

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 3938/Del/2015
(Assessment Year: 2010-11)

ITA No. 3939/Del/2015
(Assessment Year: 2011-12)

&

ITA No. 5470/Del/2016
(Assessment Year 2012-13)

DCIT, Circle-19(1), New Delhi	Vs.	Opus Projects Ltd, 20, Functional Industrial Estate, Patparganj, New Delhi PAN: AABCO0134H
(Appellant)		(Respondent)

Revenue by :	Shri H. K. Chaudhary, CIT DR
Assessee by:	Shri C. S. Anand, Adv
Date of Hearing	22/12/2020
Date of pronouncement	19/01/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are three appeals filed by LD Dy. CIT, Circle-19(1), New Delhi (The Learned AO) for assessment year 2010 – 11, 2011 – 12, and 2012 – 13. Some Common issues are involved in these appeals and therefore we disposed of those by this common order.
2. The learned AO has filed appeal against order of ld CIT(A)-7, New Delhi dated 23.03.2015 for Assessment Year 2010-11 raising in ITA No. 3938/Del/2015 following grounds of appeal:-
 - “1. On facts and in circumstances of case, Ld. CIT(A) has erred in deleting addition of Rs. 12.48.000/- and therefore disagreeing with AO that a sum of Rs. 3,12,000/- which was 1/5th of total amount was allowable by ignoring vital evidence in form of lease deed which showed said amount of stamp duty paid for five years.”

2. "i. On facts and in circumstances of case, Ld. CIT(A) has erred in law in deleting addition of Rs. 1.25.87.414 /- without appreciating facts that assessee is not fulfilling conditions laid down in section 30(a)(i) of Income-tax Act, 1961 since assessee company has not undertaken to bear cost of repair / civil construction as per registered lease agreement of assessee."
 - "ii. On facts and in circumstances of case, Ld. CIT(A) has erred in deleting addition of Rs. 1,25,87,414/- without appreciating facts that assessee company has not incurred expenditure on lease premises was more than cost of leased premises.
 3. "i. On facts and in circumstances of case, Ld. CIT(A) has erred in law in deleting addition of Rs. 93,00,000/- made on account of excess rent u/s 40(A)(2)(a) of Income-tax Act, 1961 without appreciating facts that assessee has claimed to have incurred expenditure on rent of Rs. 1,80,00,000/- whereas cost of lease rental property is less than rental income i.e. cost of Rs. 1,19,39,365/- and therefore, expenditure incurred is excessive or unreasonable having regard to fair market value of such payment of rent."
 - ii. On facts and in circumstances of case, Ld. CIT(A) has erred in law in deleting addition of Rs. 93,00,000/- made on account of excess rent u/s 40(A)(2)(a) of Income-tax Act, 1961 by admitting fresh evidence without following mandatory procedure under Rule 46A. In view of this, matter had to be restored to Assessing Officer to examine afresh.
 4. On facts and in circumstances of case, Ld. CIT(A) has erred in law in deleting addition of Rs. 5,45,52,447/- made on account of legal and professional fees and consultancy charges u/s 40(A)(2)(a) of Income-tax Act, 1961 without any basis and material evidence on record"
 5. On facts and in circumstances of case, Ld. CIT (A) has erred in law in deleting addition of Rs 3,32,000/- made on account of foreign travelling expenses without appreciating facts that assessee has failed to furnish material evidence on record showing that said expenses were wholly and exclusively spent for business purposes."
 6. On facts and in circumstances of case, Ld. CIT (A) has erred in deleting addition of Rs. 8,11,76,086/- made on account of undisclosed management fee since revenue is recognized in this year as tax was deducted during year on this amount and assessee company has claimed credit in this year also and that deductee party i.e. M/s Alliance Promoters hat claimed deduction Of expenditure in this under reference."
 7. In facts and in circumstances of case, Ld. CIT (A) has erred in deleting addition of Rs. 3,00,000/- made on account of excess rental expenses u/s 40(A)(2)(a) of Income-tax Act, 1961 without appreciating facts that assessee has failed to produce any material on record to show that payment was not excessive and is comparable to unrelated parties or it was for legitimate needs of business before Assessing Officer as well as before Ld. CIT(A)."
3. Similarly, Id AO filed ITA number 3939/Del/2015 against order of The Commissioner Of Income Tax (Appeals) – 7 dated 23rd of March 2015 for Assessment Year 2011 – 12 has raised following grounds of appeal:-
- i. on facts and in circumstances of case, learned CIT – A has erred in deleting addition of ₹ 90 lakhs made on account of excess rent u/s 40A (2) (a) of

income tax act, 1961 without appreciating fact that assessee has claimed to have incurred expenditure on rent of Rs 1, 80,00,000 whereas cost of lease rental property is less than rental income i.e. ₹ 1,19,39,365/- and therefore, expenditure incurred is excessive or unreasonable having regard to fair market value of such payment of rent

