

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

**BEFORE SHRI G. D. AGRAWAL, PRESIDENT  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 1566/DEL/2016 (A.Y 2010-11)**

**I.T.A .No.1567 /DEL/2016 (A.Y 2012-13)**

Express Drilling Systems LLC C/o. Nangia & Company, Suit 4A, Plaza M-6, Jasola New Delhi AABCE6891R  <b>(APPELLANT)</b>	Vs	ADIT (International Taxation) Circle-1, Income Tax Office Subhash Road Dehradun  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Amit Arora &amp; Vishal Mishra, CA</b>
<b>Respondent by</b>	<b>Sh. Arun Kumar Yadav, Sr. DR</b>

<b>Date of Hearing</b>	<b>06.12.2017</b>
<b>Date of Pronouncement</b>	<b>18.01.2018</b>

**ORDER**

**PER BENCH**

These appeals are filed by the assessee against the orders dated 29/1/2016 passed by CIT(A)-2, Noida for Assessment Year 2010-11 & 2011-12.

2. The grounds of appeal are as under:- **ITA NO. 1566/Del/2016**

*“Based on the facts and circumstances of the case, your appellant respectfully submits the following grounds:*

*Ground No.1*

*That the Ld. CIT(A) erred in facts and in law in disallowing sub-contractor expenses u/s 40(a)(ia) of the Income Tax Act, 1961 on account of purchases made from Shiv-Vani Oil & Gas Exploration Services Limited without deduction of tax at source. In doing so the Ld. CIT(A) failed to appreciate that:*

- By virtue of amendment brought to section 201(1) of the Income Tax Act, 1961 by Finance Act, 2012, the assessee cannot be regarded as “assessee in default”;*
- In the absence of being held as an “assessee in default” the disallowance u/s 40(a)(ia) cannot be made;*
- the amendments brought in by the Finance Act, 2012 to the section 201(1) and 40(a)(ia) being curative in nature and thus, have retrospective effect;*
- the case of the assessee is squarely covered by the decision of the Hon’ble High Court of Delhi in case of Commissioner of Income Tax-1 Vs Ansal Land Mark Township (P) Ltd.*
- Shiv-Vani Oil & Gas Exploration Services being a consortium partner of the assessee is neither a “contractor” nor a “sub-contractor” of the assessee and thus, the provisions of Section 194C are not applicable to payments/credits made to Shiv-Vani Oil & Gas Exploration Services.*

*Your appellant prays that the erroneous order be cancelled and appropriate relief may be granted to the appellant.”*

3. In both the Assessment Years the issues are identical. Therefore, we are taking the facts of Assessment Year 2010-11 for the sake of convenience. The assessee is a wholly own subsidiary of CDX Gas, LLC a company duly incorporated not laws of USA. CDX Gas is expert production of Coal Bed Methane and has various explorations and production blocks in USA. The assessee provides specialized drilling for Coal Bed Methane and has requisite experience and technology in drilling horizontal, lateral and multilateral wells. Shiv-Vani Oil and Gas Exploration Services Ltd. Shiv-vani is a company duly incorporated under the provisions of the Companies Act, 1956. Shiv Vani is engaged in the business of providing drilling, work over, seismic, offshore logistic compressions, turnkey projects in setting up Gas Gathering Stations, installations and oil and gas services. Mineral Exploration Corporation Ltd under(“MECL”) is a Government of India enterprise and is a company registered under the Companies Act, 1956. MECL is a premier exploration agency which carries out systematic detailed mineral exploration and allied work on project basis ranging from exploration to development, in order to establish reserves in various minerals/ores. ONGC was desirous of hiring of integrated services for development of Central Parbatpur and drilling, completion and testing of pilot wells in Jharia, Bokaro and North Karanpur CBM Blocks. The assessee, Shiv-Vani and MECL had necessary experience and expertise to perform the services required by ONGC in its tender and jointly submitted the bid as a consortium. The assessee and Shiv-Vani subsequently entered into an agreement ‘Scope of work agreement’ on December 16, 2006. The individual responsibility of the members of the consortium was set out in the agreement. During the previous year 2009-10, the assessee incurred the expenditure aggregating to a sum of Rs.120,200,916/- under the head Sub-Contractor cost. The work pertaining

to civil works, drilling rigs, work over rigs and all related equipment and repair facilities as well as personnel and provision of other ancillary services for drilling, testing and completion of the wells including cementation logging and hydro-fracturing, put wells on production, install production, transportation and processing facilities was performed by Shiv Vani for which the said company raised invoices on the assessee. The assessee had deducted tax applying the provisions of Section 194C of the Income-tax Act, 1961 in respect of the entire expenditure debited under the head subcontractor cost pipelines, tools, etc from suppliers who were Indian residents. The draft assessment order u/s 143(3)/144C(1) of the Income-tax Act, 1961 for the Assessment Year 2010-11 was passed on 30/3/2013 at a total income of Rs.9,11,62,280/- as against total loss of Rs.4,16,47,738/- shown in the return of income. The assessee did not file any objection against the draft order before the Dispute Resolution Panel. The Assessing Officer made disallowance of certain expenditure since tax was not deducted at source thereon and while making payments and certain other expenses since the assessee failed to submit any proof. The Assessing Officer had completed the assessment in case of the assessee treating the expenditure on account of outright purchase from Shiv-Vani not allowable u/s 40(a)(ia) of the Act because tax was not withheld on such outright purchases.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A) and the CIT(A) upheld the order of the Assessing Officer in disallowing the entire payment of Shiv-Vani on which tax was not deducted at source by the assessee.

5. The Ld. AR submitted that the Hon'ble High Court in case of CIT Vs. Ansal Land Mark Township Pvt. Ltd. (2015) 377 ITR 635 held that the second proviso to Section 40(a)(ia) of the Act is declaratory and curative and had retrospective effect from 1<sup>st</sup> April 2005. Therefore, the Assessing Officer as well as the CIT(A) has not taken cognizance that once the buyer had

disclosed receipt in return of income for the year under consideration then as per second proviso to Section 40(a)(ia) and first proviso to Section 201(1) of the Act disallowance of such payments by the assessee cannot be made even if these amendments was made effective from 1/4/2013. The Ld. AR also relied on the Tribunal's order in case of Mohit Burman Vs. ACIT.

6. The Ld. DR relied upon the order of the CIT(A) and the Assessing Officer.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT(A) has relied upon the decision in case of Potential Logistic & Transports Vs. ITO 364 ITR 689 of the Hon'ble Kerala High Court but the Jurisdictional High Court decision in case of CIT Vs. Ansal Land Mark Township Pvt. Ltd. & ITAT decision in case of Mohit Burman Vs. ACIT has not been considered. Therefore, the matter is remanded back to the file of the CIT(A) to take cognizance of these two decisions. Needless to say, the assessee be given opportunity of being heard.

8. In results, both the appeals of the assessee are partly allowed for statistical purpose.

**Order pronounced in the Open Court on 18<sup>th</sup> January, 2018.**

Sd/-

**(G. D. AGRAWAL)**  
**PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 18/01/2018  
*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5.

DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	06/12/2017	PS
2.	Draft placed before author	06/12/2017	PS
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4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	18.01.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	18.01.2018	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		