

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,  
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA  
(समक्ष)Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)  
[Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

**I.T.A. No. 2123/Kol/2017**  
**Assessment Year: 2012-13**

M/s. Anchal Collection Ltd. (PAN: AAFCA0699H)	Vs.	Deputy Commissioner of Income-tax, Circle-10(1), Kolkata.
Appellant		Respondent

&

**CO No. 17/Kol/2019**  
**In I.T.A. No. 2123/Kol/2017**  
**Assessment Year: 2012-13**

Deputy Commissioner of Income-tax, Central Circle-2(4), Kolkata	Vs.	M/s. Anchal Collection Ltd.
Cross Objector		Respondent

Date of Hearing	03.03.2020
Date of Pronouncement	29.05.2020
For the Appellant	Shri S. M. Surana, Advocate
For the Cross Objector	Shri Ram Bilash Meena, CIT, DR

### **ORDER**

**Per Shri A.T.Varkey, JM**

Both these appeal and Cross Objection filed by the assessee and revenue respectively against the order of Ld. CIT(A)-16, Kolkata dated 30.08.2017 for AY 2012-13.

2. Ground No 2 of assessee's appeal is against the action of Ld. CIT(A) in passing the order ex parte without allowing the assessee any proper opportunity of being heard.

3. After hearing the rival submissions and on perusal of the grounds of appeal of assessee, we note that the assessee has preferred this appeal against the action of Ld.

CIT(A) in confirming the disallowance of expenses of Rs.5,69,66,737/- u/s. 40(a)(ia) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) and confirming the addition of Rs.2,71,39,800/- u/s. 68 of the Act and confirming the disallowance of Rs.2,68,441/- by treating the electric installation as normal electrical installation when the same was part of the machinery and on which depreciation as machinery was allowable. We also note that the order of Ld. CIT(A) is an ex parte and cryptic order without affording any reasonable opportunity of being heard to the assessee. However, during the hearing before us, the Ld. AR has brought to our notice that given an opportunity the assessee is ready to cooperate in the appellate proceedings before the Ld. CIT(A). In the aforesaid circumstances, we are of the opinion that there was no proper opportunity granted to the assessee at the time of appellate stage. Therefore, we set aside the impugned order of the Ld. CIT(A) and remand the issue raised by the assessee back to the his file for fresh adjudication after affording reasonable opportunity of being heard to the assessee and the assessee is directed to diligently participate in the appellate proceedings without fail. Therefore, the grounds of appeal of assessee are allowed for statistical purposes.

4. Now we are coming to Revenue’s Cross Objection. This Cross Objection of revenue is time barred by 35 days and a condonation petition has been filed. After considering the condonation petition and for the reasons given therein, we condone the delay of 35 days in filing the cross objection and admit the same for hearing.

5. At the time of hearing the Ld. AR of the assessee pointed out that the grounds raised by the Revenue in its cross objection which is as under:

*“That in the facts and the circumstances of the case the ground taken by the assessee/appellant against disallowance of expenses u/s. 40(a)(ia) of the I. T. Act, 1961 for Rs.5,69,66,737/- added back to the total income by the Assessing officer in the Assessment Order u/s. 143(3) of the I. T. Act, 1961 dated 27.03.2015 for the Assessment Year 2012-13 as confirmed by the Ld. CIT(A) vide order No. 922/ CIT(A) - 15/Kol/15-16 dated 30.08.2017 should be dismissed considering that the same expenses claimed for Rs.5,69,66,737/- has already been allowed in the Assessment year 2013-14.”*

6. On the aforesaid issue the Ld. AR drew our attention to the decision of the Tribunal “A” Bench, Kolkata in IT(SS)A No. 23/Kol/2017 ACIT Vs. M/s. Imax

Infrastructure Pvt. Ltd. for AY 2008-09 dated 16.01.2019 wherein the Tribunal has restricted the disallowance made by the AO u/s. 40(a)(ia) of the Act to the extent of 30% of the total amount by taking note of the amendment brought in by Finance Act No. 2 w.e.f. 01.04.2015 to sec. 40(a)(ia) of the Act. According to Ld. AR, the Chandigarh Bench of the Tribunal has held that the said amendment was curative in nature and hence, retrospective [in the case of DCIT Vs. Punjab Infrastructure & Development Board, Chandigarh ITA No. 774/Chd/2013 order dated 30.09.2015.] Taking note of this decision, the Tribunal in M/s. Imax Infrastructure Pvt. Ltd. (supra) vide para 4.1 held as under:

*“4.1. In view of the above concession given by the ld. Counsel for the assessee, we reverse the order of the Ld. CIT(A) and restore the disallowance made by the Assessing Officer u/s. 40(a)(ia) of the Act, to the extent of 30% of the total amount. The balance disallowance is hereby deleted.”*

7. In the light of the above position of law, the Ld. AR submitted that the assessee is ready to remit 30% of the total amount disallowed u/s. 40(a)(ia) of the Act and the disallowance may be restricted to 30% as directed by the Tribunal supra

8. After hearing the Ld. DR also we note that the assessee's appeal has been remanded back to the file of Ld. CIT(A) for de novo adjudication, therefore, we are inclined to remand this issue also back to the Ld. CIT(A) for taking a decision after duly considering the submission of the Ld. AR of the assessee and the cited decision of the Tribunal on this issue supra. Therefore, the cross objection of revenue is allowed for statistical purposes.

9. In the result, both the appeal and the cross objection are allowed for statistical purposes.

Order is pronounced in the open court on 29th May, 2020

Sd/-  
(J. Sudhakar Reddy)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 29th May, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Central Circle-2(4) & DCIT, Circle-10(1), Kolkata.
2. Respondent – M/s. Aanchal Collection Ltd., Paridhan – The Garment Park, 19, Canal South Road, SDF V, Room No. 403, Kolkata-700 015.
3. The CIT(A)-16, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Asstt. Registrar.