

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SMT BEENA A. PILLAI, JUDICIAL MEMBER

ITA No. 5070/DEL/2010
[A.Y 2007-08]

Electric Power Development Co. Ltd [PPSP], K-43, IInd Floor Jangpura Extension New Delhi	Vs.	The A.D.I.T Circle - 1(2) International Taxation New Delhi
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PAN: AABCE 1581 A

ITA No. 1645/DEL/2015
[A.Y 2007-08]

The A.D.I.T Circle - 1(2) International Taxation New Delhi	Vs.	Electric Power Development Co. Ltd [PPSP], K-43, IInd Floor Jangpura Extension New Delhi
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PAN: AABCE 1581 A

(Applicant)

(Respondent)

Assessee By : Ms. Jyoti Narula, CA

Department By : Shri G.K. Dhall, CIT-DR

Date of Hearing : 12.02.2019

Date of Pronouncement : 15.02.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The appeal by the assessee is preferred against the order dated 06.09.2010 framed u/s 143(3) r.w.s 144C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] pertaining to A.Y 2007-08 and the appeal by the Revenue is preferred against the order of the CIT(A) - 42, New Delhi dated 27.01.2015 pertaining to A.Y 2007-08 by which the first appellate authority has deleted the levy of penalty u/s 271(1)(c) of the Act.

2. The appellant company is incorporated under the laws of Japan.

Its overall business activities are as under:

- > To build and operate power plants
- > To build transmission network
- > Independent Power Producer (IPP)
- > To provide consulting Services such as Survey, design and construction supervision of Hydroelectric and thermal power projects.
- > To provide electric power consultancy relating to environment protection measure.

3. It can look back on a proud history spanning over half century as an electric power wholesaler with a proven track of reliable, low-cost power supply. The nationwide network of power transmission trunk lines it has built and operated has made a significant contribution to Japan's economic development and the improvement of living standards in Japan. In October 2004, it was listed on the First Section of Tokyo Stock Exchange and this completed its transformation to a private sector company in all aspects.

4. Its performance records as of the end of March 2009 show that it has built and operate network of about 2,400 kilometers of power lines. As part of it international commitment, since 1960 it has carried out 300 consulting service projects with 63 countries and regions mainly from the developing world. This has included surveying, design and construction supervision of hydroelectric and thermal power development as well as electric power consulting relating to environment protection measures. Recently, it has become engaged in a wide range of global operations such as IPP (Independent Power Producer) projects.

5. In recent years, it has experienced an adverse environment and dramatic changes in its operating environment, mainly due to slower growth in electric power demand, further deregulation in its industry and global warming. At the same time, this change has created new business opportunities. It will strive to enhance its corporate value by reinforcing its competitiveness in electricity wholesaling and building solid revenues and earnings foundations. It will also establish new operations based on the principle of effective coexistence between energy and the environment.

6. In India EPDC through its project office named Electric Power Development Co. I Ltd.(PPSP) [the assessee] is providing detailed Design, Engineering Services and *Construction* Supervision to West Bengal State Electricity Board for its Purulia Pumped Storage Project. The Company has signed an agreement with WBSEB on dated 31st/ October 1995 expired on 30th June 2003 and renewed wef 1st July 2003 vide agreement dated 26th March 2004. The project was financed by Japan Bank for International Cooperation (JBIC). [

7. Till the time the services could be provided from head office directly, the same was done, ' however, the personnel from Japan used to visit the project site from time to time, all the services were

provided and managed by the Head Office itself. When the construction supervision started during 2002 the company felt that it should establish a project office in India. Therefore a project office was setup under the RBI's permission dated 6th September 2002. The Nodal office for the project was established in Delhi and site office as at the Project site.

8. During the course of scrutiny assessment proceedings, the A.O observed that the Head of the assessee has paid professional and consultancy fees to various persons in Japan amounting to Rs. 58,63,025/- and out of which an amount of Rs. 5043164/- has been paid to Indo Business Centre. The assessee was asked to furnish the details of these expenses. The assessee filed detailed reply giving details of expenses mainly contending that the expenses are nothing but reimbursement. It was further explained that the appellant is project office of EPDC Japan who incurs various expenses on behalf of the project office in India and such expenses are reimbursed to the Head Office in Japan by project office in India on cost to cost basis. The assessee further explained that this is the reason why no tax was deducted at source. The Assessing Officer was not convinced with the contention of the assessee New Delhi proposed a disallowance of Rs.

58,46,180/- and Rs. 1,90,69,180/- being the salaries debited to the profit and loss account of the project office of the assessee in India.

9. The assessee has raised objections before the DRP and after considering the points of objections, the DRP held as under:

"Ground No.3 & 4: These grounds are being dealt together. They relate to erroneous disallowance of professional expenses and proportional salary cost reimbursed to the head office. During the proceedings before us the details of professional charges paid to Indo Business Center Japan was produced. They relates to payments to these three parts:

1.	Indo Business Center Ltd., Japan	-	Rs.50.43,164/-
2.	Ernst & Young, Japan	-	Rs.1,90,000/-
3.	Other Japanese Consultants, Japan	-	Rs. 58,46,189/-

The AR for the assessee has relied on certain case laws. The facts of these cases are different. Assessee has reiterated before us that in addition to the main activities of project carried out at the project site by EPDC itself, various routine office activities such as accounting, payment disbursement, regulatory compliances and logistics support were outsourced by EPDC head office in Japan to Indo Business Centre Japan and some of these activities were outsourced to India Business Solutions by Indo Business Japan. Infact, assessee's project office in Delhi is functioning from the premises of Indo Business Solution. The arguments

advanced by AR has been examined. Assessee has made the payments on account of expenditure without withholding taxes. The disallowances on this account is proper.

The proportional salary cost has also been found to be made without withholding taxes. No further materials have been brought before us except for the case laws. The disallowances are found to be proper. No disallowances are being issued."

10. Aggrieved by this, the assessee is before us.

11. The ld. counsel for the assessee drew our attention to the voluminous paper book and pointed out that the documents furnished by the assessee were never considered by the DRP/Assessing Officer, which resulted into miscarriage of justice.

12. We have given a thoughtful consideration to the orders of the DRP qua the issue. The findings of the DRP are exhibited elsewhere. We agree with the ld. counsel for the assessee that the DRP has not examined the voluminous documentary evidences brought on record. Therefore, in the interest of justice and fair play, we restore this issue to the file of the DRP. The DRP is directed to decide the issue afresh

after examining the related documentary evidences and after giving reasonable opportunity of being heard to the assessee.

13. In so far as ITA No. 1645/DEL/2015 is concerned which relates to the levy of penalty u/s 271(1)(c) of the Act, we are of the considered opinion that since the quantum is set aside to the file of the DRP, the Assessing Officer must reconsider the levy of penalty after the decision of the DRP. We, therefore, set aside this issue to the Assessing Officer with the direction to reconsider the levy of penalty as per law after the decision of the DRP.

14. In the result, the appeal of the Revenue in ITA No. 1645/DEL/2015 as well as the appeal of the assessee in ITA No. 5070/DEL/2010, are treated as allowed for statistical purposes.

The order is pronounced in the open court on 15.02.2019.

Sd/-

**[BEENA PILLAI]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 15th February, 2019

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Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	