

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

**Before Shri P.M. Jagtap, Accountant Member  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 395/KOL/ 2013  
Assessment Year: 2007-2008**

**Assistant Commissioner of Income Tax,.....Appellant  
Circle-30, Kolkata,  
2, Gariahat Road (South),  
Kolkata-700 068**

**-Vs.-**

**M/s. Bells Advertising Syndicates,.....Respondent  
50A, Bibhutibhusan Bandyopadhyay Sarani,  
Ballygunge,  
Kolkata-700 019  
[PAN : AAGFB 9482 R]**

**Appearances by:**

*Shri Saurabh Kumar, JCIT, Sr. D.R., for the Department  
Shri V.N. Purohit, FCA, for the assessee*

Date of concluding the hearing : January 07, 2016  
Date of pronouncing the order : February 10, 2016

**O R D E R**

**Per Shri P.M. Jagtap :-**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-XIV, Kolkata dated 13.12.2012 for the assessment year 2007-08.

2. The relevant facts of the case giving rise to this appeal are as follows:-

The assessee is a partnership firm, which is engaged in the business of letting out of display sites to Indian and multi-national companies for their advertisements. The return of income for the year under consideration was originally filed by it on 01.11.2007 declaring total income of Rs.19,47,697/-. Thereafter a revised return was filed by the assessee on 01.11.2007 declaring total income of Rs.49,30,245/-. During the course of assessment proceedings, the Assessing Officer noticed that

the assessee has made payments against the following expenses without deducting tax at source:-

1.	Transport charges paid to Sri Subhra Kr. Ghosal	Rs. 1,88,790/-
2.	Transport charges paid to Sri Tapan Samanta	Rs. 1,02,900/-
3.	Site rent paid to Entally Shiv Sakti	Rs. 2,02,000/-
4.	Site rent paid to Rukshmini Devi Trust	Rs. 1,20,000/-
5.	Painting & Maintenance paid to Tulika Arts	Rs. 61,289/-
6.	Painting & Maintenance paid to Macro Media	Rs. 2,26,711/-
7.	Painting & Maintenance paid to Asit Dutta	Rs. 1,19,811/-
8.	Painting & Maintenance paid to Prabir Halder	Rs. 2,20,832/-
9.	Painting & Maintenance paid to Samir Halder	Rs. 1,61,372/-
10.	Painting & Maintenance paid to A.B. Enterprise	Rs. 5,95,242/-
11.	Painting & Maintenance paid to K.P. Enterprise	Rs. 5,000/-
12.	Painting & Maintenance paid to Sonata	Rs. 27,370/-
Total		Rs.20,31,317/-

The Assessing Officer, therefore, invoked the provision of section 40(a)(ia) and made disallowance of Rs.20,31,317/- on account of above expenses.

3. The disallowance made by the Assessing Officer under section 40(a)(ia) was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) deleted the said disallowance for the detailed reasons given in paragraph no. 5.1 to 5.14 of his impugned order:-

*"5.1 On going through the Ledger of appellant for the Accounting Year 2006-07 relevant to the Assessment Year 2007-08, the A.O. found that, the appellant has made payment of Rs.2,91,690/- (Rs.1,88,790/- to Sri Subrata Kumar Ghosal and Rs. 1,02,900/- to*

*Sri Tapan Samanta) without deduction of tax at source by invoking the provisions of section 40(a)(ia).*

*The appellant in it written submission argued that the action of the Ld. A.O. in disallowing above sum of Rs.2,91,690/- is bad in law for the following reasons:-*

*" The Ld. A.O. added back the entire amount since he was of the opinion that the payments to the transporters were made pursuant to contract followed by non deduction of tax at source. Your appellant during the course of hearing vehemently clamored that there never existed any contract with the aforesaid two transporters and your appellant was under no obligation to transport its materials through them only. In this connection, your appellant invites your attention to the judgement of the Hon'ble Kolkata Tribunal in the ITA No. 1158/KOL/2008 in the case of ACIT Circle 48 Kolkata Vs: M/s. Stumm India, Howrah wherein in addition to other points, Hon'ble ITAT Kolkata has held that existence of a contract is pre-requisite for application of section 194C of the Income Tax Act 1961 and in the instant case, the Ld. A.O. has failed to produce any evidence, whatsoever, as to the existence of any contract and as such action of the A.O. in invoking the provisions of Section 40(a)(iii) is vitiated by error of law and hence the entire addition of Rs.2,91,690/- is liable to be deleted in full. In this connection, it is pertinent to mention here that the aforesaid judgement of the Hon'ble Kolkata Tribunal, which is suarely applicable here, has been upheld by the Hon'ble Calcutta High Court in ITA No. 127 of 2009.*

*In the instant case of your appellant there was no contract between your appellant and the transporter Subrata Kr. Ghosal and Tapan Samanta. The above said transporters transported goods of the public in general in normal course of business. The aforesaid two persons were not in any case bound under any contract nor your appellant was.*

*TDS is deductible for any payment made by a specified person to a contractor in pursuance of a contract as stipulated U/S 194C of the Income Tax Act. In the instant case there existed no contract between the appellant and the transporters and hence there was no infringement of law by your appellant which could attract disallowance of transport charges.*

*Moreover, 40(a)(ia) provides that "Not Withstanding" anything to the contrary in Section 30 to 38, the following amount shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession" :*

a) *In the case of any assessee*

ia) *any interest commission or brokerage ... amounts payable to a contractor or sub-contractor being resident for carrying out any work on which tax is deductible at source under Chapter XVIIIB on which tax is deductible at source and such tax has not been deducted or after deduction has not been paid.*

*Now the question arises as to whether section 40(a)(ia) can be invoked only to disallow expenditure of the nature referred to therein (interest, commission etc.) which is shown as 'payable' as on the date of the Balance Sheet or it can be invoked also to disallow such expenditures which becomes payable at any time during the relevant previous year and was actually paid within the previous year.*

*In this connection, your appellant places its reliance on the decision of the Hon'ble Special Bench Visakhapatnam Tribunal in the case of Merylyn Shipping and Transports Vs. Addl. CIT, Range I, Visakhapatnam in the Appeal No. 477 (viz) of 2008, judgement delivered on April 9, 2012 wherein it has been held that "Provisions of Section 40(a)(ia) are applicable only to the amounts of expenditure which are payable as on the date 31st March of every year and it cannot be invoked to disallow expenditure which has been actually paid during the previous year, without deduction of TDS" (Photocopy of the judgement of the Special Bench enclosed marked as Annexure - 4). In the said judgement it has been concluded that the ward "payable used in Section 40(a)(ia) of the Income Tax Act, 1961 has to be given its natural meaning and going by strict interpretation, the Hon'ble VP of the Special Bench opined that Section 40(a)(ia) of the Act is applicable only to the expenditure, which is payable as on 31st March of every year and cannot be invoked to disallow the amounts which have already been paid during the previous year without deducting tax at source.*

*In view of the above judgement of the Hon'ble IT AT Special Bench Visakhapatnam, the appellant prays that the addition of Rs.2,91,6901- (Rs. 1,88,790/- + Rs.1,02,900/-) made U/S 40(a)(ia) be deleted in full."*

5.2. *It is seen that the appellant had made payment in respect of the transport charges paid to Sri Subrata Kumar Ghosal of Rs.1,88,790/- and a sum of Rs. 1,02,200/- to Sri. Tapan Samanta. In respect of these payments, the appellant has stated that these payments were not made pursuant any contract. The appellant has argued before the A.O. that there never existed any contract with the said two parties and the appellant was under no obligation to transport its materials through them only. The appellant has relied on the ratio laid down in the case of ACIT - CIRCLE - 48 - Kolkata Vs. M/s Stumm India, Howrah in ITA No.*

1158/KOL/2008, Assessment Year 2005 -06. In the said case it has been held that the existence of contract is prerequisite for application of section 194C. In absence of evidence of existence of any contract, section 194C is not applicable. The aforesaid order has been confirmed by the Hon'ble Calcutta High Court in ITA No. 127 of 2009. It is seen from the assessment order and the submission of the appellant that there did not exist any contract between the appellant and two parties to whom the transport charges were paid. Therefore, respectfully following aforesaid decision of the Hon'ble ITAT, Kolkata, confirmed by jurisdictional High Court, it is held that provision of section 194C was not applicable. The A.O. was not justified in making disallowance of Rs.1,88,790/- and Rs. 1,02,900/-. Accordingly, the A.O. is directed to delete the aforesaid two amounts of disallowance.

Addition of Rs. 2,02,000/- (Rent paid)

5.3. The A.O. on going through the Ledger copy of the appellant for relevant year found that, the appellant had paid rent of Rs.2,02,000/- without deduction of tax at source as provided u/s.40(a)(ia) to Entally Shiva Shakti. The appellant in its written submission argued that out of the said amount of Rs. 2,02,000/-, a sum of Rs. 60,000/- has already been disallowed U/S 40A(3). It was further argued that keeping in view of the aforesaid judgement of Hon'ble Special Bench, Visakhapatnam Tribunal, the aforesaid addition of Rs.2,02,000/- made due to non-deduction of tax be deleted in full.

5.4. I have carefully gone through the submission of the appellant. Further I find that the amounts were paid within the previous year and nothing was payable as on 31.03.2007 and, therefore, no TDS was payable as per the ratio laid down in case of M/s. Merilyn Shipping & Transports Vs ACIT 136 ITD S-23 (S.B.). Accordingly, addition based on wrong perception made by the A.O. is deleted in full. The appellant gets relief of Rs.2,02,000/-.

5.5. Addition of Rs. 1,20,000/- (Rent paid to Rukmini Devi Trust)

The appellant debited a sum of Rs. 1,20,000/- under the head rent paid to Rukmini Devi Trust. The A.O. disallowed the amount since no tax had been deducted at source against such payment. The appellant in its written submission contended that this payment being rent in nature should have been considered by the Ld. A.O. U/S 194 I of the Act and there was no scope to invoke Section 40(a)(ia) since the payment did not exceed the statutory limit of Rs. 1,20,000/-, accordingly it was prayed that such addition of Rs.1,20,000/- is bereft or any legal sanction be deleted in full.

5.6. I have duly considered the submission of the Ld. AR and going through the same, I am of the opinion that the action of the A.O. is disallowing a sum of Rs.1,20,000/- for non-deduction of tax at source is unjustified in law rent since payment did not

*exceed the statutory limit of Rs.1,20,000/- and as such the same is deleted.*

5.7. Addition of Rs.14,17,627/-

*On perusal of the Ledger of the appellant for the Accounting Year 2006-07, relevant to the Assessment Year 2007-08, the A.O. found that the appellant had made following payments without deduction of tax at source as provided U/S 40(a)(ia) of the Act.*

"1) M/s Tulika Arts.....	61,289/-
2) Macro Media.....	2,26,711/-
3) Ashit Dutta.....	1,19,811/-
4) Probhat Halder.....	2,20,832/-
5) Samir Halder.....	1,61,372/-
6) A.B. Enterprise.....	5,95,242/-
7) K.P. Enterprise.....	5,000/-
8) Sonata.....	27,370/-

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14,17,627/-  
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Regarding payment made to Macro Media (Rs.2,26,711/-)

*As the appellant paid a sum of Rs.2,26,711/- to M/s Macro Media without deduction or any tax at source, the A.O. added back the entire amount as per provisions of section 40(a)(ia).*

*In its written submission, the appellant submitted that the said payments were made to M/s Macro Media for supply of printed flex and vinyl, orders for which were given to the customers as is evident from the bills of M/s. Macro Media, which the Ld. A.O. overlooked at the time of assessment proceedings. Moreover, M/s. Macro Media also charged Vat U/S 4(7)(A) of the VAT Act. This is a clear case of payment for supply of materials and not for contract work. When sale of goods is covered by VAT, the same cannot be treated other than sales. Sales Tax (not called VAT) is charged on sale of goods as per VAT Act.*

*The appellant further argued that when the title of the property vests with the purchaser only upon delivery, it suggests that the contract is a contract for sale and not a contract for work. It was also argued that mere fact that the purchaser provides some specification to the manufacturer, it should never be construed to be a circumstances which should lead to the inference that the contract is not a contract for sale.*

*The appellant drew the attention as to the judgement of the various courts wherein it has been held that where (i) property passes to the purchaser upon delivery of the goods and (ii) the raw materials were sourced by the manufacturer and was not*

supplied by the purchaser, the same would not fall within the scope and ambit of Section 194C.

The appellant, also relied on the judgment of the Hon'ble Division Bench of the Bombay High Court in the case of BDA Limited Vs. CIT (2006) 281 ITR 99 wherein it has been held that providing some specification as to the quality and nature to the manufacturer who produces the article or thing would not detract the nature of transaction as a Sale, so long as purchaser had not supplied raw materials to the Seller. Such contract would be a contract for sale.

The appellant also relied on the judgement of the Hon'ble Delhi High Court in the case of ITO Vs. Kuber Khaini (P) Ltd. (2011) 47 SOT 474/ 13. Taxmann.Com 210 (Delhi), wherein it has been held that if a contractor undertakes to supply any article or thing fabricated according to specification given by specified person and property in such article or thing passes to such person only after such article or thing is delivered, the contract will be contract for sale and as such outside the purview of Section 194C (iv). Accordingly, the appellant prayed that such illegal addition of Rs.2,26,711/- be deleted in full.

5.8. I have carefully gone through the submission of the appellant. Further I find that the amounts were paid within the previous year and nothing was payable as on 31.03.2007 and, therefore, no TDS was payable as per the ratio laid down in case of M/s. Marilyn Shipping.& Transports Vs ACIT 136 ITD S-23 (S.B.). Accordingly, addition based on wrong perception made by the A.O. is deleted in full. The appellant gets relief of Rs.2,26,711/-.

5.9. Payment made to M/s. A.B. Enterprise (Rs.5,95,242/-)

On going through the Ledger of the appellant, the A.O. found that the appellant had made payment of Rs.5,95,242/- to M/s. A.B. Enterprise for painting and maintenance since the appellant did not deduct any tax at source as provided U/S 40(a)(ia).The appellant in its written submission contended that in fact such payments were made to M/s. A.B. Enterprise for supply of materials like light set, wire cable of various sizes, Joint Box, Projection Box etc. necessary for installation of Kiosks, installed at various Street Junctions. These items have been supplied by M/s. A.B. Enterprises and M/s. A.B. Enterprises had been charged 4% VAT for supply of such items as is evident from the bills which the L d. A. O. never cared to examine inspite of the fact that the appellant had mentioned this point before the Ld. A.O. at the time of assessment proceedings. As the contract was for supply of materials no tax was liable to be deducted at source U/S 194C read with Section 40(a)(ia). It is common knowledge that when a product is covered under Sales Tax Act, the same cannot be treated otherwise than sale of goods and as such the appellant

prayed for deletion of such unwarranted addition of Rs.5,95,242/-.

5.10. On going through the submission of the appellant as well as supporting evidences which were also produced before the A.O. at the time of assessment proceedings, I am of the view that no tax is liable to be deducted at source on amount paid for purchase of materials. Having considered the submissions of the appellant, I find that issue is squarely covered in the favour of the appellant by the judgement of the special bench in case of *M/s. Merilyn Shipping & Transports Vs ACIT, 136 ITD S-23 (S.B)* as the payments were made within the previous year and no amount was payable as on 31.03.2007. Accordingly the addition of Rs.5,95,242/- is deleted.

5.11. Payment made to K.P. Enterprise (Rs.5,000/-):

This payment of Rs.5,000/- was made to the labour contractor. Since no tax was deducted at source, the A.O. added back the amount of Rs 5,000/- u/s 40(a)(ia). The appellant contended that since the amount of Rs.5,000/- paid to the labour contractor is far below the statutory limit, there was no question of deduction of tax at source u/s 194C of the Income Tax Act. Accordingly, the appellant strongly contended for deletion of such unwarranted addition.

5.12. The action of the A.O. in disallowing the sum of Rs.5,000/- for non-deduction of tax at source for payment made to the labour contractor is wholly unwarranted and devoid of any legal sanction and as such the same is deleted.

5.13. Disallowance of payments of Rs.5,90,674/-

The A.O. disallowed further sum of Rs. 5,90,674/- for payment made to *M/s. Tulika Arts, Ashit Kumar Dutta, Prabir Halder, Sona Electrical and Samir Halder* for non-deduction of tax at source.

In its written submission, the appellant furnished the break-up of such payments as below:-

	Material(CRs.)	Labour(Rs.):	Total(Rs.):
1) Tulika Arts	48,345/-	12,944/-	61,289/-
2) Ashit Kr. Dutta	96,053/-	23,758/-	1,19,811/-
3) Prabir Halder	1,69,412/-	51,420/-	2,20,832/-
4) Sona Electrical	23,040/-	4,330/-	27,330/-
5) Samir Halder	1,31,055/-	30,317/-	1,61,372/-
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	4,67,905/-	1,22,769/-	5,90,674/-
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The appellant pointed out that the above break-up of payments manifest that a sum of Rs.4,67,905/- was for material and the

*balance Rs.1,22,769/- for supply of labour. The appellant contended that major part of the payment was made for supply of material (nearly 70%). As regards, payment made to Sonata Electrical and M/s. Tulika Arts, the appellant claimed that the payments were below the statutory limit and as such no TDS was liable to be deducted at source. The appellant also referred to the CBDT's Circular No. 13 of 2006 dated 13.02.2006 and the ratio as laid down in the case of M/s Stumm India, Howrah (1158/KOL/2008) wherein it has been mentioned that wherein any payment is made for job consisting of material cost and labour, the provision of Section 40(a)(ia) would be applicable on that portion of payment which is attributable to labour charges. The appellant further relied on the decision of the Hon'ble Special bench Vishakapatnam wherein it, has been categorically, held, that the provisions of Section 40(a)(ia) are applicable only to the amounts of expenditure which are payable as on 31st March of every year and it cannot be invoked to disallow expenditure which has actually been paid during the previous year without deduction of TDS. In the instant case, there was no such amount payable as on 31st March 2007 and hence addition of Rs.5,90,674/- be deleted in full.*

*5.14. Considering the facts and circumstances of the case, I am of the view that no tax was deductible at source in respect of purchase of material. Having considered the submissions of the appellant, I find that issue is squarely covered in the favour of the appellant by the judgement of the, Special bench in case of M/s Meryl Shipping & Transports Vs ACIT, 136 ITD S-23 (S.B) as the payments were made within the previous year and no amount was payable as on 31.03.2007. Accordingly the addition of Rs.5,90,674/- is deleted”.*

4. During the course of assessment proceedings, it was also noticed by the Assessing Officer that the assessee has claimed depreciation of Rs.25,84,532/-, which was inclusive of depreciation claimed on Kiosks & Consoles @ 100%. According to the Assessing Officer, the assessee could not fully establish beyond doubt that the life of Kiosks & Consoles was less than one year in order to support and substantiate its claim for depreciation at 100% thereon. He, therefore, treated the said assets as normal items of plant and machinery and restricted depreciation thereon at 15%, which resulted in disallowance of Rs.15,88,374/-.

5. Before the Id. CIT(Appeals), the assessee made the following submissions in support of its claim for depreciation at 100% on Kiosks & Consoles:-

*“Consoles on the other hand are electronic traffic light signal. Your appellant firm has to install traffic light signals in lieu of advertisement right on console roof. Once the console is installed, the appellant has to maintain it. Once installed in public thorough-fare, your appellant loses its right of ownership and those become the property of the Police department, Govt. of West Bengal. Such consoles are exposed to road accidents by the trucks frequently, bus and vehicle drivers. If a console is damaged for any reason, it has to be replaced immediately by the appellant. The consoles are fabricated from tin, plywood, wooden and temporary iron frames. The structure itself is temporary in nature. The life of each structure of console is very limited and hardly remains usable beyond six months. In fact electronic portion of the console are auto manual micro processor based traffic signal (remote terminal device 1 intelligent electronic devices). The main unit of electric portion including the software is installed at different places from where a person contracts its operation. The consoles are at work for all 24 hours of the day.*

*Secondly as stated earlier consoles are auto manual micro processor based traffic signals (copy of the bill marked as Annexure - 9 enclosed) for which the appellant is entitled to 80% depreciation vide 8(C) of Depreciation Schedule (Rule 5 of I.T. Rule 1962) which is reproduced below and since the auto traffic signals works round the clock for 24 hours, the appellant is entitled to triple shift allowance and hence 100% depreciation is to be allowed in consoles”.*

In addition to the above submissions, it was also contented on behalf of the assessee before the Id. CIT(Appeals) that Kiosks are purely temporary structures and, therefore, depreciation @100% is allowable thereon as per Appendix 1 of Income Tax Rules, 1962.

6. The Id. CIT(Appeals) found merit in the assessee's submissions in so far as it was in relation to the depreciation claimed at 100% on Kiosks and allowed the claim of the assessee on this count for the following reasons given in paragraph no. 7.1 of his impugned order:-

*“7.1. I have considered the assessment order and submission of the appellant. Kiosks are purely temporary structures, in nature. The Kiosks are also exposed to the vagaries of weather. Rain*

*water and sunlight affect the temporary wooden structure badly. The appellant has also filed certificate from Chartered Engineer certifying that the life span of the Kiosks are not more than six months. Having considered all the facts and circumstances of the case, I hold that the kiosks are purely temporary erections eligible for 100% depreciation as per I.T. Rules 1962. Hence, the A.O. is directed to allow depreciation @ 100 % on Kiosks as claimed by the appellant”.*

7. As regards the claim of the assessee for depreciation at 100% on Consoles, the Id. CIT(Appeals), however, did not find merit in the said claim and allowed the claim of the assessee for depreciation on Consoles at 30% for the following reasons given in paragraph no. 7.2 of his impugned order:-

*“7.2. Consoles on the other hand are run by auto control device as in the case of display board. As the consoles work round the clock in consonance with display boards, these are eligible for double shift allowance. Since the A.O. has allowed the double shift allowance on display board in subsequent assessment year (i.e. A.Y.-2008-09) leading to 30% depreciation, the A.O. is directed to allow 30% depreciation on consoles also”.*

8. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal on the following grounds:-

*1) On the Facts and in the circumstances of the case, the Ld CIT(A) erred in law as well as on facts in deleting the disallowance of Rs.20,26,317/- (Rs.20,31,317/- minus Rs.5000/-) made U/s.40(a)(ia) by the A.O. for non-deduction of tax at source, by placing reliance on the decision of ITAT, Vishakapattanam in the case of Merilyn Shipping & Transports-Vs- Addl. CIT, Range-1, Vishakapattanam.*

*2) On the facts and in the circumstances of the case the Ld. CIT(A) erred in law as well as on facts in allowing depreciation on Kiosks and Consoles at the rate of 100% and 30 % respectively against A.O's rate of 15% on the said assets which was based on depreciation chart.*

9. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly submitted by the Id. Counsel for the assessee, Ground No. 1 raised by the Revenue in this appeal is virtually infructuous as the Id. CIT(Appeals) vide his impugned order has deleted the disallowance made by the Assessing Officer under

section 40(a)(ia) not only relying on the decision of the Special Bench of ITAT at Vishakhapatnam in the case of Merilyn Shipping & Transports – vs.- Additional CIT, but even on merit and this position clearly evident from the paragraph no. 5.1 to 5.14 of the impugned order of the Id. CIT(Appeals) has not been disputed even by the Id. D.R. Since the Revenue has not challenged the decision of the Id. CIT(Appeals) on this issue on merit, Ground No. 1 raised by it in this appeal has become only academic and the same is accordingly liable to be dismissed.

10. As regards the first issue raised in Ground No. 2 relating to the assessee's claim for depreciation at the rate of 100% on Kiosks, it is observed that Kiosks by their own nature are purely temporary structures as explained on behalf of the assessee before the Id. CIT(Appeals) as well as before us. The assessee has also filed a certificate from Chartered Engineer certifying that the life span of the Kiosks are not more than six months making it eligible for depreciation at 100% as per the relevant Income Tax Rules, 1962. We, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) allowing the claim of the assessee for depreciation at 100% on Kiosks being temporary structures.

11. As regards the other issue raised in Ground No. 2 relating to the assessee's claim for depreciation on Consoles, it is observed that the Id. CIT(Appeals) has upheld the decision of the Assessing Officer on this issue treating the Consoles as ordinary items of plants and machinery eligible for depreciation at normal rate of 15%. He, however, found that the Assessing Officer himself in the subsequent year has allowed double shifting allowance on display boards thereby giving depreciation at 30% and by taking a consistent stand, the Id. CIT(Appeals) directed the Assessing Officer to allow depreciation at 30% on Consoles for the year under consideration. At the time of hearing before us, the Id. D.R. has not been able to raise any material contention to dislodge the basis adopted by the Id. CIT(Appeals) while allowing the double shift allowance to the assessee on Consoles for the year under consideration. We, therefore,

find no justifiable reason to interfere with the impugned order of the Id. CIT(Appeals) on this issue and upholding the same, we dismiss Ground No. 2 of the Revenue's appeal.

**12. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on February 10, 2016.

Sd/-

Sd/-

**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**(P.M. Jagtap)**  
**Accountant Member**

***Kolkata, the 10<sup>th</sup> day of February, 2016***

*Copies to :* (1) ***Assistant Commissioner of Income Tax,  
Circle-30, Kolkata,  
2, Gariahat Road (South),  
Kolkata-700 068***

(2) ***M/s. Bells Advertising Syndicates,  
50A, Bibhutibhusan Bandyopadhyay Sarani,  
Ballygunge,  
Kolkata-700 019***

(3) *Commissioner of Income-tax (Appeals)-XIV, Kolkata*

(4) *Commissioner of Income Tax, Kolkata*

(5) *The Departmental Representative*

(6) *Guard File*

*By order*

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

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