



THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11.02.2010

+ **ITA 146/2010****THE COMMISSIONER OF INCOME TAX**

..... Appellant

- versus -

ORIENTAL STRUCTURAL ENGINEERS P.LTD ... Respondent

Advocates who appeared in this case:-

For the Petitioner : Ms Rashmi Chopra

For the Respondent : Mr Rajat Navet and Mr Ankit Gupta

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal by the revenue is directed against the order dated 06.03.2009 passed by the Income-tax Appellate Tribunal in ITA No.3058/Del/2007 relating to the assessment year 2004-05. The Assessing Officer had made a disallowance of Rs 1,22,85,406/- by invoking the provisions of Section 40A(2)(b) of the Income-tax Act, 1961 (hereinafter referred to as 'the said Act'). The respondent / assessee is a joint venture of two companies, namely, Oriental Structural Engineers Pvt. Ltd and Gammon India Ltd. The joint venture was established for the purposes of obtaining works from the National Highways Authority of India. However, it was the



assigned by the National Highways Authority of India to the joint venture would be carried out on a back-to-back basis by the partners themselves and that the works would be equally distributed between the partners.

2. During the year in question, the assessee received the contracts from the National Highways Authority of India amounting to Rs.1,24,75,88,242/-. The assessee had, as per the joint venture agreement, sub-contracted the works to the joint venture partners, namely, Oriental Structural Engineers Pvt. Ltd and Gammon India Ltd for execution of the project. 98.47 % of the receipts from the National Highways Authority of India had been paid by the joint venture / assessee to its partners / sub-contractors. A very small amount of expense was incurred by the joint venture / assessee on account of tax, royalty, audit fee, service tax, etc. amounting to Rs.1,03,680/- which amount had been claimed as a loss. The Assessing Officer felt that the payment made by the joint venture / assessee to the extent of Rs.1,22,85,402/- was excessive and, therefore, the said amount was disallowed by invoking the provisions of Section 40 A(2) (b) of the said Act.

3. The assessee, being aggrieved, filed an appeal before the Commissioner of Income-tax (Appels), who deleted the disallowance. The said deletion was confirmed by the Income-tax Appellate Tribunal by virtue of the impugned order. The Tribunal returned a clear finding of fact indicating that the payments made by the joint venture / assessee to its partners was not excessive and, therefore, Section 40A(2) of the said Act

4. In any event, no interference with the impugned order is called for inasmuch as the same does not raise any question of law and the findings are those of fact alone. A decision of this court in the case of **Commissioner of Income-tax v. Dr. R.N. Goel**: 2008 (X) AD (Delhi) 545 was also referred to, wherein it was observed as under:-

“7. Having perused the record of the case, and after hearing the counsel for both the Revenue, as well as, the assessee, we are of the view that the issue involved before the authorities below was whether the expenses claimed by the assessee towards payment of commission, as well as, service charges to CIL was reasonable having regard to the provisions of Section 40A of the Act. This issue according to us is a pure question of fact. The Supreme Court in Upper India Publishing House Pvt. Ltd. Vs. CIT: (1979) 117 ITR 569 and the Division Bench of this Court in the case of CIT Vs. North India Ind. & S.



Mohta Electrosteel Ltd: (1995) 215 ITR 522 have held that whether or not an expenditure is unreasonable and hence, merits disallowance under the provisions of Section 40A of the Act, is essentially a question of fact”.

5. No question of law, what to speak of a substantial question of law, arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

February 11, 2010

bs/dutt