- ii. on facts and in circumstances of case, learned CIT (A) has erred in deleting addition of ₹ 90 lakhs on account of consultancy charges u/s 40A (2) (a) of income tax act, 1961 without any basis and material evidence on record
- iii. on facts and in circumstances of case, learned CIT (A) has erred in deleting addition of ₹ 8,663,244/- made on account of consultancy charges from Messer signature group India private limited without any basis and material evidence on record
- iv. on facts and in circumstances of case, learned CIT – A has erred in law and on facts in deleting disallowance u/s 14A rwr 8D of ₹ 450,000/- out of total disallowance of ₹ 1,180,642/- by admitting fresh explanation of assessee without referring to AO for verification which is in violation of provisions of sub rule (3) of rule 46A.
- v. On facts and in circumstances of case, learned CIT – A has erred in law and on facts in deleting disallowance u/s 14 A read with rule 8D of ₹ 450,000/- without following mandatory procedure Under rule 46A and matter had to be restored to assessing officer to decide matter afresh

4. ITA number 5470/Del/2016 is filed by learned Asst Commissioner Of Income Tax, Circle – 19 (1), New Delhi against order of The Commissioner Of Income Tax (Appeals) – 36, New Delhi dated 22 August 2016 for assessment year 2012 – 13 raising following grounds of appeal:-

- i. on facts and Under circumstances of case, learned CIT – A has erred in deleting addition of ₹ 90 lakhs made on account of excess rent u/s 40 A(2)(a) of income tax act, 1961 without appreciating fact that assessee has claimed to have incurred expenditure on rent of Rs 1,80,00,000 whereas cost of lease rent property is less than rental income i.e. cost of Rs 1,19,39,365/-. Therefore, expenditure incurred in excessive or unreasonable having regarded to fair market value of such payment of rent.
- ii. On facts and Under circumstances of case, learned CIT – A has erred in deleting addition of ₹ 90 lakh/- made on account of consultancy charges u/s 40A (2) (a) of income tax act, 1961 without any basis on record.

5. Firstly, we state facts for A Y 2010 – 11. Brief facts shows that assessee is a company engaged in business of real estate infrastructure. It filed its return of income on 15.10.2010 declaring income of Rs. 3,79,21,780/-. Case of assessee was picked up for scrutiny and assessment under/ section 143(3) of The Income Tax Act [The Act] was passed on 22.03.2013, wherein, income was assessed at Rs. 19,75,17,730/-. The following additions were made:-
- i. Disallowance on account of stamp duty on lease agreement for five years of rented property of Rs. 12,48,000/- , being 4/5th held to be capital expenditure
 - ii. Disallowances of capital expenditure being renovation expenditure incurred by assessee in Lease hold premises of Rs. 1,25,87,414/-.
 - iii. Disallowances of rental expenses of Rs. 93,00,000/- out of total rent paid of Rs. 1,86,00,000/- applying provisions of section 40A(2)(a).
 - iv. Disallowances of legal and professional charges of Rs. 5,46,52,447/- being 50% of total expenditure applying provisions of section 40A(2)(a).
 - v. Disallowances of travelling expenditure of Rs. 332,000/- holding that 50% of total travelling expenditure is not for purpose of business.
 - vi. Disallowances/ additions of Rs. 8,11,76,086/- as undisclosed management fees.
 - vii. Disallowances of rental expenses of Rs. 3 lakhs being 50% total rental expenditure applying provisions u/s 40A (2) (a) of The Act.
6. The assessee preferred appeal before Ld CIT (A). The LD CIT (A) deleted disallowances of stamp duty expenditure holding that there is no doubt about genuineness of such expenditure and it is revenue in nature. With respect to expenditure of renovation, he held that assessee submitted details of such expenditure and no new asset has come into place. He therefore, considering decision of Hon'ble Delhi High Court in 205 CTR 574 in CIT Vs. Escorts Finance Ltd held that expenditure incurred by assessee was only required to make premises operational and functional. He further held that it did not bring in to existence any new asset of an enduring nature. He also noted that assessee has also incurred capital expenditure separately and assessee capitalized it. Thus, he deleted disallowances. With respect to disallowance of rent expenditure, he held that Ld AO has not been able to show that expenditure incurred was excessive or unreasonable having regard to the fair market value/ price of services for which payment was made. Thus, he deleted disallowance of Rs. 93,00,000/- of rent expenditure. With respect to disallowances of legal and professional fees and consultancy charges u/s 40A (2) (a) of Rs. 5,46,52,447/-, He held that LD AO has not shown that expenditure incurred was excessive was unreasonable having regard to fair

market value of services. Thus, he deleted disallowances. With respect to disallowances of travelling expenditure of Rs. 3,32,000/- he held that necessary assessee provided details of travelling expenditure to LD AO, however, LD AO has made disallowance merely on basis of surmises and conjectures and on ad hoc basis. Thus, he deleted that disallowances of Rs. 3,32,000/- out of travelling expenditure. With respect to addition of Rs. 81176086/- on account of management fees paid, he held that it is contended by assessee that above sum pertained to succeeding year and in subsequent year, assessee has offered above sum for taxation as period of income to which it relates to was in succeeding year. Therefore, he directed LD AO to verify this aspect that if assessee has shown above income in subsequent year then addition made in this year deserves to be deleted. With respect to disallowance of Rs. 3 lakhs out of rent he held that AO has not been able to show that expenditure incurred was excessive or unreasonable. Therefore, he deleted disallowances.

7. Now LD AO is aggrieved by that order of LD CIT (A) and has preferred this appeal.
8. We have heard LD CIT DR on behalf of LD AO and LD AR for assessee. The LD CIT DR vehemently supported order of LD AO. He submitted that most of disallowance made by LD AO is u/s 40A (2) (a) of The Act. He further stated that looking to the annual accounts of assessee as well as business operation, generally the expenditure are for reducing tax liability. He referred to the annual accounts of the assessee for all these disallowances. LD AR relied upon order of LD CIT (A).
9. We have carefully considered rival contentions and perused orders of lower authorities.
10. The ground No. 1 is with respect to deletion of disallowance of Rs. 12,48,000/- on account of stamp duty charges of lease agreement pertaining to lease period of five years. The fact shows that assessee entered into an agreement for lease of premises for five years. The assessee paid stamp duty charges of Rs. 15,60,000/-. The LD AO held that as lease is for 5 years, only 1/5th of lease rent charges are allowable and therefore, 4/5th of such charges should be disallowed. The ld AO relying decision of Hon'ble Supreme Court in case of Madras Industrial Investment Corporation Ltd Vs. CIT 225 ITR 802 disallowed Rs. 12,48,000/- being 4/5th of such expenditure and allowed Rs. 3,12,000/- only against total claim of assessee of Rs. 1,56,000/-. The LD CIT (A) held that above expenditure is revenue expenditure and therefore, it is to be allowed in the year in which it is incurred. He held that lease agreement though was entered for five years but for registration itself, registration fees is to be paid and therefore, it is revenue in nature. The learned departmental representative relied upon judgment of honourable Supreme Court in case of Madras industrial investment Corporation Ltd versus CIT 225 ITR 802. We find that issue before honourable Supreme Court was allowability of debenture discount whether it should be

spread over a number of years for redemption of debenture, as payment was to secure a benefit of a number of years. It was a continuing benefit to business of company over entire period and therefore liability was allowed to be spread over period of debenture. The honourable Supreme Court held so for reason that it was true that liability had been incurred in accounting year. However, liability was a continuing liability, which stretched over a period of 12 years. It was, therefore, a liability spread over a period of 12 years. Ordinarily, revenue expenditure, which is incurred wholly and exclusively for purpose of business must be allowed in its entirety in year in which it is incurred. It cannot be spread over a number of years even if assessee has written it off in his books over a period of years. However, facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In present case, even for first year if registration charges/stamp duty is not deposited, assessee is not eligible for occupying premises. The Commissioner (Appeals) had categorically given a finding that Assessing Officer was not correct in holding that expenses on account of stamp duty should be allowed as deferred revenue expenditure. The revenue did not file any appeal against aforesaid finding nor did it make any claim of stamp duty expenditure being allowed as deferred revenue expenditure before Tribunal. In fact during hearing before us, only issue, which appears to have been in dispute, was whether stamp duty paid for leased premises is capital expenditure or revenue expenditure. Period of lease for which property has been taken, cannot be regarded as a decisive test to determine nature of expenditure. In any case, it is not disputed that stamp duty amount has been paid on lease deed for purposes of carrying on assessee's business. Once aforesaid position is accepted then amount of Stamp Duty paid for has to be allowed as revenue nature. The period of lease [5 years] could not be said to be such a long period that assessee could be said to have acquired or brought into existence an advantage of an enduring character. The office premises were obtained with a view to carry on business activity of assessee-company and facility so obtained could not be said to be an advantage of any enduring nature. Besides, terms of lease were not on record and, therefore, no other considerations could be taken into account for finding out whether any asset of an enduring character was acquired. Stamp duty was required to be paid in order to bring about document of Lease. Expenses so incurred for securing premises on lease for a short period of five years were, therefore, allowable as revenue expenditure. We do not find any infirmity in order of LD CIT (A) and therefore, ground No. 1 of appeal of LD AO is dismissed.

11. Ground No. 2 is with respect to disallowance of Rs. 125874141/- incurred by assessee as renovation expenditure deleted by LD CIT (A). Fact shows that assessee has incurred

expenditure of Rs. 1,25,87,414/- under head of repairs and maintenance expenditure of premises taken on lease. The assessee has incurred expenditure of Rs. 2.5 crores out of which Rs. 1,25,87,414/- has been claimed as revenue expenditure during year and balance is capitalized. The LD AO asked details of such expenditure. The assessee submitted details stating that above expenditure of Rs. 5,06,119/- is for civil work, Rs. 44,00,000/- is for tiles and stone, Rs. 1,42,000/- is for floor furnishing and other expenditure are such as partition wall, paneling and cladding, doors and shutters, sanitary fixtures and fittings, painting and storage, internal signage's and special items. The LD AO noted that above expenditure has clearly given enduring benefit to assessee. Further, as rented property pertains to a sister concern and rent paid is Rs. 1,86,00,000/- per annum such sister concern will also get benefit of 30% of such expenditure and therefore, he held that above expenditure is purely capital in nature. The LD CIT (A) noted that this expenditure have been incurred by assessee to make office taken on lease useful looking at business needs of assessee. He further held that whether tenant will get deduction of 30% of rent would only depend upon whether repairs and maintenance is because of owner or tenant. However, that cannot decide about disallowability of expenditure in hands of tenant. We have carefully considered rival contentions. The facts show that cost of renovation was incurred by assessee who is lessee in respect of premises. It is not a long lease of property but only for five years. Rent of assessee is also not concessional as LD AO himself disallowed some part of this. It is not case that by incurring this expenditure some additional floors or some extra construction was carried out. In view of this, we do not find any infirmity in order of LD CIT (A) in deleting disallowance of Rs. 42587414/- holding them to be revenue expenditure. More so, decision is correct for reason that assessee out of total expenditure of Rs. 2.5 crores itself classified some of expenditure as capital expenditure and only claimed revenue expenditure of Rs. 125,00,000/-. Accordingly, ground No. 2 of appeal is dismissed.

12. Ground no. 3 of appeal is with respect to additions/ disallowance of Rs. 93,00,000/- made on account of excess rent paid u/s 40A(2)(a) of The Act. The facts of case shows that during year assessee has taken a building on rent for Rs. 186,00,000/-. The rent agreement was entered into with one of sister concern. The LD AO held that as rent agreement was entered with a sister concern questioned about justification. The assessee submitted that premises taken by assessee on rent are of 30 sq ft. In earlier year, rent paid of assessee was of Rs. 1.71 crores per annum compared to Rs. 1.86 crores this year. The assessee also stated that looking to area and cost, quality of space provided justifies above rent. The LD AO issued notice u/s 133(6) to owner of premises. He found that rent paid by assessee is more than cost of building. He therefore, applied provisions of section 40A (2) (a) and disallowed 50%

of rent i.e. Rs. 93,00,000/- as excessive. The LD CIT (A) deleted same holding that LD AO has failed to show that rent was excessive or unreasonable having regard to market price of rent. He further noted that assessee has provided a copy of similar lease agreement where lease rent was Rs. 80 sq ft whereas assessee has paid only Rs. 50 sq ft. He therefore, deleted disallowances. Honourable Delhi High Court in *Hive Communication (P.) Ltd. v. CIT* [2011] 12 taxmann.com 287/201 Taxman 99 (Delhi)/[2013] 353 ITR 200, has observed that any determination on question of reasonableness and excessiveness requires several facets and parameters to be kept in mind, albeit approach has to be from standpoint of a reasonable and prudent businessman. The Assessing Officer's judgment of disallowance, if any, to be made has to be an objective and fair decision, as provision is made to check evasion of tax and not to cause hardship in *bona fide* and genuine cases. Arms-length price paid for a fair market value should not be disallowed. The factors to be taken into consideration are those specified in Section 40A(2)(a); i.e. fair market value of goods, services and facilities and whether they were for legitimate use of business; and benefit derived or accruing to assessee from expenditure so incurred. Benefit accruing to company or assessee in context of section has to be viewed in a pragmatic way and not measured in terms of Pound, Shillings and Pence. Benefit accruing has to be considered judiciously, dispassionately and without any bias from viewpoint of a reasonable and honest person in business. Aforesaid ratio elucidated relies and refers to several earlier judgments including *CIT v. Edward Keventer (P.) Ltd.* [1972] 86 ITR 370 (Cal) which was affirmed by Hon Supreme Court in *CIT v. Edward Keventer (P.) Ltd.* [1978] 115 ITR 149 (SC) and *CIT v. Shatrunjay Diamonds* [2003] 261 ITR 258/128 Taxman 759 (Bom). Similar view has been expressed by Hon. Delhi High Court in *Sigma Corpn. India Ltd. v. Dy. CIT* [IT Appeal No. 795 of 2016, dated 15-2-2017]. Assessee company as well as sister company, both are assessed to income tax at maximum marginal rate, and, therefore it cannot be said that rent is paid to respondent company at an unreasonable rate to evade income tax. Further In absence of any material before Assessing Officer, such as comparative chart etc. to suggest that any excessive rent payment was made to sister concern and 50 % ad hoc disallowance was made on payment made under Section 40A(2)(b) of Act to Aditya Prakash entertainment private limited solely on ground that party to whom payment was made, it is a sister concern and there is an attempt to evade Tax and therefore, there was an element of excessive claim. Further cost price of property purchased by owner of property long back, cannot be basis for making any disallowance applying provisions of Section 40 A (2) (a) of The Act. Therefore, We are of opinion that Assessing Officer was not justified in making disallowance to extent of 50 % payment under Section 40 A(2)(a) of The Act . Under these circumstances,

disallowance made by Assessing Officer is rightly deleted by learned CIT(A). Even otherwise For purpose of making disallowances u/s 40 A(2)(a) of The Act , it is duty of revenue to show that expenditure incurred by assessee is excessive and unreasonable by drawing such inference from prevailing market price of similar kind of service or goods. Unless, LD AO brings those facts on records, disallowance u/s 40 A(2)(a) cannot be made. In view of this, we find no infirmity in order of LD CIT (A) in deleting disallowance of Rs. 93,00,000/- out of rent paid. Accordingly, ground number 3 of appeal is dismissed.

13. Ground number 4 is against deletion of disallowance of ₹ 54,552,447 made on account of legal and professional fees and consultancy charges u/s 40 A (2) (a) of The Income Tax Act 1961. The fact shows that assessee has claimed deduction of consultancy charges of ₹ 69,067,616/- and legal charges of ₹ 40,237,278. The learned assessing officer has disallowed 50% of above consultancy charges by applying provisions of Section 40 A (2) (a) of The Act. The learned assessing officer noted facts that M/s Alliance promoters private limited is appearing as a related party of Opus reality development Ltd, thus he held that it is a closely held company by assessee. He noted that about 80% of total expenses incurred by assessee are either on account of consultancy expenses of legal expenses has been shown to be claimed in name of related parties. He noted that modus operandi of assessee is diverting funds in name of various companies and thereby claiming deduction has been proved. He noted that it is a colorable device and provisions of Section 40 (A) (2) are applicable. Therefore, he disallowed 50% of such expenditure. The learned CIT – A recorded argument of assessee that expenses incurred and claimed by assessee on account of consultancy charges are legal and professional expenses paid were genuine expenditure. He noted that these payments were made for purpose of business and therefore are allowable as a business expenditure thus he deleted disallowance. He further noted that provisions of Section 40 A (2) clearly provides that assessing officer has to prove that expenditure incurred was excessive or unreasonable having regard to fair market value of services for which payment was made which learned assessing officer has failed. Even before us, assessee has also given a detail of expenses incurred of consultancy charges of ₹ 69,067,616 and legal and professional charges of ₹ 40,237,278 at paper book page number 35 and 36. It is also to be noted that assessee has also earned consultancy income, which is placed at page number 37 of paper book, such income is of ₹ 201,609,736 also from sister concerns such as opus reality development of ₹ 90 lakhs and from Alliance Promoters Ltd of ₹ 104,787,858. It is in fact to be seen that assessee has not paid any sum to Opus Reality Development Or Alliance Promoters Ltd any legal and professional fees but in fact, it has earned such professional fees from them and shown it as income. Thus, assessee has earned income from related parties

but has not paid sums to related parties. Thus expenditure incurred by assessee was not to related parties, therefore application of provisions u/s 40A (2) is misplaced. Accordingly, we do not find any infirmity in order of learned CIT – A in deleting disallowance of ₹ 54,652,447. Accordingly, ground number 4 of appeal is dismissed.

14. Ground number 5 is with respect to deletion of disallowance of ₹ 332,000 made on account of foreign travel expenses by learned CIT – A. The brief facts noted by Ld assessing officer shows that director of assessee has incurred an expenditure of ₹ 664,009 towards foreign travel expenditure for visiting various places in Malaysia, Hong Kong, Goa, USA and Dubai. The assessee explained that it is engaged in planning and execution of a large township with scope of work including appointment of various agencies, selection or design and later on marketing product in international market. Accordingly, company executive and directors are required to visit different places across countries. The main investor of company also belongs to Bahrain and director's entire board meeting etc was held in Dubai. Architects are also of Hong Kong and Malaysia. Therefore assessee stated that these are all business expenditure incurred by assessee which are allowable u/s 37 (1) of The Act. The learned assessing officer rejected contention of assessee and disallowed 50% of such expenditure holding that they appear to be a clear pleasure trip of directors of company. The learned CIT – A noted that assessee has clearly furnished requisite details before Learned assessing officer which were examined by him and if AO found that there are certain expenditure which are not related to business, he should have disallowed entire such sum. On perusal of details of travelling expenditure, LD AO should have clearly stated which details were not on record in respect of travelling expenses. He further held that merely on suspicion LD AO has disallowed above expenditure and that too on an ad hoc basis. He further held that in addition on estimated basis could not be sustained. Therefore, he deleted above addition/disallowance. We do not find any infirmity in order of learned CIT – A as learned assessing officer has disallowed only 50% of expenditure on d hoc basis without pointing out any infirmity in details submitted by assessee and assessee has also given a detailed justification for incurring such expenditure, which was not found to be incorrect. In view of this ground number 5 of appeal of ld AO is dismissed.
15. Ground number 6 of appeal is with respect to deleting addition of ₹ 81,176,086/- on account of undisclosed management fee. The facts shows that during year under reference assessee company has received a management fee of ₹ 101,696,600 from M/s Alliance Promoters Ltd out of which Rs 1, 10,23,930 was disclosed as a taxable income and rest of amount of ₹ 81,176,086 was carried forward to a subsequent year as advance received. The learned assessing officer asked assessee about discrepancy which was explained by

assessee that above income is for a particular period and which is required to be segregated between two periods as it belongs to two different financial years. The learned assessing officer rejected contention of assessee and applying matching principle made an addition of ₹ 81,176,086 in hands of assessee. The learned CIT – A noted that assessee has offered above amount in subsequent year as it pertained to that financial year. The learned CIT – A further set-aside issue to file of Learned assessing officer for above verification. The learned AO is thus aggrieved. Before us assessee has placed on record at page number 207 of paper book an invoice raised for ₹ 211,699,348 by assessee on Alliance Promoters Private Limited for a consultancy charges for period of 10 September 2008 to 9 September 2009 as per management agreement at clause number 8.2. The above bill shows that a sum of ₹ 18,08,411,666 is charged along with service tax at rate of 12.36% of Rs 232,87,682 totaling to ₹ 211,699,348. Apparently, above consultancy charges are for period from 10 September 2008 to 9 September 2009. The assessee bifurcated above sum of ₹ 188,411,666 between periods for 10 September 2008 to 31 of September 2009 and booked it into this financial year ended on 31st of March 2009. The balance sum was booked as income in financial year starting from 1 April 2009 to 31 of March 2010. Admittedly, assessee has offered balance sum in next year as it on basis of period of consultancy services pertains to next financial year. The amount of tax deduction or its period is the responsibility of payer and it does not determine the liability of the recipient as income. For determining the income in the hands of the recipient, method of accounting of recipient as well as the nature of income is required to be examined. The learned CIT – A I has also given direction to Ld assessing officer to verify above aspect whether a sum of ₹ 81,176,086 has been offered by assessee in subsequent year or not. There is no denial from the Id DR that above sum is not offered by assessee as income in next Financial Year. Thus, we do not find any infirmity in order of learned CIT – A and accordingly ground number 6 is dismissed.

16. Ground number 7 of appeal is with respect to deletion of disallowance of ₹ 3 lakhs made on account of excess rental expenditure u/s 40 A (2) (a) of income tax act. Brief facts shows that Assessee Company has claimed rental expenses in name of its sister concern at ₹ 6 lakhs for property at PatparGanj industrial area, New Delhi. Assessee submitted that above property is used as showroom, service centre and therefore proportion thereof is let out to assessee for official purposes, and rent paid is as per market rate. The learned assessing officer on issue of enquiry letter u/s 133 (6) found that owner of property Prakash Amusement Rights And Fun Word Private Limited, total cost of factory building is only ₹ 2,385,623 and only some portion thereof is stated to be given on rent. The learned assessing officer noted that Assessee Company is reducing its taxable income by claiming

rent in name of assessee's sister concern and provisions of Section 40 A (2) (a) are clearly applicable in this case and therefore he disallowed 50% of such expenses. The learned CIT – A deleted above disallowance. As facts and reasoning are similar to ground number [3] of above appeal, we do not find any infirmity in order of learned CIT – A in deleting above disallowance. Accordingly, ground number 7 of appeal is dismissed.

17. Accordingly, appeal of learned assessing officer for assessment year 2000 – 11 in ITA number 3938/Del/2015 is dismissed.
18. Coming to appeal of Learned assessing officer for assessment year 2011 – 12, ground number 1 is identical to ground number 3 of appeal for assessment year 2000 – 11. The parties confirmed that facts and reasons for disallowance by learned assessing officer and for deletion of above disallowance by learned CIT – A are similar. As we have already decided that ground holding that there is no infirmity in order of learned CIT – A in deleting above disallowance, for similar reasons we also dismiss ground number 1 of appeal of learned assessing officer for this assessment year also.
19. Ground number 2 of appeal is with respect to deletion of disallowance of ₹ 90 lakhs made on account of consultancy charges by applying Provisions of Section 40 A (2) (a) of The Income Tax Act. The fact shows that assessee has claimed an expenditure of Rs 1,80,00,000/- on account of consultancy charges paid to Time N cash management India private limited, recipient of sum is a company in which director of Assessee Company are also having substantial interest. The learned assessing officer disallowed 50% of such expenditure stating that in previous year it was held that assessee was claiming expenses by diverting funds in name of various companies under garb of consultancy expenses. Therefore, he applying provisions of Section 40 A (2) (a) disallowed 50% of such expenditure. The learned CIT – A deleted above disallowance holding that AO has not been able to show that expenditure incurred was excessive or unreasonable having regard to fair market value of services for which payment was made. Undoubtedly, genuineness of expenditure is not doubted otherwise Learned-assessing officer should have disallowed whole of expenditure. The learned assessing officer has also failed to show that expenditure incurred was excessive or unreasonable having regard to market price. We have also deleted the similar disallowance made in assessment year 2010 – 11 as per ground number 4 of that appeal. Therefore, for similar reasons we uphold order of learned assessing officer deleting above disallowance. Accordingly, ground number 2 of appeal is dismissed.
20. Ground number 3 of appeal is with respect to deletion of disallowance of ₹ 8,663,244/- made on account of consultancy charges paid to Signature Group India Private Limited. The

disallowance made by learned assessing officer shows that assessee has claimed expenditure of Rs 1, 73,26,487 for taking consultancy services from M/s signature group India private limited. Assessee submitted copy of agreement entered with that particular party. The learned assessing officer disallowed 50% of such expenditure amounting to ₹ 8,663,244/-. The learned CIT – A noted assessee has submitted complete details with respect to above payment in form of agreement as well as necessary invoices. The learned assessing officer has disallowed above expenditure without giving any reason but based on disallowance in previous years. He further noted that AO is required to show that above expenditure incurred was excessive and unreasonable, which he failed. It is also to be noted that in earlier year assessee has paid a sum of Rs 270,58,844 as consultancy expenditure to signature group India private limited. For current year, it has only paid consultancy charges of RS 173,26,487 to that party. It is also fact that if above expenditure is unverified expenditure, learned assessing officer should have disallowed 100 % of such expenditure, where as he has disallowed only 50% of expenditure on estimated basis. There is no reference to market price of such services. In view of this, we do not find any infirmity in order of learned CIT – A in deleting above disallowance of consultancy charges of ₹ 8,6,63,244/- accordingly ground number 3 of appeal of learned assessing officer is dismissed.

21. Ground number [4] is with respect to disallowance u/s 14 A of The Act. The learned assessing officer noted that assessee company was having an investment of ₹ 27 10 crores in mutual funds as at 31st of March 2011 and therefore he asked assessee that why there should not be any disallowance u/s 14 A of The Act. The learned assessing officer thereafter proceeded to make disallowance of ₹ 1,180,642 being 0.5% of average cost of investment u/s 14 A of The income tax act. The learned CIT – A only corrected figures of average value of investment at ₹ 146,158,495 and confirmed disallowance of 0.5% thereof of ₹ 730,642. Therefore principally Ld learned CIT – A has upheld disallowance made by learned assessing officer however directed to correct only arithmetic inaccuracy in the order. Before us, learned departmental representative could not show that figure adopted by learned CIT – A for confirming above disallowance are not correct. In result ground, number 4 of appeal is dismissed.
22. Consequently, appeal filed by learned assessing officer in ITA number 3939/Del/2015 for assessment year 2011 – 12 is dismissed.
23. ITA number 5470/Del/2016 is filed by learned assessing officer for assessment year 2012 – 13. The [1] ground of appeal is identical to ground number 1 of appeal of learned assessing officer in ITA number 3939/Del/2015. Both parties confirmed that there is no change in

facts and circumstances of case. The learned and CIT – A has deleted disallowance of ₹ 90 lakhs out of expenditure on rent of Rs 180 lakhs incurred by assessee as learned assessing officer has failed to show that how above expenditure is unreasonable excessive. We have given reason for confirming order of learned CIT – A in appeal for assessment year 2011 – 12 by deciding that ground (1). For similar reasons we confirm order of learned CIT – A in deleting disallowance of ₹ 90 lakhs out of rent paid of Rs 180 lakhs. Accordingly, ground number [1] of appeal is dismissed.

24. Ground number [2] of this appeal with respect to deletion of addition of ₹ 90 lakhs made on account of consultancy charges u/s 40 A (2)(a) of The Act is identical to ground number [2] of appeal for assessment year 2011 – 12 of assessing Officer [ITA number 3939/del/2015]. Both parties confirmed that there is no change in facts and circumstances of case. We have given our detailed reasons while deciding that ground of appeal confirming order of learned CIT – A deleting above disallowance. For similar reasons, we confirm order of learned CIT – A – and dismiss Ground number 2 of appeal of learned assessing officer.
25. Accordingly, ITA number 5470/Del/2016 filed by learned assessing officer for assessment year 2012 – 13 is dismissed.
26. Accordingly all These 3 appeals of learned assessing officer filed for assessment year 2010 – 11, 2011 – 12 and 2012 – 13 are dismissed

Order pronounced in open court on 19/01/2020.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/01/2020

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi