

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :  
NAGPUR BENCH : NAGPUR.

Income Tax Appeal No.44 of 2013

The Commissioner of Income Tax-I,  
Aayakar Bhawan, Civil Lines,  
Nagpur.

... Appellant

Versus

M/s SMSL-UANRCL (JV),  
267, Ganesh Phadnavis Bhawan,  
near Trikoni Park, Dharampeth,  
Nagpur.

... Respondent.

Shri Anand Parchure, Advocate for petitioner.  
Shri N.S. Bhattad, Advocate for respondent.

Coram : B.P. Dharmadhikari &  
A.P. Bhangale, JJ.

Dated : 02<sup>nd</sup> March, 2015.

ORAL JUDGMENT [Per B.P. Dharmadhikari, J.]

Heard Advocate Shri Anand Parchure, for the appellant and  
Advocate Shri N.S. Bhattad, for the respondent.

2] The following two questions are sought to be urged by the  
appellant :-

[1] *Whether in the facts of the case and in law, the Hon'ble ITAT was correct in holding that the entire income earned by the joint venture company is liable to be taxed in the hand of one of the members of the assessee company without appreciating the fact that the contract was awarded to the assessee company and not to the individual member of the assessee company?*

[2] *Whether on the facts of the case and in law, the Hon'ble ITAT was correct in not applying the principle laid down by the Supreme Court in the case of C.H. Achhaiya 218 ITR 239 and Madras High Court in the case of Murugesu Naicker Mansion reported in 244 ITR 461 wherein it was held that, Assessing Officer is not precluded from taxing the right person merely on the ground that a wrong person is taxable?"*

3] The Income Tax Appellate Tribunal, Nagpur [ITAT] has as a matter of fact found that the assessee/ joint venture did not execute the contract work and the said work was done by one of its constituents namely SMS Infrastructure Limited. It is also found that the receipts for the said project work are reflected in the books of account of SMS Infrastructure Limited and in return, said SMS Infrastructure Limited has disclosed that income. The said return was accepted by the Assessing Officer in the assessment made under Section 153A read with Section 143 (3) of the Income Tax Act, 1961. It found that, therefore, some income could not have been taxed again

in the hands of joint venture/assessee.

4] Efforts of Advocate Shri Anand Parchure is to demonstrate that the contract was entered by the joint venture, the joint venture has received the consideration and then parted with part of work in favour of one of its constituents namely SMS Infrastructure Limited. By inviting our attention to change in the legal position in view of the amendment to Section 3 of the Act of 1961 as compared to the Act of 1922, he submits that the assessment, therefore, ought to have been done of the assessee joint venture company for entire sum and thereafter for part of it paid to SMS Infrastructure Limited, of the constituent. He also states that the Assessing Officer cannot refuse to tax the right person because wrong person has been taxed. He submits that otherwise there was no reason for the assessee to show TDS.

5] Advocate Shri N.S.Bhattad relies upon the findings recorded by ITAT in para 7 to urge those findings are concurrent findings of fact and are not perverse.

6] The assessee/ joint venture had filed return of income of Rs. 2,19,990/- and claimed TDS of Rs. 30,14,718/-. When a quarry was raised by the Assessing Officer about the receipts for the project  
<http://www.itatonline.org>

work in respect of TDS certificate or its non mention in profit and loss account of the joint venture/ assessee, it submitted that due to oversight and inadvertently the credit of TDS was shown by it. It requested and sought leave to withdraw the claim of TDS.

7] If the TDS claim was not erroneous, the income could have been shown in the account of joint venture/ assessee. If leave to withdraw was being sought with some ulterior motive, the income would have been reflected in the account of joint venture/ assessee. The consideration either by the Assessing Officer or Appeal authorities does not show this position. On the other hand, the Assessing Officer has worked out income tax at 3% of the contract value at the hands of joint venture/assessee. Such guess work would not have been essential, had the assessee actually received the amounts and those amounts would have been reflected in the books of account. The department would have procured some material to show receipts by assessee towards contract. There is no finding of receipt of any income by joint venture assessee on account of said contract.

8] The finding of fact, therefore, reached by the Commissioner of Income Tax (Appeals)-I, Nagpur [CIT(A)] and sustained by ITAT, cannot be said to be perverse.

9] In the light of this discussion, we find that the above mentioned questions which ignore this finding of fact does not arise for determination and cannot be said to be substantial questions of law arising out of impugned order.

10] The Income Tax Appeal is accordingly rejected. No costs.

JUDGE

JUDGE

Deshmukh