

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, AHMEDABAD**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
& SHRI MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 521/Ahd/2015

(निर्धारण वर्ष / Assessment Year: 2005-06)

<b>M/s. Jai Somnath Iron Works</b> 4, Asta Mitra Estate, Nr. Vadilal Ice Factory, Dudheshwar Road, Ahmedabad- 380004	<b>बनाम/</b> Vs.	<b>JCIT</b> Range-9 1 <sup>st</sup> Floor, Pratyaksh Kar Bhawan, Ambawadi, Ahmedabad
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:</b> AAB FJ1 886 A		
(अपीलार्थी/ <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से/ <b>Appellant by :</b>	Shri S. N. Divatia, AR
प्रत्यर्थीकीओरसे / <b>Respondent by:</b>	Shri Rajdip Singh, Sr. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	01/10/2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	18/10/2019

**आदेश/ORDER**

**PER MANISH BORAD - AM:**

This appeal by the assessee pertaining to A.Y. 2005-06 is directed against the order of Ld. Commissioner of Income Tax (Appeals)-10, (in short Ld. CIT(A)) Ahmedabad dated 12.12.2014 which is arising out of the order under section 143(3) of the Income Tax Act, 1961; in short "the Act" in 26.12.2007 framed by Joint Commissioner of Income Tax, Range-9, Ahmedabad.

2. The brief facts as called out from the records are that the assessee is a partnership firm engaged in the contract work in regard to laying of Gas/Oil/Water Pipeline. Income of Rs. 96,22,150/- declared of return of income filed on 31.10.2005. The case was selected for scrutiny followed by serving notices under

section 143(2) and 142(1) of the Act. Assessee also filed revised return on 28.12.2006 showing income at Rs. 76,91,930/-. In the course of assessment proceeding Ld. AO observed that the assessee has not deducted tax at source on various payments which calls for a disallowance under section 40(a)(ia) of the Act. After considering the submissions of the assessee, Ld. AO made various additions making disallowance 40(a)(ia) of the Act, lump sum disallowance of travelling and office expenses and 1/5<sup>th</sup> disallowance of telephone mobile vehicle and vehicle expenses and assessed income at Rs. 2,33,16,232/-.

3. Aggrieved assessee preferred appeal before Ld. CIT(A) and partly succeeded. Now, the assessee in appeal against the order of Ld. CIT(A) confirm the additions and has raised following grounds of appeal:-

*“1.1 The order passed by CIT(A), Abad on 12.12.2014 for A.Y. 2005-06 partly confirming the disallowance made u/s. 40(a)(ia) by AO is wholly illegal, unlawful and against the principles of natural justice.*

*1.2 The Ld. CIT(A) has grievously erred in not admitting the additional explanation and evidence relating to the disallowance of testing fees of Rs. 9,67,924/-, though there was sufficient cause for failure to produce the same before AO.*

*2.1 The Ld. CIT(A) has grievously erred in law and or in confirming the following disallowance made by AO.*

<i>(i)</i>	<i>Disallowance u/s. 40(a)(ia)-Consultancy</i>	<i>Rs. 66,543/-</i>
<i>(ii)</i>	<i>Disallowance u/s. 40(a)(ia)-testing</i>	<i>Rs. 9,67,924/-</i>
<i>(iii)</i>	<i>Disallowance u/s. 40(a)(ia)-</i>	<i>Rs. 1,03,122/-</i>
<i>(iv)</i>	<i>1/5<sup>th</sup> out of telephone, vehicle etc.</i>	<i>Rs. 1,36,481/-</i>

*2.3 That in the facts and circumstances of the case, the Ld. CIT(A) ought not to have confirm the above said disallowances.*

*It is therefore prayed that the impugned disallowances as made by AO and partly confirmed by CIT(A) may please be allowed.”*

3. Ld. Counsel for the assessee argued referring to the following submissions:-

*“(i) Disallowance u/s. 40(a)(ia)-Consultancy Rs. 66,543/-*

*The ledger a/c of consultancy charges (pg-37) and Bills shows that in all Rs 22,000/- were paid to Shri D N. Patel loss assessor & valuer towards JCB, excavator etc. inspection charges which is not liable to TDS u/s 194J.*

*Similarly Rs. 24,300/-were paid to Bureau Veritas Indus Services P Ltd as per Bill No. 4001086 dt. 21-4-2004 related to inspection charges of seamless pipes.*

*Similarly Rs. 28,386/- were disallowed in respect of Comr. Clearing Agencies P Ltd (Pg.39) though reimbursements.*

(ii) *Disallowance u/s. 40(a)(ia)-testing* Rs. 9,67,924/-

*The brake up appears at pg. 40 of PB and it includes RS.4,89,332/- material purchase (Pg. 42) and items below Rs. 20,000/- where no TDS is to be made. So far as remaining amount of Rs.4,01,241/- is concerned the parties may be assessed to tax the AO may verify the same as to tax paid by them.*

(iii) *Disallowance u/s. 40(a)(ia)-* Rs. 1,03,122/-

*It was sub contract payments to Laxmi Eng: Co. In case it is assessed to tax, the benefit of proviso may be allowed subject to verification*

(iv) *1/5<sup>th</sup> out of telephone, vehicle etc.* Rs. 1,36,481/-

*Looking to the nature and volume of the business, no of total vehicles, staff etc the disallowance is excessive.”*

4. Per contra the Learned. DR vehemently argued supporting the order of the lower authorities.

5. We have heard rival contention and perused the record placed before us and also gone through the Paper Book running from Page No. 1 to 42. Though, the assessee has raised various grounds of appeal but they are confined to the following disallowance confirmed by Ld. CIT(Appeals):-

“(i) *Disallowance u/s. 40(a)(ia)-Consultancy* Rs. 66,543/-  
(ii) *Disallowance u/s. 40(a)(ia)-testing* Rs. 9,67,924/-  
(iii) *Disallowance u/s. 40(a)(ia)-* Rs. 1,03,122/-  
(iv) *1/5<sup>th</sup> out of telephone, vehicle etc.* Rs. 1,36,481/-”

6. As regards the disallowance under section 40(a)(ia) of Rs. 66,543/- paid towards consultancy charges we observe that the Ld. AO primarily made disallowance of Rs. 2,25,141/- and when the matter came before the Ld. CIT(A) disallowance of Rs. 1,58,598/- was deleted being reimbursement to the C/F agent.

We find that the alleged disallowance of Rs. 66,543/- also includes Rs. 28,386/- paid to Commercial Clearance Agencies Pvt. Ltd. Copy of bill is placed at Page No. 39 of the Paper Book. On perusal of the sum we find that at sum of Rs. 24,535/- is for reimbursement of charges paid to AIR India which in our considered view is not liable for TDS. And the remaining amount of Rs. 3,851/- is towards minor charges for documentation, loading, labour charges etc. which are also not liable for TDS. Therefore, Rs. 28,386/- has been wrongly disallowed under section 40(a)(ia) by the Ld. CIT(Appeals) and deserves to be deleted. For the remaining amount of Rs. 38,157/- (Rs. 66,543 - Rs. 28,386) which are incurred purely for technical and professional fees and were liable for deduction of tax at source. Ld. Counsel for the assessee failed to provide any certificate from Chartered Accountant or any evidence to prove that alleged amount of Rs. 38,157/- has been offered to tax. We are, therefore, not inclined to interfere in the finding of the Ld. CIT(Appeals) confirming disallowance of Rs. 38,157/- and the same stands confirmed. In the result, out of the total alleged disallowance of Rs. 66,543/- we delete the disallowance of Rs. 28,386/-.

7. Now, we take up the disallowance of Rs. 9,67,924/- confirmed by CIT(A) under section 40(a)(ia) of the Act. We find that before the lower authorities assessee filed certain documents to prove that alleged amount also include payment for purchase of material and some payments below the limit of Rs. 20,000/- which are also not liable for deduction of tax at source but no cognizant was taken by both the lower authorities. Looking to the fact that the issue relates to A.Y. 2005-06 and practically will not be advisable to set aside the matter to the AO for the purpose of verification, we have gone through the document placed in the Paper Book and find that out of Rs. 9,67,924/-, sum of Rs. 4,89,532/- has been paid for purchase of material from various vendors namely Veekay Vikaram & Co. 3,17,104/- M/s. Xell Chemicals at Rs. 32,860/-, M/s. New Lexus Sales Corporation Rs. 70,068/- and M/s. Delta Engineers at Rs. 69,300/-. We also find that total sum of Rs. 77,351/- were paid to nine vendors and individual amount paid for the year

was less than the prescribed limit for deduction of tax at source. These facts were not disputed by the Ld. DR. Therefore, in our considered view sum of Rs. 5,66,683/- (material cost Rs. 4,89,332/- and amount less than Rs. 20,000/- totalling to Rs. 77,251/- were not liable for deduction of tax at source and therefore no disallowance for 40(a)(ia) was called for. For the remaining amount of Rs. 4,01,241/- as it is contended that few of the suppliers have Permanent Accountant Number and may have offered the alleged amount for tax but no concrete evidence filed by the assessee in support to prove that the alleged amount of Rs. 4,01,241/- has been offered to tax by the respective payee. The general contention made by the assessee will not be of any help and, therefore, we confirm the view taken by the Ld. CIT(A). In the result, out the total disallowance of Rs. 9,67,924/- assessee gets relief of Rs. 5,66,683/- and the remaining disallowance of Rs. 4,01,241/- stands confirmed.

8. As regards the disallowance of Rs. 1,03,122/- under section 40(a)(ia) of the Act, it is not in dispute that the alleged amount was paid contract as charge to Laxmi Engineering Company and was subject to deduction of tax. However, since no concrete evidence has been placed before us to prove that the alleged amount has been offered to tax by the assessee we find no reason to interfere in the finding of the Ld. CIT(A) and therefore, disallowance of Rs. 40(a)(ia) of the Act of Rs. 1,03,122/- paid to M/s. Laxmi Engineering Company stands confirmed.

9. Now we take up the issue of 1/5<sup>th</sup> disallowance of telephone and vehicle expenses and adhoc disallowance. We find that the Ld. AO made disallowance of 1/5<sup>th</sup> of the expenses incurred for telephone expenses, mobile expenses, vehicle insurance, vehicle depreciation and lump sum disallowance of Rs. 40,000/- out of travelling and 20,000/- out of office expenses. Assessee failed to get any relief by Ld. CIT(A). Before us Ld. Counsel for the assessee submitted that the books of account are audited and no evidence was found by the AO to question the genuineness of expense claimed. To some extent, we find force in the contention

made by the Ld. Counsel for the assessee and agree to the fact that no specific instances has been pointed out by the AO which could prove that the assessee has claimed excessive expenses or false claim has been made. However, looking to the fact that in such type of expenses an element of personal nature cannot be ignored since the assessee is a partnership firm and no separate perquisites have been paid to the partners, therefore, in the interest of justice and being fair to both the parties we sustain the disallowance of Rs. 50,000/- as against Rs. 1,36,481/- confirmed by Ld. CIT(Appeals).

10. In the result, the appeal of the assessee is partly allowed.

**This Order pronounced in Open Court on 18/10/2019**

Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Ahmedabad: Dated 18/10/2019

TANMAY

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

True Copy

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।