

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (A), KOLKATA
[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]**

I.T.A. No. 1245/Kol/2017

Assessment Year: 2012-13

AIS Advance Information Systems (I) Pvt. Ltd.....Appellant
(Now known as PSI ametals India Pvt. Ltd.
6, Old Post Office Street, 2nd Floor,
Kolkata – 700 001.
[PAN: AAHCA 3798 F]

DCIT CIRCLE 2(1), Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata – 700 069.

Appearances by:

Shri I. Banerjee, FCA appearing on behalf of the assessee.

Shri P.K. Srihari, CIT appearing on behalf of the Revenue.

Date of concluding the hearing : May 10, 2018

Date of pronouncing the order : June 22, 2018

ORDER

Per P.M. Jagtap, AM

This appeal filed by the assessee is directed against the order of Ld. Principal CIT – 2, Kolkata dated 29.03.2017 passed under section 263 of the Income Tax Act, 1961.

2. The assessee in the present case is a company which is engaged in the business of rendering Advance Information Technology Services. The return of income for the year under consideration was filed by it on 11.09.2012 declaring a total income of Rs. 56,01,740/-. In the assessment completed u/s 143(3) vide an order dated 11.03.2015, the total income of the assessee was determined by the A.O. at Rs. 1,40,70,003/- after making a disallowance of Rs. 84,68,259/- on account of 'Tax on Remuneration of Delegates'. The record of the said assessment came to be examined by the Ld. Principal CIT and on such examination, he found that out of total

payments of Rs. 4,28,82,624/- made to one single party VACE Engineering GmbH & Co. from Austria on account of fees for technical services, management consultancy charges and reimbursement of expenses, tax was deducted from the amount only to the extent of Rs. 2,34,38,587/-. According to the Ld. Principal CIT, the assessee had failed to deduct tax at source from the balance amount of Rs. 1,94,44,037/- and the disallowance to that extent was required to be made under section 40(a)(ia). Since no such disallowance was made by the A.O. in the assessment completed under section 143(3), he issued a notice under section 263 requiring the assessee to show cause as to why the said order should not be revised by treating the same as erroneous and judicial to the interest of the revenue. In response to the said notice, the relevant details and break up the payments made to VACE Engineering GmbH & Co. were furnished by the assessee. According to the learned Pr. CIT, the assessee however failed to substantiate its case on the issue of non-deduction of tax at source from the said payments. He accordingly treated the assessment order passed by the AO under section 143(3) to be erroneous and prejudicial to the interest of the revenue and setting aside the same, he directed the AO to complete the assessment afresh after making a disallowance of Rs. 1,94,44,037/- under section 40(a)(ia) of the Act vide his order dated 29.03.2017 passed under section 263. Aggrieved by the order of the Ld. Principal CIT passed under section 263, the assessee has preferred this appeal before the Tribunal.

3. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned

counsel for the assessee has submitted that tax at source from the entire fees for technical services paid to VACE Engineering Gmbh & Co. amounting to Rs. 3,86,77,816/- was deducted by the assessee at source and the same was also paid within the prescribed time. He has invited our attention to the details of tax deducted and paid as given at page 23 of his Paper Book and submitted that there was no failure on the part of the assessee to deduct or pay the tax at source from the fees for technical services paid to VACE Engineering Gmbh & Co. He has submitted that a disallowance of Rs. 84.68 lacs in fact was made by the AO in the assessment completed under section 143(3) on account of 'Tax on Remuneration of Delegates' who were the employees of VACE Engineering Gmbh & Co. He submitted that the amount of Rs. 13,19,341/- was paid to VACE Engineering Gmbh & Co. towards reimbursement of expenses actually incurred and there being no profit element involved therein, the assessee was not required to deduct tax at source. As regards the balance amount of Rs. 28,85,467/- paid by the assessee company to VACE Engineering Gmbh & Co. towards management consultancy charges, the learned counsel for the assessee admitted that there was a delay in payment of tax deducted at source from the said payment and contended that disallowance under section 40(a)(ia) is required to be restricted to that amount instead of Rs. 1,94,44,037/- as directed to be made by the Ld. Principal CIT vide his impugned order.

4. The learned DR, on the other hand, has contended that all the factual details now being furnished by the learned counsel for the assessee before the Tribunal were not furnished before the Ld. Principal CIT during the course of proceedings under section 263 to

show the compliance of TDS provisions. He has contended that the AO, therefore, may be directed to verify these details before a relief can be allowed to the assessee on the basis of the same. We find merit in this contention of the learned DR. Accordingly, the impugned order of the Ld. Principal CIT under section 263 is modified and the A.O. is directed to decide the issue relating to the disallowance under section 40(a)(ia) to the extent of Rs. 1,94,44,037/- after verifying the claim made by the learned counsel for the assessee before us from the relevant facts and figures.

5. In the result, the appeal of the assessee is treated as partly allowed for statistical purpose.

Order Pronounced in the Open Court on 22nd June, 2018.

Sd/-

(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 22/06/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. AIS Advance Information Systems (I) Pvt. Ltd. (now known as PSI Metals India Pvt. Ltd.), 6, Old Post Office Street, 2nd Floor, Kolkata - 700 001.
2. DCIT CIR 2(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata