

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A(SMC)' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member**

**I.T.A. No. 19/KOL/ 2015  
Assessment Year: 2010-2011**

**M/s. Royal Mittal,.....Appellant**  
**18, R.N. Mukherjee Road, 6<sup>th</sup> Floor,**  
**Kolkata-700 001**  
**[PAN: AAAAR 6857 P]**

**-Vs.-**

**Income Tax Officer,.....Respondent**  
**Ward-36(1), Kolkata,**  
**Aayakar Bhawan, Poorva,**  
**110, Shanti Palli, E.M. By-Pass,**  
**Kolkata-700 107**

**Appearances by:**

*Shri S.M. Surana, Advocate, for the assessee*  
*Shri A.K. Singh, JCIT, D.R., for the Department*

Date of concluding the hearing : August 10, 2016  
Date of pronouncing the order : October 21, 2016

**O R D E R**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-XX, Kolkata dated 25.07.2014 and the solitary issue arising out of the same relates to the addition of Rs.16,59,316/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of disallowance of expenses claimed by the assessee on salary.

2. The assessee in the present case is an A.O.P., which is engaged in the business as a Railway Contractor. The return of income for the year under consideration was filed by it on 19.08.2010 declaring total income

of Rs.4,74,190/-. In the Profit & Loss Account filed along with the said return, a sum of Rs.16,59,316/- was debited by the assessee on account of salary expenses. During the course of assessment proceedings, the following submissions were made by the assessee in support of its claim for salary expenses:-

*"In respect of employees employed by us we are enclosing the salary sheet of payments month wise, the statutory deduction were not applicable as per the salary scale given by us further there is no applicability of professional tax in Jharkhand. Regarding appointment letters, Bio data etc since the project is complete the relevant file records and other documents were shifted from the site office to a temporary place and therefore not readily available, we will provide the same in due course. We are also enclosing the details of employees who have continued in our JV in the financial year 2010-11."*

*In respect of your query regarding employment of 17 odd nos. of persons we have employed 15 supervisors because one out of Seventeen is accountant and other a computer operator. The employment of supervisor or other staff are necessary in views of the clause no. 13 of agreement between Royal Mittal JV and M/s Royal Infra Constru wherein it is stipulated that in case progress of the work or quality thereof is not upto the mark then Royal Mittal JV will have right to take over the work in as a where is condition within ten days of notice". With such stipulation in the contract where time is essence of the project if it is not supervised properly and in case the project got delayed then we as a contractor would suffer losses due to cancellation of contractor severe pecuniary penalties, which will affect not only this project but all the future prospects with railways".*

The above submission made by the assessee was not found acceptable by the Assessing Officer and rejecting the same, he proceeded to disallow the salary expenses claimed by the assessee mainly for the following reasons given in the assessment order:-

*"1. The assessee has discussed only non-applicability of professional tax in Jharkhand. But it has escaped to explain the reason(s) for non-deduction of employees' and*

*employer's contribution towards provident fund, ESI, etc. in respect of the salary paid to the above said persons to whom the assessee has claimed to have engaged as employee during the F.Y. 2009-10. Thus it is apparent that the assessee had not engaged any employee for supervision/accounting/computer works during the F.Y. 2009-10 and thus question of any deduction towards provident fund and ESI does not arise.*

*2. On perusal of the monthly salary sheets provided by the assessee it is seen that the salary sheets do not provide any information as to when the salary was disbursed and when the employees enrolled therein received their salary. The salary were shown paid without using 'revenue stamp of Rs.1/-, which is necessary to be used while making payment exceeding Rs.5,000/-. The face of the salary sheets itself reveal that they were manufactured only for submitting them in this office.*

*3. The assessee's claim that their appointment letters, Bio data etc are not readily available since the project is complete and thus the relevant file records and other documents were shifted from the site office to a temporary place is apparently not convincing as to why the relevant records had to be shifted to a temporary place and not to the head office of the assessee being situated at Kolkata. Thus seeking time for submission of the requisitioned documents is nothing but buying time for manufacturing the same for submission before the undersigned.*

*4. The assessee's claim that to keep tab on progress and quality of work the employment of supervisor or other staff were necessary in views of the clause no. 13 of agreement between Royal Mittal JV and M/s Royal Infraconstru Ltd does also not carry much weight in view of the fact that M/s Royal Infraconstru Limited is not only sub-contractor of the project but also a main member (partner) of the assessee AOP having 85% share of profit and thus an idea of engaging any employee only for keeping an eye on effectiveness and competent of its own main partner having 85% share in its profit is not convincing at all.*

*5. The assessee failed to submit any evidence regarding identity of the employees, their education and the*

*evidence regarding the works they carried out for the assessee 'AOP' during the financial year 2009-10.*

*6. The assessee could not produce/submit any evidence which could prove clearly that it had engaged persons as supervisor/computer staff and accountant, and received due services from them. Payments to them were also claimed to have been made in cash only”.*

3. The disallowance made by the Assessing Officer on account of salary was disputed by the assessee in appeal filed before the Id. CIT(Appeals) and during the course of appellate proceedings before him, the following submissions were made by the assessee in support of its claim for deduction on account of salary expenses:-

*"The appeal is directed against the order of the AO passed u/s. 143(3) of the I.T. Act, 1961. The only ground of appeal is the disallowance of the entire salary of Rs. 16,59,316/- paid during the year to the employees.*

*The facts of the case are that the assessee as AOP was constituted by two entities viz. Royal Infra Constro limited and Mittal Bros. Engs and Contractors. This AOP entered into a contract with Railways to carry out certain projects at different sites. The contract was undertaken towards the end of the A.Yr. 2009-10 when pertaining to F.Y. 2008-09. In that year only piling work was undertaken, the bills for advances were made on the Railways and the assessee received certain payment which were accounted for as income. Since however no work on surface level was executed no supervision was required and further there was practically no withdrawal from the bank nor any correspondence, no employee was kept. The contract was entered into on 2.12.2008 and the actual work was started in Jan. 2009. Therefore, neither any salary was paid nor any claim for salary was made in the accounts in assessment year 2009-10. This shows the genuinity of the assessee JV that salary was claimed only in the year when employees were kept and salary was paid.*

*However, full swing work started during the assessment year in question on the surface and it was felt that the supervisory staff both for contract work as well as for accounting work and for computer operations have to be kept so that the work is executed as per*

*contract. The assessee employed some supervisory staff, accountant and computer supervisor and the total claim of the salary was Rs.16,59,316/-. The assessee filed the details of the persons to whom salary was paid but on being asked by the ITO to produce the employees it was informed that the assessee Joint Venture duly executed the contract in Sept. 2011, there was no other fresh contract was taken the JV was dissolved and therefore the employees were terminated. However, the names and addresses of the employees as required by the AO were filed. the AO still doubted the payment of salary and issued summon U/s. 133(6) to the employees to the addresses given. It appears from the assessment order that summons were duly served on 8 employees out of 17 persons employee/employees and in fact 3 of them also confirmed having received the salary. Still the AO for one reason or the other has disallowed the said salary/remuneration to the employees.*

*It is submitted that the assessee duly produced the salary register before the AO as well as the cash book showing the date of payment of salary to the employees. The bank statement of the assessee was also produced to show the cash withdrawals. Before the AO it was also shown that the assessee had to make correspondences, submit bills to the contractee, collect cheques and put the same into bank and make disbursement as may be required for business purposes. The two Joint Venture partners were not human beings to look after the Joint Venture business and therefore the services of employees was a necessity. If it is presumed that no employees were kept then how the business could be conducted, bank account can be operated, supervision can be done is a big question? Not only that the appellant was maintaining two computers which means the computer operator was there. the appellant was also maintaining cash book and ledger which could not have been maintained unless the employees were kept and not only that the returns of income as well as different statement have to be filed before a number of authorities which were statutorily required to carry on the business. Therefore the AO cannot say that there was no employee at all. Moreover the total turnover during the year was Rs.5,42,96,090/- and therefore the payment of salary to the extent of Rs.16,91,570/- on account of payment to Supervisory staff, computer operator, Accountant(all designated as Supervisors) and the peon all being administrative staff was fully proved and the expenses incurred were reasonable considering the turnover, the*

