In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi

Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 3851/Del./2014
Assessment Year: 2009-10

A.C.I.T., Circle 24(1), New Delhi. **(Appellant)**	vs.	Geoconsult-Rites NRT 1JV, D-1/35, Second Floor, Vasant Vihar, New Delhi. (PAN- AAAAG5998C) **(Respondent)**

Appellant by	Sh. Arun Kumar Yadav, Sr. DR
Respondent by	Sh. S.K. Agarwal, C.A. & Sh. Sanchit Bansal, C.A.

Date of Hearing	14.09.2017
Date of Pronouncement	05.10.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order dated 29.04.2014 of ld. CIT(A)-XXIII, New Delhi for the assessment year 2009-10 on the following grounds :

> *"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,65,14,237/- made on account of non-deduction of TDS u/s. 40(a)(ia) of the I.T. Act.*
>
> *2. On the facts and in the circumstances of the case, the impugned order passed by the Ld. CIT(A) is perverse both in facts and law."*

2. The brief facts of the case are that the assessee filed its return of income on 29.09.2009 declaring an income of Rs.57,76,140/- which was processed u/s. 143(1). The case was selected for scrutiny and statutory notices were issued. On perusal of profit and loss account of the assessee, it was noticed that the assessee had debited a sum of Rs.2,65,14,558/- under the head Personnel Cost. As per details filed in schedule 'F' , it was noticed that out of above expenses, the assessee had debited the amounts to two parties, which were also the Partners of the assessee firm, i.e., Rs.1,43,01,910/- to Man-power expenses GC and Rs. 1,22,12,327/- to Man Power Expenses Rites. The AO, therefore, observed that the above amounts have been paid to both the parties towards supply of manpower, but did not deduct tax at source as per provisions of section 194C of the Act. The assessee filed detailed reply before the AO, but the Assessing Officer rejected the same on the reasoning that the assessee made the payment under sub-contract to two parties for supply of manpower and thus, was liable to deduct tax at source as per provisions of section 194C(1); that the payment was not made directly by the assessee firm to the labour; that in the case of sub-contract, the element of profit must exist and therefore, the reply of assessee that there was no profit element in the reimbursement of payment, could be verified on scrutiny of GC and Rites' cases; and that therefore, the assessee was responsible to deduct the tax at

source, which he failed to do. On the strength of these findings, the AO disallowed the expenses of Rs.2,65,14,237/- as per provisions of section 40(a)(ia) of the Act. The assessee carried the matter in appeal before the ld. CIT(A), filed a detailed submissions and additional evidences in the form of (a) copy of letter of acceptance dated 17.08.2007 and copy of contract agreement dated 22.04.2008 entered with Nortern Railways Administration, (b) details of employees assigned and cost incurred by GEoConsult ZT GmbH and (c) details of employees assigned and cost incurred by RITES Limited. The ld. CIT(A) called for remand report from the AO and after considering the detailed reply of assessee, remand report of AO, relevant provisions of law, evidences adduced by assessee and various decisions on the issue, the ld. CIT(A) deleted the addition vide impugned order observing as under :

> *4.4 I have carefully considered the submissions made by the appellant and the arguments put forth by the Id. AR. I have also carefully considered the assessment order, as well as the Remand Report submitted by the AO. I find that both the assessment order and the Remand Report of the AO are based on presumptions, Suppositions, conjectures and surmises. The AO has presumed that there was a subcontract between the appellant-AOP and the two JV partners, namely, M/s. GeoConsult and M/s. RITES. The AO has also presumed that had there been no such sub-contract between the appellant-AOP and the two JV partners, the payment for labour would have been done by the appellant-AOP directly to the labour, rather than routing it through M/s. GeoConsult and M/s. RITES. The AO has further presumed that since there has to be a sub-contract between the appellant-AOP and the two JV partners for supply of labour, there also has to be an element of profit embedded in the transaction, which can only be found out by scrutinizing the returns of the two JV partners.* ***Since, I find that the very basis of the arguments put forth by the AO in his Remand Report, is based on presumptions and suppositions, his suggestion that there was no reason to admit the additional evidence has no merit. The additional evidences are hereby admitted.***

4.5 First and foremost, the appellant is not a "firm" but an "AOP". M/s. GC and M/s. RITES entered into a "Joint Venture Agreement" (JVA) on 18.12.2007 for the formation of an AOP under the name GeoConsult-RITES NRT-1, specifying the mutual rights and obligations of both the parties. A copy of the said JVA is placed on record at page no. 34/PB-I. The JV entered into a contract with Northern Railway and the work to be executed under this contract included exploratory drilling, geophysical survey and testing, design engineering and supervision of construction of the railway tunnel in Jammu and Kashmir. Since, the appellant JV did not have any employees of its own, both-M/s. GC and M/s. RITES were required to assign qualified and experienced personnel having requisite expertise and knowledge to undertake the work assigned to the appellant-AOP as per contract by Northern Railway. This was in accordance with Clause 9.1 of the JVA and the manpower and other costs paid by each member of the JV-AOP were to be reimbursed by the appellant in terms of Schedule-II of the JVA. During the relevant A.Y. 2009-10, the appellant-AOP reimbursed expenditure aggregating to Rs.2,65,14,237/- paid by the JV members for the purpose of execution of the project. The details of the employees assigned and cost incurred by M/s. GeoConsult has been placed on record as additional evidence at page no. 13-22/PB-II. Similarly, details of employees assigned and cost incurred by M/s. RITES Ltd. is placed on record as additional evidence at page no. 23-116/PB-II. ***In the light of the above facts, it is abundantly clear that the money paid by the appellant-AOP to its JV members was actually a reimbursement of expenses with no element of profit therein. It was not a payment made under any sub-contract, which appears to be a mere figment of imagination of the AO.*** *The appellant has relied upon the order of Hon'ble High Court of Himachal Pradesh in the case of CIT Vs. Ambuja Darla Kashlog Mangu Transport Co-op Society and Solan Distt Truck Operators Transport Co-Op Society, Bilaspur District Truck Operators Transport Coop Society Ltd. and Sirmour Truck Operators Union (2010) (227 CTR 299). The Id. AR has also relied upon the decision of Hon'ble Punjab and Haryana High Court in the case of CIT Vs. Truck Operators Union, 339 ITR 532 and also the decision of Hon'ble ITAT, Hyderabad in the case of M/s. Hindustan Ratna JV Vs. ITO in ITA No. 372/Hyd/2013 dt. 18.12.2013.* ***I have considered the above judgments cited by the Id. AR in favour of his client and I feel that the case of the appellant is clearly covered by the above mentioned judgments. Moreover, Hon'ble Supreme Court of India has held in the case of GE India Technology Centre Pvt. Ltd. Vs. CIT (2010)*** *327* ***ITR 446 (SC) that tax is deductable at source only in respect of "Income" or any other sum which comprises "An element of income". Obviously, an expenditure incurred by the payee cannot partake the nature of income or profit in its hands and therefore, no tax is deductable at source in respect of payment or reimbursement of such an expenditure by the payer.*** *In the light of the facts and circumstances of the case and the discussion narrated above, it is held*

that the payments made by the appellant AOP to its JV partners were reimbursement of expenses which were not hit by the provisions of Section 40(a)(ia) of the Act. Therefore, the disallowances made by the AO of Rs.2,65,14,237/- are hereby deleted."

3. The learned DR, relying on the assessment order, submitted that the deletion of addition is not justified as the assessee was legally obliged to deduct tax at source on the payments made to sub-contractors as per provisions of section 194C of the Act and the ld. CIT(A) was not justified in treating the impugned payments as reimbursement, observing that there was no profit element in the transactions. The ld. CIT(A) has ignored the finding of the AO that in case of sub-contract, there remains profit elements, which can be ascertained on scrutiny of the cases of the two parties to whom the impugned payment was made. He, therefore, urged for setting aside the impugned order and to restore the assessment order.

4. The ld. Authorized representative of the assessee, on the other hand, relied on the impugned order and submitted that the impugned payment was clearly in the nature of re-imbursement to the Joint Venture Members for the cost incurred by them in the project and there is no sub-contractor agreement in existence nor is there any evidence with the department to suppose any profit element in this payment. He, therefore, urged that the ld. CIT(A) was

quite justified in holding that TDS provisions are not applicable in this payments relying on several decisions relied before him.

5. Having considered the rival submissions in the light of attending facts and circumstances of the case and the evidence on record, we find no justification to dislodge the findings reached by the ld. CIT(A) in the impugned order. It is not in dispute that both the parties to whom the impugned payment was made by assessee-AOP were the Joint Venture Members of the assessee-AOP. It is notable that as per clause 9.1 of the Joint Venture Agreement entered between the assessee-AOP and the Northern Railway, both GC and RITES have incurred the costs on manpower in the project of Northern Railway, which was reimbursable to them as per above contract entered with the main contractee to execute the project. The ld. CIT(A) has properly examined the details of employees assigned and cost incurred by both the Joint-Venture Members, i.e., GC and RITES and has clearly found that the amount actually incurred by them towards the manpower cost, was reimbursed to them by the assessee-AOP. Therefore, the ld. CIT(A) has rightly observed that it was not any payment made under any sub-contract, as imagined by the AO without any evidence on record. There is no good reason or evidence on record to hold that the expenditure incurred by the Assessee-

AOP in the present fact situation would partake the character of income or profit, liable to tax deduction at source by the payer. For this proposition, the ld. CIT(A) has relied on several decisions in the cases of CIT vs. Ambuja Darla Kashlog Mangu Transport Co-op. Society & Ors. (2010) 227 CTR 299 (HP) and CIT vs. Truck Operators Union, 339 ITR 532 (P&H) and M/s. Hindustan Ratna JV vs. ITO, in ITA No. 372/Hyd/2013 dated 18.12.2013 of ITAT Hyderabad Bench, against which no counter decision is relied on behalf of the Revenue. We, accordingly, find no good reason to interfere with the impugned order. As a result, the appeal of the Revenue is found to have no merits and is, thus, dismissed.

6. In the result, the appeal is dismissed.

Order pronounced in the open court on 05.10.2017.

Sd/-	**Sd/-**
(H.S. Sidhu)	**(L.P. Sahu)**
Judicial member	**Accountant Member**

Dated: 05.10.2017
aks

Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi