

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

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2821/Del/2015  
AY: 2011-12

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| DCIT, Circle 8(1)<br>Room No.415<br>4 <sup>th</sup> floor<br>C.R.building<br>I.P.Estate<br>New Delhi 110 002 | vs. | Engineers India Ltd.<br>Engineers India Bhawan<br>1, Bhikaji Cama Place<br>R.K.Puram<br>New Delhi 110 066<br><br>PAN: AAACE5318C |
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A N D

Cross Objection No.486/Del/2015  
(In ITA No. 2821/Del/2015)  
AY: 2011-12

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| Engineers India Ltd.<br>Engineers India Bhawan<br>1, Bhikaji Cama Place<br>R.K.Puram<br>New Delhi 110 066<br>PAN: AAACE5318C | vs. | DCIT, Circle 8(1)<br>Room No.415<br>4 <sup>th</sup> floor<br>C.R.building<br>I.P.Estate<br>New Delhi 110 002 |
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**(Appellant)**

**(Respondent)**

**Department by :** Smt.Naina Soin Kapil, Sr.DR.

**Assessee by :** Sh. Nageswar Rao, Adv. &  
Sh. Purushottam Anand, Adv.

**Date of Hearing :** 29/01/2019

**Date of Pronouncement:** 08/02/2019

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present Cross appeals have been filed by revenue as well as assessee against order dated 27/02/15 passed by Ld.CIT(A)-3, New Delhi on following grounds of appeal:

ITA 2821/Del/15 (Revenue)

*"1. Whether on the facts and in the circumstances of the case and in law, Ld.CIT(A) has erred in deleting the addition made on account of payment of Rs.1,52,99,818/- by the AO u/s 40(a)(i) of the I.T.Act, 1961.*

*2. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing."*

Cross Objection 486/Del/15 (Assessee)

*" Based on the facts and circumstances of the case, M/s ENGINEERS INDIA LTD ('Respondent') craves leave to prefer to file cross objections in response to the appeal filed by the Department against the order passed by the learned Commissioner of Income Tax (Appeals) - 3 ['CIT(A)'] under section 250 of the Income-tax Act, 1961 ('the Act') on the following grounds:*

*1. That the Learned CIT(A) erred in not adjudicating on ground raised by the Respondent in appeal against TDS credit of Rs. 18,99,261 not allowed by the Assessing Officer while computing tax demand of the Respondent Assessee.*

*2. That, based on facts and circumstances of the case, the learned CIT(A) and the Assessing Officer ought to have granted TDS credit of*

Rs. 18,99,261 while computing tax demand of the Respondent Assessee.

3. That the Learned CIT(A) erred in not specifically adjudicating on the issue that no interest u/s 234B of the Act could be levied in facts of the present case, since prepaid taxes paid by the Respondent Assessee was in excess of 90% of the total tax liability and merely holding that interest u/s 234B is consequential.

4. That the Learned CIT(A) erred in not specifically adjudicating on the issue of interest u/s 234C excess charged by the Assessing Officer and merely holding that interest u/s 234C is consequential.

**2. Brief facts of case are as under:**

Return of income was filed declaring total income of Rs. 7,21,44,97,477/-, which was subsequently revised to total income of Rs. 7,15,67,26,286/-. Assessee is a public limited company and is engaged in business of engineering, consultancy and LSTK contract work. It is a Public Sector Company with Ministry of Petroleum and Natural Gas established under Indian Companies Act, 1956 and is primarily engaged in providing engineering and technical consultancy services and execution of contracts on a Turnkey basis predominantly in Oil/Gas/Hydro Carbon Sectors. The assessment u/s 143(3) of the Income Tax Act, 1961 (the Act) was finalised at total income of Rs. 7,16,62,27,270/- after making disallowance of Rs. 9750/- u/s 14A of the Act, and disallowance of Rs. 94,91,410/- u/s 40(a) of the Act on account of non-deduction of TDS u/s 194H on payments made to foreign agents.

**3.** Aggrieved by additions, assessee preferred appeal before Id.CIT(A) who deleted disallowance u/s 40(a) of the Act.

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

**3.2.** At the outset, Ld.Counsel submitted that issue raised by revenue in its appeal stands squarely covered by decision of this Tribunal in assessee's own case for assessment year 2010-11 in ITA No. 2235/Del/2014 vide order dated 02/03/2017.

**3.3.** He further submitted that said order stands confirmed by Hon'ble Delhi High Court in ITA No. 1156/2017 vide order dated 14/03/18 wherein Hon'ble Delhi High Court observed as under:

*" This Court notices that the ITAT has followed the judgement of the Division Bench of this Court in CIT vs. Eon Technology (P) Ltd. 2011 (203) taxman 266, where the Court in similar circumstances held that providing such services, in respect of activities abroad, do not constitute fee for technical services and therefore, disallowable u/s 40(a). In view of these circumstances, no substantial question of law arises. The appeal is consequently dismissed."*

**4.** Ld.Sr.DR though supported order of Ld.A.O. could not refute afore stated observations by *Hon'ble Delhi High Court* wherein decision of this Tribunal for assessment year 2010-11 in assessee's own case, has been upheld.

**5.** We have perused submissions advanced by both sides in light of records placed before us. Admittedly issue stands squarely covered in assessee's favour by decision of this Tribunal in assessee's own case, which has been upheld by Hon'ble Delhi High Court (supra). Respectfully following the same we uphold view taken by Ld. CIT (A).

**5.1. Accordingly ground raised by revenue stands dismissed.**

**6. In the result appeal filed by revenue stands dismissed.**

**7. Cross Objection No. 486/Del/2015**

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

**7.1. Ground No. 2:**

Assessee raised issue in respect of TDS credit not being allowed by Ld. AO while computing tax demand. Assessee has filed before us application dated 17/01/2014 under section 154 of I.T.Act, 1961 (the Act) filed before Ld.ACIT.

**7.2.** Ld. AO is directed to pass an order in the application so filed by assessee and give credit to TDS as per law.

**8. Ground No. 3, 4** is consequential and therefore do not require any adjudication.

**9. In the result, Cross Objection filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 08<sup>th</sup> February, 2019.

*Sd/-*

**( PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

*Sd/-*

**(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dt. 08<sup>th</sup> February, 2019

- Gmv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

|   | Date                   |
|---|------------------------|
| Draft dictated on                                     | 06.02.19               |
| Draft placed before author                            | 06.02.19<br>07.02.2019 |
| Draft proposed & placed before the second member      |                        |
| Draft discussed/approved by Second Member.            |                        |
| Approved Draft comes to the Sr.PS/PS                  | 07.02.19               |
| Kept for pronouncement on<br>&<br>Order uploaded on : | 08.02.19               |
| File sent to the Bench Clerk                          |                        |
| Date on which file goes to the AR                     |                        |
| Date on which file goes to the Head Clerk.            |                        |
| Date of dispatch of Order.                            |                        |