : Shri Leena Srivastave, D.R.

ORDER

PER: C.L. SETHI, J.M.

The assessee is in appeal against the order dated 05.08.1996 passed by the
ld. CIT(A) in the matter of an assessment made u/s 143(3) of the Income Tax
Act, 1961 for the assessment year 1003-04.

2. The grounds raised by the assessee revolved around following two issues:-

- (i) Whether payment on account of Jammu and Kashmir sale tax
directly made by NHPC to the sale tax authority constitute the
payment in connection with civil works job executed by the assessee
company for NHPC so as to include the same in the total receipts for
the purpose of determining profit u/s 44BBB of the Act.

(ii) Whether the payment on account of tax in respect of expatriate personnel constitute an income or receipt in the hands of the assessee company for the purpose of applying the provisions contained in section 44BBB of the Act.

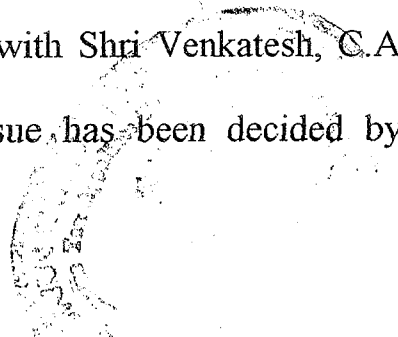
3. We have heard both the parties and have carefully gone through the orders of the authorities below.

4. The assessee in the present case is a non-resident company deriving income from the execution of civil construction work of Dulhasti Hydro Electric Project in Jammu and Kashmir. The assessee's income was computed as per provision contained in section 44BBB of the Act. In the light of the A.O.'s order for the assessment year 1991-92 and 1992-93, the A.O. included the amount directly paid by NHPC on account of the work contract sale tax and also the amount of reimbursement by NHPC of Indian income tax and surcharge of expatriate technical persons, in the total receipts for the purpose of determining the profit within the meaning of section 44BBB of the Act.

5. On an appeal, the Id. CIT(A) confirmed the A.O.'s order by following his own order passed in earlier years.

6. Hence, the assessee is in appeal.

7. In the course of hearing of this appeal, the Id. authorized representative for the assessee, Smt. Rano Jain, CA appeared alongwith Shri Venkatesh, C.A. for the assessee has submitted that this identical issue has been decided by the



Tribunal in favour of the assessee vide order dated 04.08.2006 in ITA No. 6725/Del/93 passed by the ITAT, Delhi Bench 'A', New Delhi pertaining to the assessment year 1991-92 and, thus, submitted that issue is squarely covered by the decision of Co-ordinate Bench as referred above.

8. The Id. D.R., on the other hand, supported the order of the authorities below.

9. We have gone through the orders of the Tribunal, that is, order dated 04.08.2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A', New Delhi in ITA No. 6725/Del/93 in the assessee's own case for the assessment year 1991-92 where the Hon'ble Tribunal has taken a view that the liability to pay works contract sale tax was of the NHPC and not of the assessee as per the terms of the contract and, thus, the said liability never formed part of the contract executed by the assessee and, thus, there was no reason to include the same in the contract value. It was further held therein that the payment made by NHPC on account of Jammu and Kashmir works contract sale tax and income tax liability of the expatriate employees was not includable in the total contract receipts of the assessee. The Tribunal, thus, decided this issue involved in this appeal in favour of the assessee in the assessment year 1991-92.

10. Respectfully following the decision of the Coordinate Bench on absolutely identical issue in the assessee's own case, we set aside the order of the Id. CIT(A) as well as of the A.O. on this issue and direct the A.O. to modify the assessment



by not including the aforesaid two items i.e. direct payment of Jammu and Kashmir works contract sale tax made by NHPC and reimbursement of income tax of expatriate employee paid by NHPC in the total contract receipts for the purpose of determining profit u/s 44BBB of the Act. Thus, the issue raised in this appeal is decided in favour of the assessee and against the revenue.

11. In the result, the appeal filed by the assessee is allowed.
12. This decision is pronounced in the open court on 23rd July, 2009 immediately after the hearing was over.

(K.D. RANJAN)
ACCOUNTANT MEMBER

(C.L. SETHI)
JUDICIAL MEMBER

Dated: 23rd July, 2009.
Mamta

Copy to:

1. Appellant *By Hand*
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

By Order

Deputy Registrar
Assistant Registrar
आयकर महानगर अफिसर
Income Tax Appellate Tribunal
New Delhi