

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ A ” BENCH, AHMEDABAD**

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And**  
**SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

- i. आयकर अपील सं./I.T.A. No.1882/Ahd/2013 for A.Y.2009-10  
ii. आयकर अपील सं./I.T.A. No.1492/Ahd/2013 for A.Y.2009-10

(i) DCIT (OSD) Circle-8, Ahmedabad.	<b>बनाम/ Vs.</b>	M/s. Transwind Infrastructure Pvt. Ltd. 92, New York Tower – A, Sarkhej Gandhinagar Highway, Thaltej, Ahmedabad
(ii) M/s. Transwind Infrastructure Pvt. Ltd. 92, New York Tower – A, Sarkhej Gandhinagar Highway, Thaltej, Ahmedabad		The Income Tax Officer Ward – 8(1), Ahmedabad.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCT 3026 D</b>		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>

अपीलार्थी ओर से/ Appellant by :	Shri J. P. Parikh, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Mudit Nagpal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	12/06/2017
घोषणा की तारीख/Date of Pronouncement	23/08/2017

**आदेश / ORDER**

**PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :**

These are two cross appeals by the department and the assessee  
against the order of the Commissioner of Income Tax(Appeals)-XIV,

Ahmedabad, dated 30/04/2013, in the matter of assessment under section 143(3) of the Income tax Act, 1961 ('the Act hereinafter'), for the Assessment Year (AY) 2009-10 identical, on the following Grounds:

- i. *The learned Commissioner of Income Tax(Appeals)-XIV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.93,39,467/- made on account of unpaid liability towards labourers and ought to have granted telescoping benefit in respect of G.P. reduction.*
- ii. *On the facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeals)-XIV, Ahmedabad ought to have upheld the order of the Assessing Office.*

2. The relevant facts as culled out from the materials on record are as under:-

During the course of assessment proceedings, in response to the various hearing and notices, the assessee could furnish the part details related to direct expenses and administrative expenses claimed in the P&L Account. During the course of hearing, the assessee was asked to produce all the supporting details and documents along with evidences for verification. On verification of the some ledger accounts, it is observed that the assessee has made cash payments to the contractors, in this regard, the assessee was asked to furnish the cash memos and vouchers to verify the genuineness of the expenses claimed. It is not verified from the ledger how much work has been done by the sub contractors against the work assigned to them. No details relevant to work completing reports have been furnished, for which payments were given to said persons. It is not established by the company that the payments were all genuine and related to business. No all bills were

furnished. The assessee was given many opportunities to submit the required details.

2.2 In response to show-cause notice, assessee has furnished the reply. The relevant Para of the said reply is reproduced is as under:

*“1..... We are in receipt of your undated notice asking us to show cause as to why huge additions should not made to the returned income in respect of the issues pointed out at Paras(a) to (d) of the notice. We appear before your Honor on this date as specified in the show cause notice and submit the following in this regard.*

*2. At the outset, we strongly object to your proposal of making huge additions on various grounds for the reasons specified in the notice, which are not only against the express provisions of law but also against the facts very much available on record. It also appears that while proposing huge additions on various ground, your Honor has not appreciated the specific provisions of law as interpreted by various Courts and Tribunals. It also appears that your Honor has completely overlooked the facts of – (1). Books of account and other documents having already been produced before your Honor from time to time in the past; (2). About the expenses having been incurred after complying with the specific requirements of law like deduction of tax at source; (3). About the payment of these expenses having been made by account payee bank instruments, whenever the same exceeded the specified monetary limits; (4). About the expenses incurred having been directly related to the business activities carried out by the company and (5). About the company having carried out its business activities primarily for Government Departments, PSUs and other Corporates. IT will thus be appreciated by your Honor that the company could not have earned the gross revenue as reflected in the Profit and Loss Account without incurring the expenses which have correspondingly been debited and claimed as deduction as such. The proposal of making huge additions is thus strongly objected to and we request your Honor kindly to pass an order without making any high pitched additions, as proposed, which may only result in avoidable litigation over several years to follow. With this background, we deal with the individual issues in the succeeding paragraphs.*

**3. Regarding the proposal of your Honor to disallow the entire expenditure of Rs. 4,54,60,544/- debited to the Profit and Loss Account under the head "work Execution Expenses":**

3.1 We have to state that the amounts debited under this group primarily consist of the expenses incurred in relation to the large work force deployed at different sites of Gujarat and Maharashtra States. These also include the sub-contract payments made to certain other parties. A chart containing party-wise details of such expenses incurred, of the corresponding tax deducted at source etc., is enclosed here with for the purpose. This can also be cross verified from the quarterly returns of TDS furnished by the company, copies of which have already been filed with your Honor earlier. The interlinked network of computers across the Country that is available with the department now will also facilitate your Honor to trace the recipients of these payments, so as to justify their genuineness.

3.2 Without prejudice to what has been mentioned above, specific attention of your Honor is further drawn to the fact that the company had undertaken labour intensive job work assignments for and on behalf of certain Government/Public Sector Undertakings like Mhanagar Gas Limited, Bharat Sanchar Nigam Limited, Videsh Sanchar Nigam Limited, Airport Authority of India Limited, Western Railways and Rail Tail etc. or other corporate entities like M.V. Omni Private Limited. Copy of the contracts entered into with each of these parties have already been filed with your Honor earlier and it is clearly the undisputed fact that the contractual services have been rendered to each of these entities, which enabled the company to earn substantial revenue there from. It will also be appreciated by your Honor that when the company has undoubtedly and undisputedly rendered the contractual services to all these entities, which are mainly Government Departments or Public Sector Undertakings, these services could not have been rendered without incurring corresponding expense. It will also be appreciated by your Honor that looking to the types of contracts undertaken, the major portion of the corresponding expenditure could not have been anything other than labor intensive expenses either incurred by retaining the services of the laborers directly or on contract / sub-contract basis. The proposal of your Honor of making complete disallowance of the entire expenditure is thus clearly against this very logic and we request your Honor not to draw any adverse inference in this regard.

3.3 Without prejudice to what has been mentioned above, it is further submitted that since major portion of this expenditure is incurred in relation to various sub-contractors and laborers who constitute unorganized sector in the labor force and since the incurrence and subsequent payment of this expenditure is being looked after by various staff members of the company posted in different mofussil areas in the states of Gujarat and Maharashtra, it was very difficult for the company to call for all the relevant documents and papers in relation to F.Y.2008-09 which have been sent back to the respective de-centralized offices. It is in this backdrop that the company has called for the sample copies of the documentary evidences which are being produced herewith for your verification. While doing this, we also request your Honor to consider the genuineness of the expenses by resorting to the indirect ways like compliance of the provisions of deduction of tax at source, payment through crossed account payee banking instruments, the reasonability of the expenditure as compared to the corresponding revenue generated etc. It will be appreciated that when there is a proposal of making huge addition of Rs.4,54,60.544/-, the same simply cannot be made without granting proper opportunity of being heard and without appreciating the facts of the case in its totality.

3.4 Reliance at this stage is also placed on the judgment of Hon'ble High Court of Rajasthan in the case of CIT vs Gotan Lime Khanij Udhyog, as reported at (2002) 256 ITR 243, wherein the Hon'ble High Court has clearly held that even if the books of account are rejected under section 145(3) of the Act, the consequential assessment order being passed continues to remain that of under section 143(3) and the AO cannot be empowered to assume that he is passing an order under section 144 of the Act. The Hon'ble High Court has thus appreciated the stand of the Tribunal that even if rejection of books of account is justified, there may be a case where there may not be any necessity of making addition to the returned income. It will be appreciated by your Honor that the case of the company is placed on even a stronger footing in view of the substantial involvement of either Government Departments or Public Sector Undertakings on one side and there rightly being no finding, necessity or proposal about the rejection of books of account.

3.5 In view of what has been mentioned above, we request your Honor not to draw any adverse inference with regard to what has been mentioned at Para-(a) of your show cause notice and to pass the assessment order accepting the returned income. Alternatively, one

*more hearing in the case may please be granted as specified elsewhere in this submission.*

**4. Regarding the proposed disallowance of rent paid amounting to Rs.3,61,130/-:**

*4.1 Vide Para-(c) of the notice, your Honor has asked the company to show cause as to why the rent expenditure to the extent of Rs.3,61,130/- should not be disallowed as the same is paid to various persons in cash. We specifically draw your kind attention to the detailed written submission along with party-wise information about the rent paid which has already been filed earlier. It can be appreciated from the same that the entire expenditure incurred under this head is not only cross verifiable from the persons concerned, but also incurred for the business of the company, thus clearly deductible as expenditure while computing the total income from the head "Income from Business of Profession". It may also be appreciated from the chart already furnished that whenever rent is paid in cash, the same has always remained below the limit as specified in section 40A(3) of the Act, thus not requiring any adverse inference to be drawn in this regard. It may also be appreciated by your Honor that whenever the payment of the rent has exceeded the threshold limit as specified under section 1944 of the Act, the corresponding tax has always been deducted and paid to the credit of Central Government. No expenditure or even a part thereof can thus be disallowed merely on the plea that the expenses are paid in cash. This holds good for the specific reasons that full details about the landlord etc. are very much available on record and the entire expenditure has clearly been incurred for the purpose of business”*

But reply was not tenable in the eyes of the AO and amount of Rs.93,39,467/- was added to the assessee's income.

3. Against the said order, assessee preferred first statutory appeal before the learned CIT(A), who partly allowed the appeal of the assessee.

4. Now department is before us.

5. We have gone through the relevant record and impugned order. Undoubtedly, no details have been furnished, for which payments were

given to said persons. It not established by the company that the payments were all genuine and related to business only.

5.2 On verification of the balance sheet and P&L Account furnished by the assessee the following details have been noted.

F.Y.	2008-09	2007-08
Sales	Rs.6,50,24,797	Rs.5,93,25,045
Gross Profit	Rs. 97,60,920	Rs.1,02,72,439
Net Profit	Rs. 28,35,916	Rs. 31,24,801
% Percentage	4.36%	5.27%

As per Profit and Loss account in earlier order, assessee's Gross Profit was 4.36% in 2008-09 and 5.27% in Asst. Year 2007-08. In the interest of the justice, we hold that Gross Profit for the year under consideration is 5.5% and it is pertinent to mention here that learned AR has also agreed for the same.

6. In the result, appeal filed by the department in ITA No.1882/Ahd/2013 for Asst. Year 2009-10 is partly allowed.

7. Now we take up the assessee's appeal in ITA No.1492/Ahd/2013 for Asst. Year 2009-10, on the following Grounds:

*The Hon'ble CIT(A), Ahmedabad-XIV, Ahmedabad, has erred in law and on facts in –*

- i. *Confirming the action of the AO in rejecting the books of account under section 145(3) of the Act.*

- 8 -

iii. *Confirming the action of the AO in making addition of Rs.23,66,067/- by estimating the income @8% of the total operational income.*

8. Facts of the case are identical in this case to the ITA No.1882/Ahd/2013 for Asst. Year 2009-10. So we do not want to repeat it here.

9. In connection with the department's appeal Gross Profit was made 5.5% and same was agreed by the AR. We do not find any merit in the appeal filed by the assessee. Therefore, assessee's appeal in ITA No.1492/Ahd/2013 for Asst. Year 2009-10 is dismissed.

10. In the result, department's appeal in ITA No.1882/Ahd/2013 for Asst. Year 2009-10 is partly allowed and Assessee's appeal in ITA No.1492/Ahd/2013 for Asst. Year 2009-10 is dismissed.

<b>This Order pronounced in Open Court on</b>	<b>23/08/2017</b>
---	-------------------

Sd/-  
एन.के. बिल्लैया  
(लेखा सदस्य)  
( N.K. BILLAIYA )  
**ACCOUNTANT MEMBER**

Sd/-  
महावीर प्रसाद  
(न्यायिक सदस्य)  
( MAHAVIR PRASAD )  
**JUDICIAL MEMBER**

Ahmedabad; Dated /08/2017

*Priti Yadav, Sr. PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XIV, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad