

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1166/MUM/2018
Assessment Year: 2014-15**

M/s Neev Infrastructure P Ltd., Neev Victoria, Nesabit Road, Next to Mazgaon Sales Tax Office, Mumbai - 400010 PAN: AABCC7395N	Vs.	The DC, Central Circle-4(2), 1918, Air India Nariman Point, Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Rajiv Khandelwal (AR)
Revenue by : Shri Abi Rama Kartikiyen (DR)

Date of Hearing: 26/07/2019
Date of Pronouncement: 30/07/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 29.11.2017 passed by the Commissioner of Income Tax (Appeals)-52 (for short 'the CIT(A), Mumbai, for the assessment year 2014-15, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. The brief facts of the case are that the assessee company, a builder developer and civil contractor, filed its return of income for the assessment year under consideration declaring total income of Rs. 6,09, 24,760/-. Since, the case was selected for scrutiny, AO issued notice u/s 143 (2) and 142 (1) of the Act. In response thereof the authorized representative of the assessee attended the proceedings and furnished the details. The AO completed the assessment u/s 143 (3) of the Act determining the total income at Rs. 6,60,56,600/- inter alia making addition of Rs. 15,93, 485/- on account of

prior period income. In the first appeal, the Ld. CIT (A) confirmed the addition made by the AO. The assessee is in appeal against the said findings of the Ld. CIT (A).

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following grounds:-

1. *“The Ld. C.I.T. (Appeal) erred in confirming additions of Rs. 15,93,485/- as Prior Period Income.*
2. *The appellant request to delete the addition confirmed by the CIT (A).*

4. The Ld. counsel for the assessee submitted before us that prior period expenditure represents depreciation claim due to the reason that the asset was not put to use during the year relevant to the assessment year 2012-13. Therefore, the said amount represents expenditure and not the income. Since, the assessee did not claim depreciation in the AY 2012-13, the same was claimed in the assessment year under consideration. The Ld. counsel also submitted before us a working to explain the claim of the assessee. The Ld. counsel further submitted that the assessee could not properly explain and justify its claim before the AO during assessment proceedings, therefore the assessee may be given one more opportunity to justify its claim before the AO in the interest of justice.

5. On the other hand, the Ld. Departmental Representative (DR) did not oppose the submissions made by the Ld. counsel and submitted that the issue may be sent back to the AO for deciding the issue afresh in the light of the submissions made by the Ld. counsel for the assessee.

6. We have perused the material on record in the light of the submissions made by the Ld. counsel for the assessee. From the perusal of the working submitted by the Ld. counsel, it appears that since the assessee failed to justify its claim before the AO, the Ld. CIT (A) confirmed the addition on the basis of the findings of the AO. Hence, in view of the submissions made by the Ld. counsel, we are of the considered view that the assessee should get one more

opportunity to justify its claim before the authorities below. We, therefore, allow the request of the Ld. counsel in the interest of justice and set aside the impugned order and send the issue back to the AO with the direction to decide this issue afresh in the light of the working submitted before us after affording a reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2014-2015 is allowed for statistical purposes.

Order pronounced in the open court on 30th July, 2019.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30/07/2019

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai