

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. 6022/Del/2015

AY: 2010-11

Dy.CIT, Circle -18(1) Room No.212 2 <sup>nd</sup> Floor, C.R.bldg. I.P.Estate New Delhi <b>(Appellant)</b>	vs.	Neptune Systems Pvt. Ltd. E-1, Greater Kailash Enclave-1 New Delhi 110 048  PAN:AAACN0024A <b>(Respondent)</b>
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**Department by :** Ms. Naina Soin Kapil, Sr.DR  
**Assessee by :** None.

**Date of Hearing :** 30/01/2019  
**Date of Pronouncement:** 15/02/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by Revenue against order dated 31/08/2015 passed by Ld.CIT(A)-42, New Delhi on following grounds of appeal:

*"1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in deleting the addition of Rs. 78,46,982/- and Rs. 4,80,000/- on account of disallowance of testing and analysis charges and rent payments respectively u/s 40A(2)(b) of the Income Tax Act, 1961 (the Act) without considering a fact that assessee did not furnish requisite information and did not discharge*

*burden of proof that payments made by it were not excessive and unreasonable before the Assessing Officer (AO)?*

*2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) is justified in deleting disallowances u/s 40A(2)(b) on the ground that the AO did not make any enquires to determine reasonableness of such payments without considering a fact that assessee did not furnish requisite information during course of assessment proceedings?*

*3. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) having noticed want of proper enquiry is justified in allowing the appeal and deleting disallowance made without ensuring that effective enquiry was carried out as laid down by Hon'ble jurisdictional High Court in case of CIT vs Jansampark Advertising and Maketing P Ltd. (2015) 375 ITR 373 (Del)?*

*4. That the order of the Ld. CIT (A) is erroneous and is not tenable on facts and in law.*

*5. That the assessee craves leave to add, alter, amend or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."*

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

Assesse filed its return of total income of Rs.1,31,21,491/- on 29/09/2010. Notice u/s 143(2) and notice u/s 142(1) of the I.T. Act, 1961 (the Act) dt. 29/08/2011 along with questionnaire was issued to assessee.

**2.1.** Ld.A.O. observed that assessee is engaged in business of manufacturing of assembling capacitors, distribution boards, feeder pillars etc. During assessment proceedings, Ld. AO observed that assessee claimed testing and analysis charges of Rs. 97,81,747/-,

whereas in preceding year such charges amounted to Rs. 3,63,843/-. It was observed by Ld.AO that this payment was made to M/s Naac Energy Controls Pvt. Ltd., a sister concern of assessee company. Ld.A.O. accordingly called upon assessee to explain the nature of such charges. Assessee informed that it earned income in nature of service charges amounting to Rs. 83.05 lakhs, against which payment for testing and analysis charges were made to its sister concern. It was submitted that primary requirement of company is to provide after-sales services, and assessee outsourced testing and analysis services to its sister concern and that without such services, assessee would have lost customers from its business. It was informed that testing and analysis services required loading power and data analysis on sites, for which it does not have sufficient technical persons. Assessee submitted that during year, assessee did such work for DMRC, DIAL & Reliance and maximum part of load and data downloading with technical power quality analysis being outsourced to the sister concern. The Ld. AO, however, was not satisfied with explanation, and observed that bills of M/s Naac Energy Controls Pvt. Ltd. were raised through computers, which shows that company issued only bills in name of assessee. Further, Ld. A.O. observed that, such expenses were booked at fag end of year by assessee. In view of this, Ld. AO held that M/s Naac Energy Controls Pvt. Ltd. had not rendered any services to assessee and in absence of any evidence of services rendered by assessee, Ld. AO invoked provisions of section 40A(2)(b) of the Act and thereby made

disallowance of an amount of Rs. 84,83,219/-. This amount was computed in same ratio of service expenses to service income as in immediately preceding year as multiplied by testing analysis charges paid during year (Rs. 97,86,209/-). Accordingly, an amount of Rs. 13,02,390/- alone was allowed.

**2.2.** Ld. AO observed that assessee claimed rental expenses in name of another sister concern, namely, M/s Neptune DUCATI Energy Controls P.Ltd. amounting to Rs.9,60,000/-. It was also observed by Ld.AO that actually no such rent was paid to sister concern during this year and it was only in nature of book entry. In view of this, 50% of such expenses were disallowed and added to total income.

**2.3.** Aggrieved by order of Ld.A.O. assessee preferred appeal before Ld.CIT(A), who allowed the claim of assessee.

**2.4.** Aggrieved, by order of Ld.CIT(A) Revenue is in appeal before us now.

**2.5.** Ld.Sr.D.R. placed reliance on order of Ld.A.O.

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

**4.** It is observed that primary requirement of assessee is to provide services after sales. In the nature of testing and analysis, assessee gets loading, power and data analysis on sites, and since it does not have sufficient technical persons only a few equipment

could be done inside. Assessee thus outsourced testing and analysis services to its sister concern.

**4.1.** It is observed that assessee claimed testing and analysis charges amounting to Rs.97,81,741/-. Ld.A.O. has observed that in immediately preceding year too assessee was carrying out activities of similar nature and claimed testing analysis charges of Rs.3,63,843/-.

**4.2.** Ld.A.O. observed that entire testing analysis charges is claimed in the name of M/s Naac Energy Controls Pvt.Ltd. being assessee's sister concern. It has also been submitted before Ld.CIT(A) that amount paid to sister concern, on account of technical and consultancy charges is wholly and exclusively for purpose of business, and therefore same are allowable as deduction u/s 37 of the Act. Before Ld.AO/CIT(A), assessee furnished copy of accounts and copies of bills raised by sister concern in assessee's name. Ld.AO observed that up to 30.03.2010, assessee credited testing charges in the name of its sister concern.

**4.3.** Ld.CIT(A) recorded that Ld.AO did not conduct any enquiries whatsoever, and merely on basis of presumption, without any supporting evidence came to conclusion that, no actual services has been rendered by sister concern to assessee and payment shown as expenditure in hands of assessee is merely a book entry.

Ld.CIT(A) analysed MOU filed by assessee, between itself and sister concern. It is observed from submissions made by assessee before Ld.AO/CIT(A) that, for testing and analysis for product, assessee availed services of its sister concern by virtue of the MOU entered. It is observed by Ld.CIT(A) that assessee received income towards service charges amounting to Rs.83.05 lakhs in respect of projects carried out for reliance, Delhi Airport, DMRC and others. Ld.CIT(A) records that from Dial – Delhi Airport Project, assessee earned income of Rs.6,64,55,236/-, against which, testing and analysis charges amounting to Rs.20,23,700/- has been paid. Ld.CIT(A) also records that from DMRC project, assessee earned income of Rs.6,64,55,236/-, against which, testing and analysis charges of Rs.21,72,000/- has been paid. Ld.AO disallowed expenses u/s 40A(2)(b).

**4.5.** This allowance of expenses under said provisions by Ld.AO itself leads to show that Ld.AO was satisfied that services were rendered by sister concern to assessee in lieu of which payment has been made by assessee. Under section 40A(2)(b), disallowance can be of any expenditure, if it is excessive or unreasonable, having regard to fair market value of goods or services or facilities, for which payment is made. It is not the case of revenue regarding payment being excessive or unreasonable. Ld.A.O. was of the opinion :

- (a) That bills raised by sister concern were raised only in assessee's name;

(b) No actual payment has been made by assessee to its sister concern.

**4.6.** In our considered opinion this is not the requirement for applying Provisions of Section 40A(2)(b) of the Act. We are therefore in agreement with the view taken by Ld.CIT(A) and the same is upheld.

**5. Accordingly grounds raised by revenue stands dismissed.**

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

Order pronounced in the open court on 15<sup>th</sup> February, 2019.

*Sd/-*

*Sd/-*

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dt. 15<sup>th</sup> February, 2019

\*GMV

Copy forwarded to: -

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

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

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