

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI**

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER

AND

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER,

**ITA No. 2028/DEL/2017
[Assessment Year: 2010-11]**

DCIT, Circle-20(1), Room No. 219, 2 nd Floor, C.R. Building, I.P. Estate, New Delhi	Power Plant Engineers Ltd., 28, Najafgarh Road, New Delhi
	PAN-AADCP3971H
Appellant	Respondent

Appellant by	Sh. C.P. Singh, Addl. CIT
Respondent by	Sh. V.K. Tulsian, FCA

Date of Hearing	27/08/2019
Date of Pronouncement	27/08/2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal, the Revenue has challenged the correctness of the Id. CIT(A)-7,
New Delhi.

2. Thus the solitary ground of the Revenue read as under:-

“On the facts and under the circumstances of the case, the Id. CIT(A) has erred in law in deleting the penalty of Rs. 1,18,72,790/- levied under section 271(1)(c) when the disallowance made u/s 40(a)(ia) was also sustained by the Id. CIT(A).

3. The roots for the levy of penalty lie in the assessment order dated nil framed under section 143(3) of the Act. While scrutinizing the return of income, the AO found

that the assessee company has paid to M/s Jindal Power Limited in lieu of the debit notes raised by M/s Jindal Power Limited with respect to salary expense and travelling expenses. The AO was of the opinion that the payments to M/s Jindal Power Limited for carrying out the work of supplying their personnel and bearing their travelling expenditure while they were engaged for the assessee company amounted to contractual payments for rendering certain services of the assessee company.

4. Accordingly, a show cause notice was issued to the assessee to explain as to why the payments could not be held liable to be subjected to the provisions of Section 194C of the Act.

5. In its reply, the assessee stated that the actual cost to the company M/s Jindal Power Limited has been reimbursed to that company and that company has duly deducted the tax at source while making payments to the concerned employees therefore, the provisions of Section 193(C) of the Act did not apply.

6. The submissions did not find any favour with the AO who was the firm belief that payments made to Jindal Power Limited are covered within the meaning of 'any work' as envisaged within the provisions of Section 194(C) of the Act. The AO disallowed Rs. 3,49,30,243/- under section 40(a)(ia) of the Act.

7. The quarrel travelled up to the Tribunal and the Tribunal in ITA No. 634/Del/2014 vide order dated 4.10.2017 remitted the matter back to the file of the AO. The relevant part of the order of the Tribunal read as under:-

"22. Therefore in view of the above decision of the Hon'ble Delhi High Court we do not have any difficulty in accepting the argument of the Ld. authorized representative that if the tax has been paid by the recipient of the income on the

income in holding the transactions and no disallowance should be made in the hands of the assessee. In view of this we set aside this issue back to the file of the Ld. assessing officer to allow the benefit of the 2nd proviso to the section 40 a (ia) of the income tax act and if the assessee is able to satisfy the Ld. assessing officer that the recipient of the income has offered the income in its return of income on furnishing the section 139 of the income tax , incorporated such income in its return of income , has paid the due tax thereon and he furnishes requisite certificate as prescribed therein that no disallowance be made. Therefore, if the assessee would like to have the benefit of this particular proviso by furnishing requisite certificate is an mentioned in the provisions of section 201 of the income tax act, the appellant may furnish to the Id AO same within 60 days of the order and the Ld. assessing officer may consider the claim of the assessee in accordance with the law. In view of this ground No. 5 of the appeal of the assessee is accepted and allowed.”

8. Pursuant to the directions of the Tribunal the AO while giving the effect in his order framed under section 143(3) read with section 254 of the Act deleted the entire additions made in the first round of litigation and accepted the returned income.

9. In the light of the aforesaid stated facts, once the foundation has been removed, the superstructure must fall. Since the basis for the levy of penalty i.e. the disallowances made in the assessment order has been removed, the penalty so levied deserves to be deleted. Therefore, we decline to interfere with the findings of the Id. CIT(A). Appeal filed by the Revenue is dismissed.

10. In the result, appeal by the Revenue is dismissed.

The order is pronounced in the open court on 27/08/2019.

Sd/-
[SUSHMA CHOWLA]
JUDICIAL MEMBER
Delhi; Dated: 27/08/2019.
SH

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	27/08/2019
Date on which the typed draft is placed before the dictating Member	27/08/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the	
Date on which the final order is uploaded on the website of ITAT	29/08/2019
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	