

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.L.P.SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.-758/Del/2014
(ASSESSMENT YEAR-2010-11)**

| | | |
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| DCIT, Circle-4(1), New Delhi (APPELLANT) | vs | Jubilant Capital ltd., 1517, 15 th Floor, Devika Tower, Nehru Place, New Delhi PAN-AAACG4198G (RESPONDENT) |
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|----------------------|---|
| Appellant by | Ms. Rishpal Bedi, Sr.DR |
| Respondent by | Sh.K.M.Gupta & Tarun Kumar, Adv. |

| | |
|------------------------------|-------------------|
| Date of Hearing | 11.01.2016 |
| Date of Pronouncement | 10.02.2016 |

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the Revenue assailing the correctness of the order dated 28.11.2013 of CIT(A)-VIII, New Delhi pertaining to 2010-11 assessment year on the following grounds:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting disallowance of Rs.32,39,609/- made by the A.O. out of the service charges paid to group company?”*
2. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
3. *That the appellant craves leave to add, alter, amend or forgo any ground(s) of appeal raised above at the time of hearing.”*

2. The Ld. AR relying upon the copy of the order dated 14.10.2015 in ITA No.6544/Del/2013 in the case of the assessee itself pertaining to immediately preceding assessment year i.e. 2009-10 submitted that the point at issue is fully covered in favour of the assessee as the consistent finding of the CIT(A) in the

year under consideration which is identical to the finding arrived in the immediately preceding assessment year stands approved by the ITAT. The Sr. DR relies upon the assessment order.

3. We have heard the rival submissions and perused the material available on record. It is seen that the assessee company was incorporated on 04.01.1990 and is engaged in the business investment, finance and business support services.

3.1. The Assessing Officer in the course of the scrutiny assessment took note of the fact that the assessee has paid service charges of Rs.96,74,243/- to M/s Jubilant Security Pvt.Ltd. M/s Jubilant Enpro Pvt. Ltd. is a group company. The assessee was asked to furnish the details of the service charges alongwith the basis of apportionment and justification for allowability vide order sheet entry dated 24.12.2012.

3.2. Not accepting the assessee's justification the AO giving the following reasons rejected it and made an addition by way of a disallowance on account of excess service charges of Rs.32,39,609/- holding as under :-

3.1. "On an analysis of the above submissions, the following conclusions are in order:-

(i) The apportionment of the common expenses is based on the number of rigs and not on the basis of the revenue generated by the rig.

(ii) The assessee has not clarified on the exact nature of the services rendered by M/s Jubilant Enpro Pvt. Ltd. Thus, it is not possible to apportion expenses on a one to one basis with the rigs employed by the assessee.

3.2. In view of the above observations, it is only logical to conclude that the expenses borne by the assessee or any other entity should be in proportion to the revenue generated by the rigs. The apportionment of the service charges on the mere number of rigs leads to the anomalous situation where even a rig with a smaller capacity is made to bear the same expenses as a rig with a greater capacity.

3.3. In order to address the above anomalous situation and to apportion expenses based on the matching principle, the service charges allowable to the assessee are calculated as below:-

Assessment Year 2010-11

| Particulars | Jubilant Enpro Pvt. Ltd. | Jubilant Securities Ltd. | Total |
|--|--------------------------|--------------------------|-----------|
| Number of Rig Months | 83 | 12 | 95 |
| Rigs-Consultancy income | 306608385 | 28122964 | 334731349 |
| Income per rig month | 3694077 | 2343580 | 3523488 |
| | | | |
| Expenditure | 66913583 | 9674253 | 76587836 |
| Expenses per rig month | 806188 | 806188 | 806188 |
| Apportionment of Expenditure as per Rig Months | 66913583 | 9674253 | 76587836 |
| Apportionment of expenses in the ratio of revenue generation | 70153192 | 6434644 | 76587836 |
| DIFFERENCE | (-)32,39,609 | 32,39,609 | |

Thus, the assessee has attributed greater expenses than is attributable on the basis of the revenue generated by the rigs operated by the assessee. In view of the above discussion, excess service charges amounting to Rs.32,39,609/- attributed by the assessee are hereby disallowed and added to the total income of the assessee.

I am satisfied that the assessee filed inaccurate particulars of its income and thereby concealed its income to the tune of Rs.32,39,609/-. Penalty proceedings under section 271(1)(c) are initiated separately for furnishing inaccurate particulars of income.”

(Disallowance of Rs.32,39,609/-)

