

IN THE INCOME TAX APPELLATE TRIBUNAL, “B” BENCH, KOLKATA

Before : **Shri M. Balaganesh,** **Accountant Member, and**
 Shri S.S.Viswanethra Ravi, **Judicial Member**

ITA No. 245/Kol/2016 A.Y 2011-12

Swarup Kumar Saha
PAN: ALGPS1418K
(Appellant/assessee)

Vs.

J.C.I.T., Range-50, Kolkata

(Respondent/department)

For the Appellant/assessee: Shri K.M Roy, FCA, Id.AR
For the Respondent/department: Shri Rajat Kr. Kureel, JCIT, Id.Sr.DR

Date of Hearing: 28-03-2016

Date of Pronouncement: 30 -03 -2016

ORDER

SHRI M.BALAGANESH, AM

This appeal of the assessee arises out of the order of the Learned CIT(A)-15, Kolkata in Appeal No. 152/CIT(A)-15/14-15/R-50/Kol dated 08/01/2016 against the order of assessment framed for the Asst Year 2011-12 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the ‘Act’).

2. The first issue to be decided in this case is as to whether the Learned AO is justified in making the disallowance u/s 40(a)(ia) of the Act towards commission expenditure amounting to Rs. 55,67,385/- in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee is an individual running a proprietary concern under the name and style “M/s Claim Corner” wherein he has received commission and consultancy charges against land acquisition and requisition amounting to Rs. 3,55,76,533/-. The Learned AO observed that out of this receipt, a sum of Rs. 3,52,57,708/- was received by the assessee from M/s Sri Girija Prasanna

Cotton Mills Ltd. The assessee submitted copy of the agreement dated 10.3.2009 between Sri Girija Prasanna Cotton Mills Ltd and the assessee. The said company was the owner of the land at Moujagarh Shyamnagar P.S.Jagatdal having total area of 10.315 acres. The said land was requisitioned under the West Bengal Land (Requisition & Acquisition) Act 1948 for construction of ESIC Hospital on 30.05.1979 and award was made on 11.3.1998. Aggrieved by this award, the company filed reference petition to Land Acquisition Collector. It was also mentioned that the company appointed Shri Swarup Kumar Saha (assessee herein) , to represent its case in the Land Acquisition Court upto Hon'ble High Court and Supreme Court at the cost of the second party. The company agreed to pay 30% commission of the total enhanced compensation to the assessee. Final compensation awarded to the company was Rs. 11,75,25,964/- and out of this, Rs. 3,52,57,708/- was paid to the assessee as commission on 22.3.2011. After deducting tax at source of Rs. 35,25,771/-, the company paid Rs. 3,17,31,937/- to the assessee which is found credited in the bank account of the assessee. Against this commission receipt, the assessee debited expenses towards commission payments , salary payments and other expenses. The Learned AO observed that the assessee has totally paid commission to 19 parties amounting to Rs. 1,94,05,385/- and out of this, a sum of Rs. 55,67,385/- paid to 13 parties were without deduction of tax at source. The Learned AO doubted the genuineness of the said commission expenditure and disallowed the same u/s 40(a)(ia) of the Act for violation of TDS provisions u/s 194H of the Act.

2.2. On first appeal, before the Learned CIT(A), the assessee submitted that his concern 'Claim Corner' is engaged in providing consultancy services and conducting cases in respect of matters relating to Awards & Compensation specially Land Acquisition Matter on contractual basis since long. In respect to such land acquisition of case Girija Prasanna Cotton Mills Ltd , represented by its Director, who is the land loser and claimant, approached the assessee for consultation of their land acquisition case being No. L.A.II/79(N) of 1978-79 in respect of land at Mouzagarh Shyamnagar,

North 24 Parganas. After consultation, the Director requested and appointed the assessee to conduct the above L.A. case. Thereafter the assessee in respect of conducting the said case appeared and send his representatives to different offices and appointed Advocates for proceeding of the case and also approached the Hon'ble Supreme Court and High Court at Calcutta for necessary directions upon the Government of West Bengal for adjudication of the case and necessary reliefs thereof. Thereafter the Award for compensation was made by the concerned L.A. Collector on 11.3.1998. It was also mentioned that all the expenses were incurred by the assessee. The company being aggrieved by the compensation award , the claimant (i.e Girija Prasanna Cotton Mills Ltd) further requested and contracted the assessee to conduct the said case and as per direction proceeding under section 18 of the Land Acquisition Act was started in the Reference Court being L.R.A. Case No. 27 /1998, which was decreed after six years by the Land Acquisition Court at Barasat by the judgement and decree dated 31.5.2004. Thereafter and execution proceeding being L.R.A Execution Case No. 15/2005 was preferred for attachment of the Collector's P/L Account for payment of the compensation award. During these 6 years the assessee incurred all expenses relating to appointment of Advocates and different people as required for conducting the case and paid the necessary fees, charges, incidental expenses of the said case. Beign further aggrieved by the judgement and decree dated 31.5.2004 of the Land Acquisition Court at Barasat, the State of West Bengal preferred an appeal in the Hon'ble High Court at Calcutta against which a Cross Appeal being FAT No. 382 of 2005 and CAN No. 3009 of 2005 was preferred by the assessee on behalf of his clients Girija Prasanna Cotton Mills Ltd. Later the Hon'ble Calcutta High Court passed an order dated 18.5.2005 wherein it was directed to pay an amount to the claimant by the Government of West Bengal.

2.2.1. The assessee further placed a copy of agreement dated 24.4.2009 between him and M/s Girija Prasanna Cotton Mills Ltd. The operative portion of the agreement as reproduced in the Learned CIT(A) order is as under:-

1. *The First Party hereby appoint the Second Party Dated 13.03.2009 to conduct the reference case before the L.A. Court, the appeal before the Hon 'ble High Court, Calcutta and the Supreme Court of India, the execution proceeding and the pursue the matter before the L.A. Collector.*

2. *That the Second Party will conduct case/cases pending before Reference Court, The Hon 'ble High Court, Calcutta at the cost of Second Party including all expenses for Advocates's fees solietor fees and fees of other agents ad they think fit and if necessary to contest the case before the Hon 'ble Supreme Court of India. Delhi at the cost of the Second party.*

3. *The Second Party will conduct the said L.A. Case No. I.A. II/79(N) of 78-79 along with the L.R.A. No. 27/98(v) & Execution case if necessaries on behalf of the first party for realization of the enhanced compensation from the L.A. Collector. North 24 parganas and will take all necessary steps for the same at their own cost.*

4. *The Second party will bear all expenses to be incurred in connection with the proceedings including the fees of the senior and junior counsels and no part three of can be claimed from the First party except the remuneration charges fixed as will appear hereinafter.*

5. *That the First party shall sign the necessary Vokatatnames and execute other documents to conduct and/or to contest the case before the L.A. judge Barasat, High Court, Calcutta and Supreme Court of India.*

6. *That the First Party will pay 30% (thirty five) of the total enhanced compensation including interest and all others statutory allowances etc. which will be decreed by the L.A. judges, Barasat and/or to be decreed by the appellate Court.*

7. *That, if necessary, the Second party may enter into agreement with other party for taking financial help for conducting this case.*

8. *Neither party have the option to rescind or cancel this agreement and this agreement shall remain valid till the reference case is disposed by the Hon 'ble Supreme Court of India and final payment is made and the 30% (thirty) of the enhanced compensation in terms of the decree of the reference court and/or by appellate court is paid by the First party to second party. "*

The Learned CIT(A) observed that in response to notice issued by the Learned AO u/s 133(6) of the Act, M/s Girija Prasanna Cotton Mills Ltd submitted the copy of the agreement dated 10.3.2009 before the Learned AO. It was further observed that the Sl.No. of the Stamp Paper was 28AA 057957. Whereas the copy of agreement supplied during the appellate proceedings was dated 24.4.2009 and Sl.No. of the Stamp Paper was 27 AA 895798. Thus, the Learned CIT(A) observed that there are two exactly similar worded agreements on record of two different dates. In both the agreements there is no signature of witnesses. The Learned CIT(A) by giving due cognizance to this anomaly concluded that the assessee had not produced any evidences to support the claim of legal proceedings being carried on for years together and assessee's engagement in the same. Accordingly he found that the basis of receipt of Rs. 3.52 crores from M/s Girija Prasanna Cotton Mills Ltd by the assessee becomes doubtful. He also observed that the commission paid by the said company @ 30% of enhanced compensation is too excessive and not heard off as paid in genuine land acquisition cases. The Learned CIT(A) summarized the events and found that the assessee has offered Rs. 3,55,76,533/- as consultancy charges received from M/s Girija Prasanna Cotton Mills Ltd and against it, debited various expenses to the tune of Rs. 3,34,50,908/- to earn this income and offered the profit for taxation to the tune of Rs. 21,25,625/-. He proceeded to examine the claim of expenditure of the assessee in the light of the aforesaid background.

2.2.2. With regard to disallowance u/s 40(a)(ia) of the Act in respect of commission expenditure claimed by the assessee to the tune of Rs. 55,67,385/-, it was observed that these amounts were not actually paid to the 13 parties before the end of the previous year. It was further observed that the assessee was not able to produce any evidences to prove the nature of services rendered by these 13 parties to make them eligible for commission. Even the addresses of these parties together with their PAN details were not provided by the assessee for cross verification by the Learned AO. The Learned CIT(A) observed that no fresh arguments or evidences were filed by the assessee in

this regard before him and accordingly upheld the disallowance made by the Learned AO. Aggrieved, the assessee is in appeal before us on the following ground:-

1) For that on the facts and in the circumstances of the case, CIT(A) has erred in sustaining disallowance of Rs. 55,67,385/- u/s 40(a)(ia).

2.3. The Learned DR vehemently supported the order of the lower authorities and argued that the assessee had not provided any evidence to prove the nature of services rendered by these 13 parties even during appellate proceedings and accordingly prayed for non-interference in the orders of the lower authorities. In response to this, the Learned AR only reiterated the submissions made before the lower authorities.

2.4. We have heard the rival submissions. We find that the disallowance of commission to the tune of Rs. 55,67,385/- has been made only u/s 40(a)(ia) of the Act for non-deduction of tax at source in terms of section 194H of the Act. In the facts and circumstances, we deem it fit and appropriate, to set aside this issue to the file of the Learned AO, to verify as to whether the payees have duly recorded the subject mentioned commission receipt in their returns and if so, in the light of second proviso to section 40(a)(ia) of the Act and in the light of the decision of the **Hon'ble Delhi High Court in the case of CIT vs Ansal Land Mark Township (P) Ltd reported in 377 ITR 635 (Del)**, the assessee herein should not be treated as assessee in default and hence no disallowance u/s 40(a)(ia) of the Act could be invoked in the hands of the payer (assessee herein). The assessee is directed to file the necessary documents and evidences before the Learned AO in this regard. Accordingly, the ground no. 1 raised by the assessee is allowed for statistical purposes.

3. The next ground to be decided in this appeal is as to whether the Learned AO is justified in disallowing a sum of Rs. 1,20,00,000/- towards commission expenditure incurred on three parties in the facts and circumstances of the case.

3.1. The assessee incurred commission expenditure to be paid to the following three parties :-

Mr.Subhash Sahu	40,00,000	Tax deducted Rs 4,00,000
Mr.Subrata Biswas	40,00,000	Tax deducted Rs 4,00,000
Mr.Satyabrata Biswas	40,00,000	Tax deducted Rs 4,00,000

Apart from this, the assessee also incurred commission expenditure to be paid to Mr.Sakti Prasad Chakraborty – Rs. 2,78,000/- (Tax deducted Rs. 27,800/-) ; Mr.Debayan Bera – Rs. 9,00,000/- (Tax deducted Rs. 90,000/-) and Mr.Nirmal Chandra Ojha – Rs. 6,60,000/- (Tax deducted Rs. 66,000/-) , which were accepted as genuine by the Learned AO and allowed as deduction.

With regard to the claim of deduction towards commission expenditure of Rs. 1,20,00,000/- in respect of three parties, the Learned AO made independent verification from their respective income tax returns and found that the same had been duly disclosed as income in the returns of the payees but found that the assessee had not furnished any evidences with regard to nature of services rendered by these 3 parties to make them eligible to receive service charges from assessee. He also found that Mr. Subrata Biswas is brother in law of the assessee and is residing in the same address of the assessee. He also observed that Mr.Satyabrata Biswas is also brother in law of the assessee. He further observed that the tax auditor for all these parties and the assessee are same. He also found that commission income was derived by those 3 parties for the first time in Asst Year 2011-12. The Learned AO also found that this commission was not paid by the assessee before the end of the previous year . Based on these observations, the Learned AO treated the commission expenditure of 3 parties to the tune of Rs. 1,20,00,000/- as bogus and disallowed the same. On first appeal, the Learned CIT(A) observed that the assessee was not able to controvert any of the findings given in the assessment order by the Learned AO. The assessee submitted the following documents before the Learned CIT(A) to justify his claim of deduction :-

- (a) Letter of engagement given by the assessee appointing Mr.Satyabrata Biswas as lawyer on record to handle the land acquisition case of M/s Girija Prasanna Cotton Mills Ltd dated 7.6.2009 duly signed by the assessee.
- (b) Letter of engagement given by the assessee appointing Mr.Subrata Biswas as legal advisor on record to handle the land acquisition case of M/s Girija Prasanna Cotton Mills Ltd dated 7.6.2009 duly signed by the assessee.
- (c) Letter of engagement given by the assessee appointing Mr.Subhas Sahu as legal advisor on record to handle the land acquisition case of M/s Girija Prasanna Cotton Mills Ltd dated 7.6.2009 duly signed by the assessee.

3.1.1. The Learned CIT(A) observed from the bank statements submitted by the assessee that the following payments were made by the assessee :-

Sri Subhas Sahu	7.4.2011	40,00,000
Sri Subrata Biswas	19.4.2011	26,00,000
Sri Satyabrata Biswas	29.3.2011	25,00,000
Sri Satyabrata Biswas	26.3.2011	10,00,000

The Learned CIT(A) observed that the assessee had not taken into account the payments made by him before 31.3.2011 in his books of accounts and instead reflected the entire amount of commission of Rs. 40,00,000/- as payable at the end of the financial year. It was further observed that the assessee claimed to deducted tax at source as per the TDS certificates dated 22.5.2011 filed by the assessee with regard to these three parties , the following sums were deducted as tax at source:-

Name	Amount credited	Tax deducted	Amount payable should be
Sri Subhas Sahu	40,00,000	4,00,000	36,00,000
Sri Subrata Biswas	40,00,000	4,11,415	35,88,585
Sri Satyabrata Biswas	40,00,000	4,00,000	36,00,000

3.1.2. The Learned CIT(A) observed that the assessee had manipulated his books of accounts by showing the wrong figure of Rs 40,00,000/- each as amounts payable in his books of accounts. He accordingly concluded that the assessee had wrongly shown that TDS was deducted but whereas no tax has been deducted on this expenditure. Based on these observations, he found that the books of accounts are not all reliable and liable to be rejected. He further observed from the income tax returns of Asst Years 2011-12 , 2012-13 and 2013-14 of the assessee that the commission was outstanding as below:-

A.Y.	Commission debited	Actually Paid	Commission Outstanding
2011-12	1,94,05,385		1,52,02,500
2012-13	0	1,05,05,000	46,97,500
2013-14	0	0	46,97,500

3.1.3. Hence he observed that despite lapse of two years, the amount of Rs. 46,97,500/- was appearing as outstanding in the books of the assessee which showed that the transactions are not genuine.

3.1.4. The Learned CIT(A) went to investigate the income tax returns of these three parties viz Sri Subhas Sahu , Sri Subrata Biswas and Sri Satyabrata Biswas and found

that they have debited expenses towards salaries and wages and other expenses and had shown meager taxable income in their returns as under for Asst year 2011-12 :-

Name	Commission Credited	Salary & Wages	Taxable Income
Sri Subhas Sahu	40,00,000	32,70,750	4,78,604
Sri Subrata Biswas	40,00,000	34,91,650	4,95,280
Sri Satyabrata Biswas	40,00,000	28,07,150	4,90,035

The Learned AO had already given a finding that even the salaries and wages figure shown as above in the returns of three parties were remaining outstanding at the end of the previous year. The assessee could not controvert this finding by way of supporting evidences before Learned CIT(A). Based on these observations, the Learned CIT(A) concluded that these names have been used by the assessee to debit bogus expenditures and the parties being relatives of the assessee had colluded with him in diverting taxable receipts. The Learned CIT(A) further observed that the assessee had not provided evidences in the form of academic qualifications of these persons to prove as to whether they are actually competent to render the professional legal services as claimed by the assessee. From their returns, it was noticed that they had received professional fees only from the assessee. The Learned CIT(A) accordingly concluded that the genuineness of the expenditure was not proved by the assessee by way of supporting evidences and upheld the action of the Learned AO. Aggrieved, the assessee is in appeal before us on the following ground :-

2) For that Ld'CIT(A) has erred in sustaining disallowance of Rs. Rs.1,20,00,000/- towards commission without errors- examining the pages.

3.2. The Learned AR reiterated the submissions made by him before the lower authorities. He further argued that the Learned AO having accepted the commission payments to Mr.Sakti Prasad Chakraborty – Rs. 2,78,000/- (Tax deducted Rs. 27,800/-

) ; Mr.Debayan Bera – Rs. 9,00,000/- (Tax deducted Rs. 90,000/-) and Mr.Nirmal Chandra Ojha – Rs. 6,60,000/- (Tax deducted Rs. 66,000/-) , as genuine, ought to have allowed the commission expenditure of Rs. 1,20,00,000/- as genuine as the same has been subjected to TDS. In response to this, the Learned DR argued that the fact of deduction of tax at source itself is in dispute as could be seen from the Learned CIT(A) order and argued that the assessee had merely used the names of his relatives to divert his taxable income to their hands and they in turn had shown meager taxable income in their respective returns after claiming bogus expenditure. He vehemently supported the order of the Learned CIT(A) in this regard.

3.3. We have heard the rival submissions. From the detailed order passed by the Learned CIT(A) and examination carried out by him, in the facts and circumstances, the assessee had not proved the genuineness of the transactions of commission expenditure together with the nature of services rendered by those 3 parties except self serving letter of engagement given by him to them. Even no evidence was furnished to prove as to whether such letter of engagement was indeed acknowledged by those three parties. The academic qualifications to prove the competency level of those three parties could also not be proved by the assessee. In these facts and circumstances, we find that the assessee had merely tried to use the names of his relatives and others to divert his taxable receipts and hence we find no infirmity in the order of the Learned CIT(A). Accordingly, the ground no.2 raised by the assessee is dismissed.

4. The last issue to be decided in this appeal is as to whether the Learned AO is justified in disallowing the salary expenditure to the tune of Rs. 1,10,89,550/- in the facts and circumstances of the case.

4.1. The brief facts of this issue is that the assessee was in receipt of commission / consultancy charges to the tune of Rs. 3,55,76,533/- and out of this, amount received

from M/s Girija Prasanna Cotton Mills Ltd on 22.3.2011 was to the tune of Rs. 3,52,57,708/-. Against this commission receipt, the assessee also debited salaries and wages to the tune of Rs. 1,10,89,550/- and claimed the same as deduction. The Learned AO asked for the details of the same together with the fact as to whether any PF and ESI were deducted and remitted on the salaries. The Learned AO observed that no PF and ESI were deducted by the assessee and from the details filed by the assessee, as against salary debit of Rs. 1,10,89,550/- , a sum of Rs. 96,50,000/- was shown as outstanding as on 31.3.2011. The Learned AO also observed that it is highly impractical that salaried employee will not take their salary on a monthly basis. He further observed that address of most of the employees are same as that of the assessee i.e 40C/1, Jessore Road, Barasat, Kol-124. He further observed from the details filed by the assessee that out of 73 employees, payments made to 66 employees are in the nature of labour payments and generally the labour payments are made on a weekly basis , it is very unlikely that these are shown as outstanding liabilities as on 31.3.2011. Based on these observations, he disallowed the entire salaries and wages debited to the tune of Rs. 1,10,89,550/- u/s 37(1) of the Act.

4.2. Before the Learned CIT(A), the assessee came up with a new explanation that the salaries and wages were paid by his wife Smt.Shikha Saha to the tune of Rs. 40,00,000/- and his son Sri Avishek Saha to the tune of Rs. 40,00,000/- on his behalf and claimed that the genuinity of the salary payment is proved beyond doubt. He also placed independent affidavits from his wife and son before the Learned CIT(A). The Learned CIT(A), however, did not give weightage to those affidavits as according to him the same were only self-serving and did not contain date wise details of payments made on behalf of the assessee. Accordingly he rejected those affidavits and did not admit even as an additional evidence. He also held that the contents in the affidavits are false in view of the fact that had the salaries been paid by his wife and son on behalf of the assessee, then the same should have been reflected in the books of accounts of the assessee and salary outstanding as on 31.3.2011 would have come

down by Rs 80,00,000/- as against Rs. 96,50,000/- . Moreover he also found that the list containing the names of 65 persons mentions that the salary is payable as on 31.3.2011. Hence the contents of the affidavits are proved wrong by the entries in the books of the assessee and the details filed by the assessee. It was further observed that these payments were made by cash by his wife and son which are not supported by any evidence.

4.2.1. The Learned CIT(A) further observed from the income tax returns of Asst Years 2011-12 , 2012-13 and 2013-14 of the assessee that the salary & wages was outstanding as below:-

A.Y.	Salary & wages debited	Actually Paid Out of outstanding	Salary & wages outstanding
2011-12	1,10,89,550		96,50,000
2012-13	5,32,410	16,50,000	80,00,000
2013-14	2,06,500	29,50,000	60,00,000

4.2.2. Hence he observed that despite lapse of two years, the amount of Rs. 60,00,000/- was appearing as outstanding in the books of the assessee which showed that the transactions are not genuine.

4.2.3. It was further observed that the balance sheet of the assessee does not show Mrs.Shikha Saha and Sri Avishek Saha as creditors either in Asst Years 2011-12 or 2012-13 or 2013-14.

Based on the aforesaid observations, he held that the assessee was not able to prove that these employees and labourers had actually rendered any services and the expenses claimed in the profit and loss account are bogus and accordingly upheld the action of the Learned AO. Aggrieved, the assessee is in appeal before us on the following ground :-

3) For that Ld'CIT(A) has erred in confirming disallowance of Rs.1,10,89,550/- without examining the veracity of affidavits.

4.3. The Learned AR reiterated the submissions made by him before the lower authorities. He further argued that the Learned AO having accepted that the balance outstanding on account of salary and wages was only Rs. 96,50,000/- as on 31.3.2011, ought to have granted deduction of Rs. 14,39,550/- (11089550-9650000) atleast to the extent of actual payment made. He further argued that the affidavits filed by wife and son of the assessee were never examined by the Learned CITA by admitting the same as additional evidences. In this regard , he relied on the decision of the **Hon'ble Allahabad High Court in the case of L.Sohan Lal Gupta vs CIT reported in (1958) 33 ITR 786 (All)**, wherein it was held that the tribunal had rejected the affidavit on the mere ground that there was no documentary evidence in corroboration in the form of any correspondence or otherwise on this point. Accordingly, it was held that the assessee was entitled to assume that the IT authorities were satisfied with the affidavit as sufficient proof on this point.

4.4. In response to this, the Learned DR argued that the fact of deduction of tax at source itself is in dispute as could be seen from the Learned CIT(A) order and argued that the assessee had merely used the names of his relatives to divert his taxable income to their hands and they in turn had shown meager taxable income in their respective returns after claiming bogus expenditure. He vehemently supported the order of the Learned CIT(A) in this regard.

4.5. We have heard the rival submissions. We find that the Learned AR places heavy reliance on the decision of the Hon'ble Allahabad High Court (supra) in respect of the affidavits and not acting on the same. We find that the Learned CITA had rejected the affidavits filed by the wife and son of the assessee as they were only self serving and did not contain date wise details of payments made on behalf of the assessee. We find

that the said affidavits did not even contain the basic fact as to whether the wife and son of the assessee were assessed to income tax and the details of their PAN together with income tax particulars were absent conspicuously. When a person files an affidavit stating that he / she has incurred Rs. 40,00,000/- on behalf of the assessee, then he / she should have definitely income on his / her own volition so as to advance this much of funds on behalf of the assessee and definitely would be assessee liable to pay income tax. This goes against the test of human probabilities. We also find that the Learned CIT(A) had held that the contents in the affidavits are false, in view of the fact, that had the salaries been paid by his wife and son on behalf of the assessee, then the same should have been reflected in the books of accounts of the assessee and salary outstanding as on 31.3.2011 would have come down by Rs 80,00,000/- as against Rs. 96,50,000/- . Moreover the Learned CITA also found that the list containing the names of 65 persons mentions that the salary is payable as on 31.3.2011. Hence the contents of the affidavits are proved wrong by the entries in the books of the assessee and the details filed by the assessee. We find that the Learned CITA further observed from the income tax returns of Asst Years 2011-12 , 2012-13 and 2013-14 of the assessee that the salary & wages was outstanding as below:-

A.Y.	Salary & wages debited	Actually Paid Out of outstanding	Salary & wages Outstanding
2011-12	1,10,89,550		96,50,000
2012-13	5,32,410	16,50,000	80,00,000
2013-14	2,06,500	29,50,000	60,00,000

The Learned CIT(A) had observed that despite lapse of two years, the amount of Rs. 60,00,000/- was appearing as outstanding in the books of the assessee which showed that the transactions are not genuine. Moreover, it was further observed that the balance sheet of the assessee does not show Mrs.Shikha Saha (wife of assessee) and Sri Avishek Saha (son of assessee) as creditors either in Asst Years 2011-12 or 2012-

13 or 2013-14. We find that the Learned CIT(A) had given logical reasons for rejecting the affidavits of wife and son of the assessee and accordingly did not admit the same as additional evidences. Accordingly, the case law relied upon by the Learned AR on the decision of Hon'ble Allahabad High Court (supra) is squarely distinguishable and not at all applicable to the facts of the instant case. However, taking into account, the nature of activities of the assessee, it is highly improbable and impractical to conclude that the assessee could have carried on all the activities on its own to earn the consultancy charges / commission income. Definitely he requires the assistance of certain employees for carrying out certain secretarial activities and taking in view the totality of the facts and circumstances and more especially in view of the fact that no adverse remarks were made by the Learned AO in respect of Rs. 14,39,550/- (11089550-9650000) being the salaries actually paid before the end of the previous year by the assessee, we deem it fit and appropriate, to meet the ends of justice, to allow the salaries & wages claim to the extent of Rs. 14,39,550/-. We hold that the Learned AR was not able to controvert the findings of the Learned CIT(A) with any documentary evidences except placing reliance on the affidavits of wife and son which has been rejected by logical reasons. Hence on the balance sum of Rs. 96,50,000/- (11089550-1439550), we find no infirmity in the order of the Learned CIT(A). Accordingly, the ground no.3 raised by the assessee is partly allowed.

5. In the result, the appeal of the assessee is partly allowed.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 30 - 03 - 2016

Sd/-
(S.S.Viswanethra Ravi, Judicial Member)

Sd/-
(M. Balaganesh, Accountant Member)

Date 30 -03-2016

Copy of the order forwarded to:-

- 1.. The Appellant/Assessee: Swarup Kumar Saha 40C/1 Jessore Road, Barasat, Kol-126
- 2 The Respondent/Department: The JCIT, Range-50, Uttarapan Complex, Ultadanga, Kol-54.
- 3 /The CIT, 4.The CIT(A)
5. DR, Kolkata Bench
6. Guard file.

True Copy,

By order,

Asstt Registrar

**PRADIP SPS