*nature of work as well as the execution of contract work. It is pertinent to note that summons were duly served on 50% of the persons even after expiry of about 2 years which shows that the employees were existing and further 3 of them duly confirmed having received the salary.*

*In view of the above the disallowance of salary made by the AO, which was proved and was quite fair and reasonable may be deleted.*

*It may here be stated that the AO has duly allowed the expenses under the head travelling and conveyance These expenses were Incurred by the same very employees. Hence, the disallowance made by the AO may be deleted."*

4. The above submissions made by the assessee were not found acceptable by the Id. CIT(A). According to him, the entire contract work to be undertaken by the assessee was given to sub-contractors for execution and there was thus no need for the assessee to incur any expenditure on salary. He accordingly confirmed the disallowance made by the Assessing Officer on account of salary expenses. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. The Id. counsel for the assessee submitted that the total works contract to be undertaken by the assessee was sub-contracted on 85%:15% basis and in order to supervise the execution of the said work by the sub-contractors, the assessee had engaged or employed 15 Supervisors during the year under consideration. He submitted in addition to the said Supervisory Staff, one Accountant and one Computer Operator were also employed by the assessee for the purpose of its business. He also submitted that some of the employees in response to the notices issued by the Assessing Officer had accepted the fact of the employment of the assessee and even the Assessing Officer while completing the assessment had allowed the expenditure claimed by the assessee on account of travelling and conveyance of all the persons

employed by the assessee. He submitted that there were eight major contracts of construction of Bridges executed by the assessee in the year under consideration and keeping in view the same, the expenses incurred by the assessee on salary was fully allowable being the expenditure incurred wholly and exclusively for the purpose of its business.

6. The Id. D.R., on the other hand, strongly relied on the orders of the authorities below in support of the Revenue's case on this issue and submitted that the adverse findings specifically recorded by the Assessing Officer may be taken into consideration while deciding the issue involved in this appeal of the assessee.

7. I have considered the rival submissions and also perused the relevant material available on record. It is observed that major contracts of execution of civil work including construction of bridges were received and undertaken by the assessee during the year under consideration. No doubt, the said contracts were got executed by the assessee through sub-contractors on 85% : 15% basis. However, keeping in view that the said contracts were in name of the assessee, it was the responsibility of the assessee to ensure the quality of work as well as completion of work in time. 15% of the total contract receipts were received by the assessee for this purpose and in order to ensure the quality of work as well as the timely completion, certain persons were required to be engaged or employed by the assessee to do the supervision of the work on its behalf. The expenses incurred on payment of salary to such persons thus were incurred by the assessee for the purpose of its business and the same, in my opinion, cannot be entirely disallowed even though the adverse findings recorded by the Assessing Officer in this regard are sufficient to show that the expenses claimed by the assessee on salary were not fully verifiable. Having regard to all these facts and circumstances of this case, I am of the view that it would be fair and reasonable to disallow 25% of the expenses incurred by the assessee on account of salary for the unverifiable element involved therein. Accordingly, I modify the

impugned order of the Id. CIT(Appeals) on this issue and direct the Assessing Officer to restrict the disallowance made on account of salary to 25%.

**8. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open Court on October 21, 2016.

**Sd/-  
(P.M. Jagtap)  
Accountant Member**

**Kolkata, the 21<sup>st</sup> day of October, 2016**

- Copies to :
- (1) **M/s. Royal Mittal,  
18, R.N. Mukherjee Road, 6<sup>th</sup> Floor,  
Kolkata-700 001**
  - (2) **Income Tax Officer, Ward-36(1), Kolkata,  
Aayakar Bhawan, Poorva,  
110, Shanti Palli, E.M. By-Pass,  
Kolkata-700 107**
  - (3) **Commissioner of Income Tax(Appeals)-XX, Kolkata;**
  - (4) **Commissioner of Income Tax- ,**
  - (5) **The Departmental Representative**
  - (6) **Guard File**

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**