3.3. The CIT(A) considering the submissions deleted the addition on the following reasoning:-

“I have discussed the matter with the AR very carefully, I perused the assessment order, written submissions, grounds of appeal and statement of facts very carefully. The appellant company is M/s Jubilant Capital Private Limited and its sister concern is Jubilant Enpro Private Limited. Both the companies supply support services to Customer who provide services through rig machines to ONGC, Reliance and other oil producing company, doing their boring work in deep sea. The appellant company had given services in relation 12 months rig supply whereas, its sister concern had given services in relation to 83 months rig supply. The necessary table from the AO’s order in para 3.3 is reproduced as under:

| Sl.No. | Particulars | Jubilant Enpro Private Limited | Jubilant Capital Private Limited | Total |
|---------------|--|---------------------------------------|---|--------------|
| 1. | Number of Rig Months | 83 | 12 | 95 |
| 2. | Rigs Consultancy Income | 306608385 | 28122964 | 334731349 |
| 3. | Income per rig month | 3694077 | 2343580 | 3523488 |
| 4. | Expenditure | 66913583 | 9674253 | 76587836 |
| 5. | Expenses per rig month | 806188 | 806188 | 806188 |
| 6. | Apportionment of Expenditure as per Rig Months | 66913583 | 9674253 | 76587836 |
| 7. | Apportionment of expenses in the ratio of revenue generation | 66913583 | 9674253 | 76587836 |
| 8. | Difference | 70153192 | 6434644 | 76587836 |
| | | -3239609 | 3239609 | 0 |

Both the companies are assessed to income tax by same AO and the tax rate is same on both the companies. By disallowing expenditure from one company and adding the same expenditure in another company, will not increase any revenue income or tax to the government. The difference of opinion between the AR and the AO is that the AR has apportioned the cost on per rig month basis whereas the AO had apportioned the expenses in the ratio on revenue generation. If one rig is used for one month in deep sea, then it is counted as one rig month. If two rigs are used for four months, then it is eight rig months. This calculation is very simple. The AR's arguments is that since the rig months are obtained from the operation record of the company very easily, there is no need of diverting the income from the one company to the other company in same group. The expenditure to company also may differ. Therefore, the AR argued that the return income may kindly be sustained. So in my opinion, the action of the AO in disturbing the expenditure figures, adding one expenditure to the other, will not generate extra revenue for department. Hence, the addition of Rs.32,39,609/- is here by deleted."

4. Aggrieved by which the Revenue is in appeal before the ITAT. We find that relying on the order dated 09.01.2014 of the ITAT in Jubilant Enpro Pvt. Ltd. in ITA No. 1245/Del/2013 in 2009-10 Assessment Year which had been upheld by the Hon'ble Delhi High Court identical issue in the case of the assessee in 2009-10 Assessment Year was concluded on similar facts and circumstances in the following manner:-

2. After hearing the rival contentions, we find that a similar issue of apportionment of expenditure has arisen in the case of aggrieved company M/s Jubilant Security Pvt. Ltd. in ITA no. 1245/Del/2013 for the assessment year 2009-10 and the "D" Bench vide order dated

09.01.2014 has upheld by the Hon'ble Delhi High Court in ITA no. 490/Del/2014 judgment dated 27 November, 2014 whereas para 4 it is held as follows :-

“4. The said finding has been reversed by the Tribunal in the impugned order. The Tribunal, accepting the plea of the assessee, has observed that the services rendered by M/s. Jubilant Enpro Pvt. Ltd. were in the nature of assistance and support services like assistance in relation to obtaining work, submissions of bids and subsequent negotiations, advising current developments, advising regarding Visas and labour permits, advice on importation and exportation of material vessels equipments rigs etc. The aforesaid work and obligation undertaken by M/s. Jubilant Enpro Pvt. Ltd. was dependant upon the number of rigs and this would determine cost apportionment of the support services which were given and provided to the recipients. The services were not dependent upon the size of the rigs or the turnover. The contention of the respondent assessee that the apportionment of cost should not be made on the basis of the turnover, but, on the basis of number rigs was accepted. The aforesaid findings are findings of fact and there is no reason or ground to hold that the said findings are perverse. Noticeably, M/s. Jubilant Enpro Pvt. Ltd. had provided services to other sister concerns of the respondent assessee. The amount and quantum paid by the assessee and other group companies is not in dispute. Any disallowance in the hands of the respondent assessee would necessarily mean increase of expenditure incurred by the sister concern, as there is no dispute about the cost incurred by M/s. Jubilant Enpro Pvt. Ltd. Otherwise also, it would result in reduction or lower income earned by M/s. Jubilant Enpro Pvt. Ltd. The Assessing Officer did not invoke Section 40A(2) of the Act, or hold that the payment made were disproportionate to the market value of the services rendered. Engaging services of M/s. Jubilant Enpro Pvt. Ltd. had helped the assessee and other group companies to reduce costs, as for the common services they did not engage employees or consultants separately. This is clear from the submission made and findings of the Tribunal that there was commonality in the nature of services and therefore, the respondent assessee and to her sister concerns had established and taken services from one cost centre i.e. M/s. Jubilant Enpro Pvt. Ltd. The respondent company and others had agreed to pay for the services by way of reimbursement of expenses. In view of the aforesaid position, we do not think, in the present appeals, the first issues requires admission.”

3. Thus, the issue as to whether the apportionment of expenditure should be made between the two companies on the basis of per rig month basis or in the ratio of revenue generation, is not more res integra.”

4.1. Accordingly where facts, circumstances and position of law remains the same respectfully following the precedence the departmental ground is dismissed.

5. In the result, the appeal of the Revenue is dismissed.

The order is pronounced in the open court on 10 of February, 2016.

Sd/-

Sd/-

**(L.P.SAHU)
ACCOUNTANT MEMBER**

**(DIVA SINGH)
JUDICIAL MEMBER**

Dated: 10/02/2016

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI