

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.217/Del./2016  
(ASSESSMENT YEAR : 2008-09)**

M/s. DCM Limited, vs. Addl. CIT,  
6<sup>TH</sup> Floor, Vikrant Tower, Range 7,  
4, Rajendra Place, New Delhi.  
New Delhi – 110 008.

**(PAN : AAACD1012E)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V.P. Gupta, Advocate  
REVENUE BY : Shri Atiq Ahmad, Senior DR

Date of Hearing : 20.09.2017  
Date of Order : 28.09.2017

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

The appellant, M/s. DCM Limited (hereinafter referred to as 'the assessee company'), by filing the present appeal, sought to set aside the impugned order dated 26.11.2015 passed by the Commissioner of Income-tax-3, New Delhi qua the assessment year 2008-09 on the grounds inter alia that :-

*“1 That the CIT(A) erred in disallowing alternate claim made by the appellant on actual payment basis in respect of following items of expenses incurred in relation to real estate*

*project without appreciating that claim had been made by the appellant for the reason that department has not accepted allowability of expenses on accrual basis and appeals in respect thereof are pending for adjudication before Delhi High Court.*

*a) Expenditure in respect of approvals and permissions- Rs.57,21,000/-*

*b) Expenditure in respect of removal of squatters - 1,64,00,000/-*

*2 That the CIT(A) erred in disallowing an amount of Rs. 68904/- in respect of bonus & Yarn cess actually paid during the year out of unpaid amount of earlier years which had been disallowed u/s 43B of the I.T. Act.*

*3 That the CIT(A) erred in upholding the initiation of penalty proceedings u/s 271 (1)( c) of the Act in the facts and circumstances of the appellant.*

*4 That the order passed by the Assessing Officer and upheld by CIT(A) is bad in law.*

*5 That the Appellant Company craves leave to alter, amend, vary and/or add any of the grounds of appeal at any time herein after.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee company is into the business of manufacturing & trading of cotton yarn, IT infrastructure services and development of real estate project. During the assessment proceedings, revised statement of computation of assessable income has been filed after taking into account admissible,

inadmissible, deductions etc., capital gain on compensation of Rs.1,62,84,096/- and interest of Rs.2,00,402/- on income-tax refund computed the total net loss at Rs.12,93,60,646/-. AO noticed from the statement of computation of assessable revised income that the assessee has claimed deduction of Rs.36,49,388/- on account of tax duty paid during the year out of the unpaid tax/duty in the earlier year u/s 43B of the Income-tax Act, 1961 (for short 'the Act'). Assessee was called upon to file details of the deductions along with supporting documents/proof of payment which was filed vide letter dated 16.12.2010 qua the payment of Rs.35,80,484/- but failed to substantiate the balance amount of Rs.68,904/- which has been added by the AO to the income of the assessee. AO assessed the total income of the assessee at loss of Rs.8,18,08,220/-.

3. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the assessee company has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1, 1(a) & 1(b)**

5. At the very outset, ld. AR for the assessee fairly conceded that he does not want to press grounds no.1, 1(a) & 1(b) having been already decided against the assessee by the Tribunal in Assessment Years 2003-04 and 2010-11 in ITA No.1237/Del/2014 & ITA No.1511/Del/2014 vide order dated 29.07.2016. So, grounds no.1, 1(a) & 1(b) are determined against the assessee.

**GROUND NO.2**

6. AO disallowed the amount of Rs.68,904/- u/s 43B of the Act on the ground that the assessee has failed to substantiate the same by filing details along with supporting documents/proof of payment.

7. Ld. AR for the assessee challenging the impugned order contended that since the total amount of Rs.36,49,388/- inclusive of the amount in question of Rs.68,904/- has been duly verified and certified in the tax audit report, the same is liable to be allowed. However, on the other hand, ld. DR for the Revenue has relied upon the order passed by the AO as well as ld. CIT (A).

8. When undisputedly the assessee has substantiated the payment of Rs.35,80,484/- out of the total claim of Rs.36,49,388/-

by filing details along with documents in the form of challans, disallowed the amount of Rs.68,904/- cannot be allowed merely on the basis of tax audit report. Even assessee has not come up before the Tribunal with supporting documents for proof of balance payment of Rs.68,904/-. So, we are of the considered view that AO as well as Id. CIT (A) have rightly disallowed deduction of Rs.68,904/-.

**GROUND NO.3**

9. Ground No.3 is premature.

**GROUNDS NO.4 & 5**

10. Grounds No.4 & 5 are general in nature, hence do not require any adjudication.

11. In view of what has been discussed above, we find no illegality or perversity in the impugned order passed by the Id. CIT (A), hence present appeal filed by the assessee is hereby dismissed.

**Order pronounced in open court on this 28<sup>th</sup> day of September, 2017.**

**Sd/-  
(N.K. SAINI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 28<sup>th</sup> day of September, 2017  
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.