

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.1669/Kol/2016**  
Assessment Year :2009-10

Income Tax Officer Ward-14(2), 10 <sup>th</sup> Floor, R.No. 3 Aayakar Poorva, 110, Shanti Pally, Kolkata-107	<b>V/s.</b>	M/s B.B.C. Project Services Pvt Ltd., 90B, S.P. Mukherjee Road, Kolkata-26 [ <b>PAN No.AACB 3671 R</b> ]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri A.K. Singh, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	22-11-2018
घोषणा की तारीख/Date of Pronouncement	30-11-2018

**आदेश /O R D E R**

**PER S.S.Godara, Judicial Member:-**

This Revenue's appeal for assessment year 2009-10 challenges correctness of Commissioner of Income Tax (Appeals)-4 Kolkata's order dated 06.06.2016, passed in case No.190/CIT(A)-4/Ward-10(2)/Kol/14-15, in proceedings u/s. 144/264 of the Income Tax Act, 1961; in short 'the Act'.

Case called twice. None appears at assessee's behest. It is accordingly proceed *ex parte*.

2. The Revenue raises two substantive grounds in its instant appeal. Its former grievance pleads that CIT(A) has erred in estimating assessee's income @ 0.4% of the total turnover of ₹48,47,08,894/- without appreciating the relevant facts. It then seeks to revive sec. 40(a)(ia) disallowance of ₹6,64,83,650/- made by the Assessing Officer on account of non-deduction of TDS and reversed in lower appellate proceedings.

3. We find in this backdrop of pleadings that CIT(A)'s order *qua* the instant twin issue(s) reads as follows:-

*"5. I have considered the submissions of the AR of the appellant and have also gone through the assessment order on the issue at hand. I find that facts emerging from records reveal that the appellant submitted primary documents in support of return already filed i.e. copy of return (ITR-6), Audited Accounts, Tax Audit Report u/s 44AB, Computation of Income etc. on 02.11.2012. Perusal of audit report i.e. Form 3CD reveals that the company maintained books of account as detailed against item 9(a) & (b). It also appears that Tax Audit Report has been submitted by Auditor after due examination of all the books of account as specified therein.*

*5.3 I find from the particulars available at Schedule 12 that ₹6,64,83,650/- was debited in the P&L A/c as incentive to agents. The payment of incentives to agents cannot be equated as commission payments by any means. Hence, the provision of Section 194H have no applicability for such payments and consequently, the question of disallowance u/s. 40(a)(ia) does not arise. I further find that the appellant has not complied before the AO. The appellant has not even produced complete books of account before me and I find from the record that there has been repeated non-compliance by the appellant before the AO. Therefore the books of account are liable to be rejected. However, I also agree with the logistic contention of the AR that disallowance of entire incentive to agents amounting to ₹6,64,83,650/- would only result in an absurd net profit rate of 13.90% in this particular line of business in which the appellant company is engaged in. Considering the facts and circumstances of the case as well as the normal profit rends in this line of business, I am of the view that book profit declared is liable to be rejected. The income of the company may be estimated keeping in view materials available on record. In this regard, I have already decided the appellant's appeal for the AYs 2001-11 & 2011-12 by adopting the theory of estimation. Following the same principle, total income is estimated @ 0.4% of total turnover of ₹48,47,08,894/- which works to ₹19,38,835/-. The AO is directed accordingly. The appellant get a relief of ₹6,54,70,185/- (6,74,09,020 – 19,38,835)."*

4. Learned CIT-DR vehemently contends during the course of hearing that CIT(A) has erred in law as well as on facts in estimating assessee's income @ 0.4% of its total turnover. He fails to dispute the fact the CIT(A) has gone by his findings in earlier assessment years thereby adopting the judicial consistency. The said estimation in earlier assessment years has admittedly

attained finality. There is no other material to dispute correctness thereof failed during the course of hearing. We therefore find no fault in CIT(A)'s action estimating the assessee's income @ 0.4% of its turnover.

5. The Revenue's latter substantive ground seeking to revive u/s 40(a)(ia) (supra) that has no legs to stand since the relevant books forming foundation thereof already stand rejected. The Revenue fails in its both substantive grounds accordingly.

6. This Revenue's appeal is dismissed.

Order pronounced in the open court 30/11/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

\*Dkp, Sr.P.S

दिनांक:- 30/11/2018 कोलकाता ।

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-ITO Ward-14(2), 10<sup>th</sup> Floor, R.No.3 Aayakar Poorva,110, Shanti Pally, Kolkata-700 107
2. प्रत्यर्थी/Respondent-M/s B.B.C Project Services Pvt. Ltd., 90B, S.P.Mukherjee Rd.Kol-26
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata )
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।