

आयकर अपीलिय अधीकरण, न्यायपीठ – “ए” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.400/Kol/2017
Assessment Year :2009-10

M/s G.G. Enterprise Room No. 13, Block-05, Mahamaya Bazaar, Durgapur-713207 [PAN No.AAGFG 9915 N]	V/s.	Income Tax Officer, Ward-1(2), Aayakar Bhawan, Durgapur- 713216
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Siddharth Agarwal, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Dhruvajyoti Roy, JCIT-DR
सुनवाई की तारीख/Date of Hearing	13-01-2020
घोषणा की तारीख/Date of Pronouncement	05-02-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2009-10 arises against the Commissioner of Income Tax (Appeals)-Durgapur's order dated 30.11.2016 passed in case No.72/CIT(A)/DGP/2016-17, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's former substantive grievance seeks to reverse both the lower authorities' action invoking sec.40A(3) disallowance cash payment of business expenditure amounting to ₹3,19,900/-. Learned counsel states very fairly that the assessee no more wishes to press for its instant former

grievance keeping in mind smallness of the amount involved provided the same is not treated as a precedent in any other assessment year. We accept the assessee's fair stand and affirm the impugned disallowance in above terms.

3. Next comes the latter issue of disallowance of hire charges amounting to ₹60,99,334/- made on account of non-deduction of TDS in both the lower authorities proceedings. There is no dispute that this assessee has paid the impugned hire charges without deducting TDS. The Revenue's case therefore both the lower authorities reasoning is that it ought to have deducted TDS as the impugned payments being contractual / sub-contractual in nature. We do not see any such oral or written evidences in the case file suggesting assessee's payees to have assumed its contractual liability regarding its transportation work. Hon'ble jurisdictional high court's decision in *Commissioner of Income Tax Kolkata-XVI vs. M/s Stumm India* in **ITA No. 127 of 2009** dated 16.08.2010 holds that the impugned disallowance in absence of such an agreement or contract between the parties; is not sustainable. We therefore direct the Assessing Officer to delete the impugned disallowance. Necessary computation shall follow as per law.

4. This assessee's appeal is partly allowed in above terms.

Order pronounced in the open court 05/02/2020

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp Sr.P.S

दिनांक:- 05/02/2020

कोलकाता ।

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

1. अपीलार्थी/Appellant-M/s G.G. Enterprise, Room No.13, Block-05, Mahamaya Bazaar, Durgapur-713207
2. प्रत्यर्थी/Respondent-ITO Ward-1(2), Aayakar Bhawan, Durgapur-713216
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, **कोलकाता** ।