

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'D', NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 4393/Del/2011
AY: 2007-08**

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| ACIT, Circle 4 (1) Room No.407 C.R. Building, I.P. Estate New Delhi | vs. | M/s Linde Engineering India Pvt. Ltd. 806, Meghdoot 94-Nehru Place New Delhi 110 019 PAN: AAACL0084E |
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(Appellant)

(Respondent)

Department by : Sh. Vijay Varma, CIT, D.R.
Assessee by : Sh. Piyush Chawla, C.A. and
Sh. Rishabh Malhotra, Adv.
Date of Hearing : 03rd July, 2018
Date of Pronouncement: 05th July, 2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present appeal has been filed by the Revenue against order dated 12/07/11 passed by Ld. CIT(A)-VII, New Delhi for Assessment Year 2007-08 on the following grounds of appeal:

1. The order of the learned CIT(APPEALS) is erroneous & contrary to facts & law.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.70,99,120/- made by the AO on account of payments to Linde AG (Holding Company) being capital in nature.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.16,18,173/- made by the AO u/s 40(a)(ia) r.w.s. 195 of the I. T. Act.
4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.20,95,97,726/- made by the AO u/s 69 of the IT Act ignoring the finding given by the AO and directing to withdraw credit of TDS amounting to Rs.27,07,432/- only.
5. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.4,67,266/- made by the AO by disallowing payment of property tax as

- the assessee was not the owner of the property.
6. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.7,98,760/- being 50% of the Rs.15,97,553/- claimed towards guest house expenses as the assessee failed to produce complete bills and vouchers and use of personal nature by directors could not be ruled out.
 7. The appellant craves leave to add, to alter, or amend any grounds of the appeal raised above at the time of the hearing.

2. Brief facts of the case are as under:

Assessee filed its return of income on 21/12/07 declaring total income of Rs. 29,17,08,576/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (the Act) and statutory notices under section 143(2) of the Act along with questionnaire was issued. In response to the notices Representatives of assessee appeared before Ld. Assessing Officer (A.O.).

2.1. Ld. AO observed that assessee is engaged in the business of Chemical Engineering and plant construction. During the year it was observed that assessee has declared gross turnover of Rs.105.14 crores as against previous year turnover of Rs.25.92 crores which includes domestic sales and services, export income, contract revenue and other income.

2.2. Ld. AO observed that assessee made certain payments to its holding company M/s Linde AG, Germany under the head 'license expenses'. It was observed by Ld. AO that these expenses were incurred by assessee towards infrastructure of WAN and local hardware and also for development of piping material management, development of documentation etc. Ld. AO treated these expenses as capital in nature, as he was of the opinion that enduring benefits accrued to assessee.

2.3. Ld.AO also made disallowance under section 40 (a) (ia) of the Act as assessee failed to deduct TDS on certain payments made to foreign holding company.

Disallowance was made on the basis of certain mismatch of TDS claimed by assessee to the extent of Rs.20,95,97,726/-which was disallowed by Ld.A.O. under section 69 of the Act.

Ld. AO made disallowance of Rs.4,67,266/-on account of property tax under the head 'rates and taxes', as well as rent expenses amounting to Rs.46,69,380/-, out of which sum of Rs.30,71,857/-has been claimed on office rent and Rs.15,97,523/-was claimed towards guesthouse expenses, since assessee had not provided all the bills and vouchers and therefore the payments could not be verified.

3. Aggrieved by additions made by Ld.AO assessee preferred appeal before Ld.CIT(A) who deleted entire additions made.

4. Aggrieved by the order of Ld.CIT(A) revenue is in appeal before us now.

5. Ground No. 1 is general in nature and therefore do not require any adjudication

6. Ground No. 2 is in respect of Rs.17,99,120/-, being deleted on account of payments made to Linde AG holding company which was considered by Ld. AO as capital in nature.

6.1. Ld.CIT, DR submitted that payments made by assessee directly were attributable to creation of asset which gave enduring benefits to assessee. It was argued that the infrastructure expenses were important tool of income generation and productivity and therefore cannot be termed as revenue in nature. He placed heavy reliance upon order of Ld.AO.

6.2. On the contrary Ld.AR submitted that invoices were produced before Assessing Officer from which it is evident that payments were annual expenses. It was submitted that these expenses were incurred in order to run the business effectively and efficiently by assessee, and therefore has to be treated as revenue in nature.

7. We have perused the submissions advanced by both the sides in the light of the records placed before us.

8. In our opinion assessee incurred license expenses towards WAN and local hardware, annual fee which has been treated by Assessing Officer to be capital expenditure. It is observed that assessee has to incur these expenses annually on which tax has been deducted. Assessee claimed license expenses of Rs.49,62,461/-in Profit and Loss account for the year under consideration out of total invoice amount of Rs.83,51,907/-. We agree with the observation of Ld. CIT (A) that the license expenses incurred by assessee do not create any asset but only provides means for running the business with a view to earn profits. *Hon'ble Supreme Court in the case of Alembic Chemicals Works Co. Ltd vs. CIT reported in (1989) 177 ITR 377* has observed that;

“The ideas of ‘once for all’ payment and ‘enduring benefits’ are not to be treated as something akin to statutory conditions; nor are the notions of ‘capital’ or ‘revenue’ a judicial fetish.”

9. Under such circumstances we do not find any infirmity in the addition being deleted as assessee has capitalised the value of the structures on which depreciation has been allowed.

9.1. Accordingly we dismiss this ground raised by revenue.

10. Ground No. 3 is in respect of Rs. 16,18,173/-being deleted by Ld. CIT (A) under section 40 (a) (ia) of the Act.

11. Ld. CIT DR submitted that assessee in details vide reply dated 13/12/10 submitted before Ld. AO that TDS has been deducted on all payments. Ld. AO upon verification, observed that TDS has not been deducted on certain payments, which has been tabulated in the assessment order at page 4. Ld. CIT DR submitted that these are payments made towards salary advance, foreign travel, engineering exports, payments made to Travel Corporation India Ltd, payments made to Linde AG being the holding company so on and so forth.

12. Ld.CIT DR also drew our attention towards a chart reproduced by Ld.CIT(A) in his order at page 7, wherein assessee categorised the payments on account of reimbursement made to holding company, on which no TDS was to be deducted. He drew our attention specifically towards nomenclature of expenses, as submitted by assessee and reproduced by Ld. AO in assessment order. Ld. CIT DR thus submitted that Assessing Officer has not got opportunity to verify whether these payments were in the nature of reimbursement or not. He submitted that Ld. CIT (A) without remanding the issue back to Ld. AO deleted addition merely by accepting submissions of assessee. He requested for the issue to be set-aside to Ld. AO for proper verification.

13. Ld.AR could not controvert the contradiction in the nomenclature of the expenses in submissions before Ld. AO as well as before Ld. CIT (A). He did not object for the issue being set aside to Ld. AO.

14. We have perused the submissions advanced by both the sides in the light of records placed before us.

15. Considering totality of facts as well as the contradiction in the nature of payment, we are of the considered opinion that it would be justifiable to set aside this issue to Ld. AO. Assessee is directed to furnish all receipts in respect of which it was alleged that these are reimbursement. Ld. AO is directed to verify the details filed by assessee and to allow assessee's claim as per law.

16. Accordingly this ground raised by revenue stands allowed for statistical purposes.

17. Ground No. 4 is in respect of Rs.20,95,97,726/- deleted by Ld. CIT (A).

17.1. Ld.AO during the course of assessment proceedings observed that assessee received advance from its customers amounting to Rs.20,95,97,726/-, which were not offered to taxation, whereas assessee claimed credit of TDS on these advances during the year under consideration. The Ld. AO very categorically observed in assessment order that assessee failed to file confirmation of the concerned parties in support of the claim and that certain advances received have not been reflected in income for current year on which TDS has been claimed.

17.2. Ld. CIT DR submitted that Ld.CIT(A) without verifying details allowed claim of assessee without reconciliation being made. He submitted that no proper verification has been carried out before allowing TDS claim. He submitted that this issue also may be set-aside to Ld. AO for due verification.

17.3. Ld.AR could not controvert the fact that TDS has been claimed on certain advances which did not form part of total income. He did not object for the issue being set aside to Ld. AO.

18. We have perused the submissions advanced by both the sides in the light of the records placed before us.

19. Considering the totality of facts as well as contradiction in nature of payment, we are of considered opinion that it would be justifiable to set aside this issue to Ld. AO. Assessee is directed to file reconciliation of income vis-a-vis the TDS claimed. Ld. AO shall verify the relevant details filed by assessee and allow the claim as per law.

20. Accordingly this ground raised by revenue stands allowed for statistical purposes.

21. Ground No. 5 is in respect of Rs.4,67,266/-being deleted on account of property tax. Ld.AO made addition in the hands of assessee, as assessee was not the owner of property for which the taxes were paid.

21.1. Ld. CIT DR relied upon order of Ld.AO.

21.2. Ld.AR submitted that property taxes have been made in accordance with the terms and conditions of lease agreement and Assessing Officer is not bringing on record any contrary evidence to justify disallowance of such expenses.

22. We have perused the submissions advanced by both the sides in the light of the records placed before us.

It is an admitted position that assessee incurred these expenses towards the property taken on lease as per the agreement entered into by assessee and lessor. In our considered opinion, payment of local taxes was agreed by assessee as per agreement and

therefore was binding. Thus, it was an expenditure incurred by assessee to discharge an obligation under the agreement for purposes of business, which is an allowable expenditure.

23. We therefore do not find any infirmity in the order of Ld. CIT (A) in deleting the addition.

24. Accordingly this ground raised by revenue stands dismissed.

25. Ground No.6 is in respect of Rs.7,98,760/-being 50% of Rs.15,97,553/-, claimed towards guesthouse expenses.

25.1. Ld. CIT DR submitted that Assessing Officer disallowed claim of assessee as assessee failed to produce complete bills and vouchers in order to establish its claim. He placed reliance upon order of Ld. AO.

25.2. Ld.AR submitted that guesthouse has been used for business purposes and not for any private use by the Directors.

26. We have perused the submissions advanced by both sides in the light of records placed before us.

Admittedly Assessing Officer estimated disallowance of 50% of total expenditure being personal in nature, without there being any material evidence on record to establish element of personal use by Directors. However, it also appears from record that assessee has not provided any bills and vouchers in order to verify the guesthouse expenses. We are, therefore, inclined to set aside this issue back to file of Ld. AO. Assessee shall file all requisite details in respect of bills and vouchers/agreements, as the case may be with the Assessing Officer in respect of guest house expenses incurred by assessee. Assessing officer shall then verify the details filed and allow the claim as per law.

27. Accordingly this ground raised by revenue stands allowed for statistical purposes.

28. In the result appeal filed by revenue stands partly allowed.

Order pronounced in the Open Court on 05th July, 2018.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 05th July, 2018

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Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches