

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

I.T.A. No.1512/DEL/2016	
A.Y. : 2009-10	
DCIT, CIRCLE 25(1), C.R. BUILDING, I.P. ESTATE, NEW DELHI	VS. M/S TRIUNE ENERGY SERVICES PVT. LTD. B-1/H-4A, MOHAN COOPERATIVE INDL. ESTATE, MATHURA ROAD, NEW DELHI - 110 044 (PAN: AAKCS1045E)
(ASSESSEE)	(RESPONDENT)

Revenue by : Ms. Ashima Neb, Sr. DR
Assessee by : Prof. S. Sampath, CA

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 31.12.2015 of the Ld. CIT(A)-14, New Delhi relevant to assessment year 2009-10.

2. The grounds raised in this Appeal read as under:-

1. *On the facts and in the circumstances of the case and in law the order passed by Ld. CIT(A) is erroneous and the Ld. CIT(A) has erred in deleting addition of Rs. 1,14,82,938/- made by AO on*

account of rent paid by the assessee company to TPPL for use of assets like generators, air conditioners, etc.

2. The appellant craves, leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of appeal.

3. The brief facts of the case are that assessee filed the return of income for the assessment year 2009-10 on 22.9.2009, declaring income at Rs. 1,98,40,774/-. The statutory notice u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") was issued to the assessee company on 18.8.2010 and served upon the assessee company. Later on a detailed questionnaire dated 08.7.2011 was sent to the assessee company alongwith notice u/s. 142(1) of the Act. In response to the same, the A.R. for the assessee attended the proceedings from time to time. The assessee was engaged in the business of consultancy services. During the year the company has entered into international transaction with associated enterprises and Form No. 3CEB has been filed by the assessee company in relation to international transactions entered into by the company. A reference has been made to the Transfer Pricing Officer to determine the Arms Length Price of the International Transactions. The Transfer Pricing Officer after review of the transfer pricing documents as prescribed under Rule 10D of the Income Tax Rules, 1962 and after

detailed discussions with the A.R. for the assessee, has passed the order under section 92CA(3) of the Act dated 14.1.2013. The Ld. Transfer Pricing Officer has not drawn any adverse inference in relation to international transactions undertaken by the assessee company. Thereafter, the AO has completed the assessment u/s. 143(3) of the Act vide his order dated 30.3.2013 at an income of Rs. 15,34,05,120/-, after making various additions/ disallowances to the returned income. Against the said assessment order, assessee appealed before the Ld. CIT(A) who vide his impugned order dated 31.12.2015 has partly allowed the appeal of the assessee. Aggrieved with the order of the Id. CIT(A), Revenue is in appeal before the Tribunal.

4. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. On the contrary, Ld. A.R. for the assessee relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order. He filed a Paper Book containing pages 1 to 50 in which he has attached the copy of written submissions filed before the Ld. CIT(A)-XIV; copy of Lease Agreement between Triune Projects Private Limited and Saipem Triune Engineering Private Limited; copy of the fresh certificate of incorporation consequent upon change of name; copy of the order of the ITAT Delhi 'G' Bench in the case of M/s Spark Hotels Pvt. Ltd. ITA No. 4631/Del/2011; Copy of the assessment order for AY 2010-11 passed u/s. 143(3) of the I.T. Act, in the case of appellant; copy of DRP Panel-II

order u/s. 144C(5) of the I.T. Act in the case of the appellant and copy of Auditor Report and Audited Annual Accounts alongwith schedule for the year ended 31.3.2009.

6. We have heard both the parties and perused the relevant records, especially the impugned order and the paper book filed by the assessee. We find that the assessee was asked to justify the payment of rent to TIPL for use of generator etc. AO observed that actual value of generator has not been provided by the assessee company during the assessment proceedings. As per AO, it appears that asset rent was three times of the value of asset. Rent of Rs. 23,47,869/- was allowed by the AO for AY 2008-09. On an estimate for this year Rs. 24,65,262/- (5% increase from last year) was allowed and difference amount of Rs. 1,14,82,938/- was disallowed and added back to the total income of the assessee company. I note that the rent was paid having regard to the market rate prevalent during the relevant previous year for the use of such assets. However, Sub-Section (2)(a) of Section 40A of the Act clothes the AO with the power to disallow expenditure, for which payment is made to a related person, which is found to be excessive having regard to the legitimate needs of business of the assessee. The onus is on the AO to demonstrate with evidence that the payment was excessive having regard to the market rates. No such evidence has been adduced by the AO. The disallowance made in such circumstances is not sustainable in law. We further note that in Assessment year 2010-11, the Dispute Resolution Panel (DRP) has allowed the claim of the assessee and has deleted the

disallowance proposed by the AO. Also, this position has been accepted in subsequent year by the AO himself. Hence, in our considered opinion, the disallowance of Rs. 1,14,82,938/- claimed on account of rent paid was rightly deleted, which does not need any interference on our part, therefore, we uphold the well reasoned order passed by the Ld. CIT(A) on the issue in dispute and accordingly reject the ground raised by the Revenue.

7. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on 28/11/2018.

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 28/11/2018

SRBHATNAGAR
Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches