

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA. No.4165/DEL/2016
Assessment Years 2012-13

ACIT, Circle-15(1), Room No.306, C.R. Building, New Delhi	v.	M/s Lahmeyer International India (P) Ltd. A-3, 2 nd Floor, Neeti Bagh, New Delhi-110049
TAN/PAN: AAACL1902H		
(Appellant)		(Respondent)

Appellant by:	Shri J.K. Mishra CIT-D.R.		
Respondent by:	Shri Nirbhay Mehta		
Date of hearing:	16	01	2020
Date of pronouncement:	12	03	2020

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 17.05.2016 passed by Ld. CIT (Appeals)-5, Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2012-13. In the grounds of appeal, the Assessee has raised following grounds:

- I. *The Ld. CIT(A) has erred in deleting the addition of Rs.10,89,77,286/- made by A.O. on account of expenses claimed by the assessee.*
- II. *The Ld. CIT(A) has erred in deleting the addition of Rs.1,95,000/- made by the A.O. on account of disallowance under section 14A read with rule 8D for the A.Y. 2012-13 by ignoring fact that as per the CBDT's Circular No.5/2014 dated 11.02.2014 Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not*

earned any exempt income.

2. At the outset, the Ld. Counsel for the assessee submitted that in so far as ground no. 1 is concerned, the same is squarely covered by the decision of the Tribunal in assessee's own case for the assessment years 2010-11 and 2011-12 passed in ITA Nos.4350 & 6073/Del/2014, order dated 21/06/2018.

3. The facts in brief are that the assessee-company is engaged in the business of providing consultancy services in the field of power sector comprising thermal, hydel, wind and solar energy and also infrastructure sector and as per schedules/plan/requirement of their projects it raises invoices, as per services provided to their clients. During the course of assessment proceedings, the assessee was asked to give project wise details of expenses and income earned during the year and further also asked why the addition should not be made on adhoc basis being 10% of the total expenditure as was made in the earlier Assessment Years 2010-11 and 2011-12, wherein it was held that disproportionate expenses are being incurred by the assessee company in respect of revenue booked. In response, the assessee has filed a very detailed reply and described the nature of services rendered, method of revenue recognition followed, expenses incurred to earn the income and the status of its ongoing projects. It was further submitted that it was also discussed and clarified that having regard to the peculiar nature of services being rendered and the size of business, there cannot be work-in-progress in the case of assessee. It

was also explained that maintaining projects wise accounting is not feasible and moreover not mandatorily required. It was further explained that during the relevant assessment year, assessee was having 148 jobs and revenue earned was Rs.45.48 crores. Out of these, 62 jobs were completed by the end of year having revenue 19.77 crore. Out of 86 ongoing jobs (having revenue of 25.71 crore), considering the nature of projects there is no work-in-progress from the Lender's Engineering (LE) jobs. There were 52 ongoing LE jobs (contributed revenue of Rs.8.46 crores) on 31st March, 2010. Out of remaining 34 ongoing jobs, 5 jobs are on man hours or man days basis. Since revenue for these jobs (Rs.11.08 crore) having already been charged for services rendered up to 31st March, 2010 there is no work-in-progress. Further, in remaining 29 ongoing jobs (having revenue of Rs.6.17 crore) in some jobs review and supervision services are also provided besides major activities on lump sum basis. Since revenue of all such activities (i.e. review and supervision) performed till 31st March, 2010 has already been booked there is no work in progress for the as well. However, the Assessing Officer proceeded to make the ad-hoc disallowance of 10% of the expenses, which was worked out at Rs.10,89,77,268/-on the ground that project wise expenses are not bifurcated.

4. The Ld. CIT (A), after detailed discussions and following the earlier appellate order has deleted the addition on the ground that project wise accounting is neither feasible nor

mandatory in respect of services providers and there could not be element of stock-in-trade and work in progress and therefore, the ad-hoc disallowance of expenditure for allocation of work in progress do not correct.

5. We find that this issue had come up for consideration before this Tribunal in earlier years and the Tribunal has deleted the addition holding as under:-

“10. We have carefully considered the rival contentions and find that the ld AO has disallowed 10% of the total expenditure incurred by the assessee on ad hoc basis. As the assessee is engaged in providing services it recognized revenue on milestone basis. As soon as milestone is achieved the invoices have been raised, hence, it was contended by the assessee that there is not remained any work in progress at the end of the year. The ld AO asked the assessee to furnish project wise revenue and the project wise expenses which the assessee did not maintain and therefore, same was not given and on our examination of the method of accounting applied by the assessee, it appears that when the assessee has received billing as per milestone and from the milestone till the close of the year there are no expenditure identified by the ld AO then there cannot be any work in progress in the business of the assessee. The ld AO could not find out that whether there is such expenditure exists or not. It was also not found by the ld AO that the assessee has incurred substantial expenditure. If the milestone before the close of the year. As the assessee is engaged in the business of consultancy services definitely there can be sum over lap of the expenses between two years. However that does not give any rise to the AO to disallow the expenditure @10% and treat it as work in progress. We do not find any reason to deviate from this reason given by the ld CIT(A) in deleting the above disallowance. Even otherwise the order of the ld CIT(A) is reasonable as it follows the decision of the Hon'ble Bombay

High Court, we do not have any reason to deviate from the same. Accordingly ground NO. 1 of the appeal of the revenue for both the years are dismissed.”

6. Thus, respectfully following the earlier year precedents which is applicable to the facts of the present appeal also, we hold that the finding of the Ld. CIT(A) is based on correct appreciation of facts and law, therefore, the same is uphold. Accordingly, ground no.1 of the Revenue is dismissed.

6. In so far as ground no.2 is concerned, relating to deletion of addition of Rs.1,95,000/- under section14A read with rule 8D, the facts in brief are that the assessee has made investment in respect of HDFC mutual fund, which was a short term mutual fund and there was no opening and closing balance. These mutual funds were made out of assessee's own available spare funds and no investments were made in the shares. The Ld. AO has made disallowance after invoking Rule-8D by taking peak investment of Rs.3,90,00,000/- and disallowed Rs.1,95,000/- under formula provided in Rule-8D(2)(iii). The Ld. CIT(A) deleted the said addition on the ground that, firstly, the assessee has not incurred and claimed any expenditure against exempt income; and secondly, there is no express satisfaction by the AO to rebut the claim of the assessee that no expenditure has been incurred in relation to exempt income. Apart from that, in the present case percentage of average value of investment appearing in the balance sheet for the first day and last day is not established and therefore, addition cannot be made.

7. After hearing both the parties and on perusal of the impugned order, we find that the assessee before the AO has very specifically stated that it has made short term investment in mutual funds of HDFC Bank and these investments have been redeemed during the year itself and there is no opening and closing investment, therefore, no disallowance under section 14A of the Act can be computed. Apart from that, the assessee has stated that the investment has been made out of surplus funds which have also not been rebutted by the AO. The Ld. AO without recording any satisfaction about the claim of the assessee that no expenditure has been incurred directly or indirectly in relation to the earning of exempt income and has proceeded to mechanically apply Rule-8D which cannot be done. Therefore, the finding of the Ld. CIT (A) is upheld. Accordingly, this ground of the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 12th March, 2020.

Sd/-
[Dr. B.R.R. KUMAR]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 12th March, 2020

Shekhar. Sr. PS

Copy forwarded to:

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

Assistant Registrar