

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A", KOLKATA**

**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SH. S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1516/KOL/2015
(ASSESSMENT YEAR-2010-11)**

DCIT, Circle-10(2), P-7, Chowringhee Square, 3 rd Floor, Kolkata- 700069.	vs	M/s. Enkon Pvt.Ltd. 32, Pramatha Choudhury Sarani, Kolkata-700053. PAN-AABCE1731E
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**C.O.No-126/KOL/2017
[IN ITA No.1516/KOL/2015]
(ASSESSMENT YEAR-2010-11)**

M/s. Enkon Pvt.Ltd. 32, Pramatha Choudhury Sarani, Kolkata-700053. PAN-AABCE1731E	vs	DCIT, Circle-10(2), P-7, Chowringhee Square, 3 rd Floor, Kolkata-700069.
(Appellant)		(Respondent)
Appellant by	Sh.Sankar Halder, Addl.CIT. Sr.DR	
Respondent by	Sh. A.K.Tibrewal, FCA & Sh. Amit Agarwal, Advocate	
Date of Hearing	25.10.2018	
Date of Pronouncement	16.11.2018	

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

Both appeal and cross objection respectively by the Revenue and the assessee are against the common order 12.10.2015 passed by CIT(A)-4, Kolkata for AY 2010-11.

2. The Ld. AR submits that the assessee is not interested in prosecuting cross-objection I.e. C.O.No.126/Kol/2017 vide its letter dated 26.07.2018 and prayed to dismiss the same as withdrawn. Therefore, C.O.No.126/Kol/2017 is dismissed.

3. Now, we shall take up appeal of Revenue i.e. **ITA No.1516/Kol/2015**.

4. The only issue is to be decided as to whether Ld. CIT(A) is justified in deleting the addition made by the AO on account of being the profit on estimation @ 13.9% on turn over in the facts and circumstances of the case.

5. Heard both parties and perused the material available on record. It is noted from the assessment record that the AO disallowed expenditure only on the basis of profit shown in the return of income and by comparing the profit as declared at the time of survey. The Ld.CIT(A) discussed the issue in detail and we find no infirmity in the order of Ld.CIT(A). Ld.DR did not point out any discrepancy in finding given by Ld.CIT(A). For better understanding, the relevant portion of Ld. CIT(A) is reproduced hereunder:-

4.3 "The AO observed that it is for the appellant to prove that how the expenditure post the date of survey amounted to a substantial figure. It is a truism in all business for the last part of the financial to so greater volume of transactions than in the fast part which is even an established truth in respect of government revenues. The A/R pointed out that it is a natural phenomenon which had no bearing on the determination of income. The fact that the appellant had declared its not total income at a figure much less than the estimated profit of Rs.3,25,000/- is not a conclusion based on evidence but a specious exercise from start to finish. The AO rejected such crystal clear explanation notwithstanding proceeded to observed without any basis that the Implication in his prejudiced mindset that the "assessee reduced the gross income as disclosed on the date of survey by Rs. 93,24,006/- at the time of preparation of final accounts as on 31.3.2010." The appellant was asked to explain why the profit shown was lower than the estimated declared at the time of survey by providing comparative analysis of the account for before the survey period and post survey period with all supporting evidence which was duly complied with by the appellant. In the assessment order, the AO has given a list of eight parties, the dates of bills on whom varied between 01.03.2010 to 27.03.2010. It is not the AO's case that such bills were bogus or that they were not in accorded with the accounts. In fact to reiterate, he has not brought on record any pointed out any defects in books of accounts or document to support his finding of an addition in the sum of Rs.89,95,308/- being disallowed expenses. The point for my consideration in the respect is whether impeccable proof has been adduced by the AO in making the impugned addition, As the AO pointed out the

statement by a person at the time of survey and an amount can be simply taken and added to the total income on that basis which is strictly prohibited by the Revenue.

4.4. The fundamental issue is whether the AO was able to find any deficiency in the accounts which were duly audited and produced before him for the inspection. No instance of any aberration was detected by the AO as found from the assessment order which was framed on the basis of a completed years accounts and the AO did not adduce any evidence that there were any factual mismatch between the data upto the date of survey and the period upto the closure of the year thereafter. His action is merely ad hoc in nature since the volume of transaction between two period which in fact is a common experience in the world of business. There is neither such thing as specific expenses for a transaction nor a direct proportional expenditure attributable to various heads under establishment. It is an integral whole which crystallizes at the end of the accounting period which in the previous year The crux of the issue therefore boils down to the fact that an expenditure may be disallowed only if evidence thereof lacking or there is no relevance thereof for purpose of business. It is not case of the AO that such expenditure was not undertaken after clinching proof thereof being adduced, evidence thereof was not lacking and impeccable documents were maintained. So it is adverse impression and imagination were the specious excuses behind his adverse conclusion. He has not adduced an iota of proof that the impugned expenses were not incurred wholly necessarily and exclusively for purpose of business. In order that an expenditure may be deemed inadmissible a plethora of proof is required which the AO was unable to bring on record. The appellant has followed a uniform accounting system from year to year. The AO has not pointed out any lacunae in this respect. The AO was therefore unable to establish the Justification of disallowance of Rs.89,95,308/- as not being incurred for the purpose of business Such addition is therefore directed to be deleted and the ground No 4 therefore succeeds.”

6. In view of the above and discussion made in para 4, we donot see any interference is called from us. Thus, Grounds raised by the Revenue is dismissed.

7. In the result, the appeal of the Revenue is dismissed and C.O. raised by the assessee is also dismissed as withdrawn..

Order pronounced in the open court on 16.11.2018.

**Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

**Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER**

Date:- 16.11.2018
Amit Kumar

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1. Appellant- DCIT, Circle-10(2), P-7, Chowringhee Square, 3rd Floor, Kolkata-700069.
2. Respondent- M/s. Enkon Pvt.Ltd., 32, Pramatha Choudhury Sarani, Kolkata-700053.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

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