

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1207/H/2018 Assessment Year: 2013-14		
Dy. Commissioner of Income-tax, Circle - 17(2), Hyderabad.	Vs.	Zelan Projects Pvt. Ltd., Hyderabad. PAN - AAACZ2265B
(Appellant)		(Respondent)
Revenue by:		Shri Narayana Murthy Naik
Assessee by:		Shri P. Murali Mohana Rao
Date of hearing:		11/05/2021
Date of pronouncement:		27/08/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the Revenue is directed against CIT(A) - 5, Hyderabad's order dated 27/03/2018 for AY 2013-14 involving proceedings u/s 143(3) of the Income-Tax Act, 1961; in short "the Act" on the following grounds of appeal:

"1. The learned CIT(A) has erred both in law and on facts of the case.

2. The learned CIT(A) erred in deleting the disallowance of written off duty draw back of . Rs.3,40,16,587 ignoring the fact that the assessee has failed to prove that the said amount has been outstanding and not received whereas the assessee has to refund duty draw back amount to the Government as per letter of Foreign Trade Development Officer.

3. The learned CIT(A) erred in deleting the disallowance of purchase liability created towards sub-contractors Rs. 10,65,15,184 ignoring the fact that the expenditure is unexplained.

4. The learned CIT(A) erred in deleting the disallowance of payment to sub-contractor 1 supplies u/s. 40(a)(ia) of Rs. 27,61,68,714 ignoring the fact that the assessee has failed to prove that the TDS has been deducted on the said amount.

5. The learned CIT(A) erred in holding that the Assessing Officer should have allowed the reversal of excess income tax provision of Rs. 1,84,73,654/- as deduction ignoring that the Assessing Officer has not accepted the revised computation tiled by the assessee.

6. Any other ground(s) that may be urged at the time of hearing.”

2. Briefly the facts of the case are that the assessee company engaged in the business of EPC (Engineering, Procurement and Construction) contracts for power projects, filed its return of income for AY 2013-14 on 27/03/2014, admitting a loss of Rs. 97,69,922/-. Subsequently, the case was selected for scrutiny through

CASS. The AO assessed the income of the assessee at Rs. 44,43,72,380/- by making the following additions:

1.- Rs.3,40,16

S.No.	Additions/Disallowances	Amount
1	Disallowance of duty drawback written off	3,40,16,587
2	Disallowance of payments to creditors for expenses	3,74,41,817
3	Disallowance of purchase liability created towards sub-contractors/suppliers	10,65,15,184
4	Disallowance of payment to sub-contractors/suppliers u/s 40(a)(a)	27,61,68,714
5	Total	45,41,42,302

3. When the assessee preferred an appeal before the CIT(A) against the order of AO, the CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved by the order of CIT(A), the revenue is in appeal before the ITAT.

5. As regards the disallowance of duty drawback written off of Rs. 3,40,16,587/-, raised in ground No. 2, the AO observed that the assessee had written off the duty drawback receivable from Ministry of Commerce & Industry, Govt. of India for Rs. 3,40,16,587/- during the year of account. He further observed that the assessee had admittedly closed the business operations and there is no inventory. All the assets were deleted during the year of

account and there is no probability/possibility to assess the amount written off to the tune of Rs. 3,40,16,587/- as when the amount is received in future years. In view of the above observations, the AO added the said amount towards duty drawback written off to the total income of the assessee.

5.1 Before the CIT(A), the assessee submitted that as regards schedule 9 item of receivables written off of Rs. 1,55,42,933/- vide letter dated 28/12/2015 filed before the AO on 04/01/2016 explained that the assessee had written off duty drawback claim of Rs. 3,40,16,587/- and reversed the provision for taxation of Rs. 1,84,73,654/- resulting in the net effect of Rs. 1,55,42,933/- and the assessee filed revised computation, which was extracted by the CIT(A) in his order at page 28.

5.2 After considering the submissions of the assessee, the CIT(A) observed that the income tax provisions are not allowable as a deduction and therefore reversal cannot be charged to tax, the AO should have allowed the same as a deduction. He, therefore, deleted the addition of Rs. 3,40,16,587/- made by the AO towards duty drawback written off.

5.3 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. As observed by the

CIT(A), the AO ignored the revised computation of income and while passing the order considered the returned loss (-) Rs. 97,69,922/-only. Thus, the claim of duty drawback written off of Rs. 3,40,16,587/- was claimed as an expenditure in the P&L Account. Income tax provisions are not allowable as a deduction and therefore the reversal cannot be charged to tax. The AO should have allowed the same as a deduction. Therefore, we do not find any infirmity in the order of the CIT(A) on these two issues. Thus, ground nos. 2 & 5 raised by the revenue on this issue is dismissed.

6. As regards disallowance of purchase liability created towards sub-contractors/suppliers of Rs. 10,65,15,184/- ,raised in ground No. 3, the AO observed that from the notes to financial statements for the year under consideration, the assessee had shown an amount of Rs. 46,29,73,596/- as payable to sub-contractor/suppliers as on 31/03/2013 under the major head 'trade payables'. When asked to furnish the details and evidence for the liability incurred during the year of Rs. 10,65,12,184/- in the name of Lanco Infratech Ltd, the assessee failed to furnish any evidence. Hence, the AO treated the entire liability of Rs. 10,65,12,184/- as unexplained.

6.1 Before the CIT(A), the assessee stated that the above amount is an additional liability created and the same had not been charged to the P&L account.

6.2 The CIT(A) after considering the submissions of the assessee, held that since the said amount had not been debited to P&L account and had been claimed as prior period expenses and not claimed as a deduction, the question of disallowance does not arise at all and hence, directed the AO to delete the said addition.

6.3 The ld. DR relied on the order of the AO and submitted that the assessee failed to explain the amounts created under the head 'trade payables' before the AO and TDS provisions will apply as the assessee has not deducted any TDS as per the provisions of the Act and no details were submitted.

6.4 On the other hand, the ld. AR relied on the order of CIT(A).

6.5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. It has been observed from the order of CIT(A) that the liability created of Rs. 10,65,12,184/- was towards supply of materials. Therefore, the TDS provision will not apply. The revenue has raised a

ground that the assessee has not debited the additional liability created to the P&L account and not claimed as expenditure, but, the CIT(A) has rightly directed the AO to delete the same. Therefore, we uphold the order of CIT(A) on this issue and dismiss the ground raised by the revenue in this regard.

7. As regards the disallowance of payment to sub-contractors/suppliers u/s 40(a)(ia) of Rs. 27,61,68,714/-, raised in ground No. 4, the AO noted that the closing balance to certain parties, there was an opening balance of Rs. 63,26,30,127/-. Further, he noted that Rs. 9,49,44,196/- was paid through bank and the balance through a general entry of Rs. 18,12,56,918/-. He opined that since no TDS was deducted on the said amounts cumulating to Rs. 27,61,68,714/-, the same was disallowed.

7.1 The CIT(A) directed the AO to delete the said amount of Rs. 27,61,68,714/- by observing as under:

The most important thing is the same is a payment of outstanding as the liability as on 01.04.2012 of Lanco Infra Tech was Rs. 63,19,80,864/- and of IA Ahluwalia was Rs. 32,400/-. The liability for TDS is on credit and therefore as these amounts were payments pertaining to the opening balance, therefore any liability of TDS on the opening balance has to be in the year of credit, which is for sure not the current year. Therefore, there is no question of TDS deduction for the year under consideration and so the question of 40 (a)(ia) does not arise. It is important to note that the said sums have not been claimed as an expenditure, during the year so

there is no question of invoking 40(a)(ia), as these amounts not deductible, if TDS is not deducted, on the certain sums/expenditure which are claimed as deductions during the year. As there is no debit in the P & L account pertaining to these amounts, therefore the question of invoking section 40(a)(ia) does not arise. Further, the liability created during the year, has not been claimed as an expenditure for the purpose of income tax and has been charged below the line. In view of the same the addition of Rs. 27,61,68,174/- is hereby deleted and the ground nos. 6 is allowed accordingly.

7.2 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. Before deleting the addition, the CIT(A) gave categorical findings. From his order, it is clear that there was a sufficient opening balance of Rs. 63,20,13,264 (63,19,80,864_ 32400), out of which, the assessee has paid Rs. 27,62,01,114/- (Rs. 27,61,68,714 + 32400). We observe from the table of the assessment order at Para No. 6. The only credit during the year is Rs. 10,65,44,584 (10,65,12,184 + 32400) out of which Rs. 10,65,124,184/- was created towards supply of materials, which has been deleted by us at para No. 6.5. Now the only amount left is Rs. 32,400/- of L.K. Ahluwalia. There is opening balance of Rs. 32,400/- of L.K. Ahluwalia which has been paid. In view of this, in the impugned AY there is no fresh creditors are created. Therefore, section 40(a)(ia) will not apply here. Therefore, we do not find any reason to interfere with the decision of the CIT(A) in directing the

AO to delete the disallowance of Rs. 27,61,68,714/- made by the AO u/s 40(a)(ia) of the Act. Thus, the ground raised by the revenue on this issue is dismissed.

8. In the result, appeal of the revenue is dismissed in above terms.

Pronounced in the open court on 27th August, 2021.

Sd/-
(S.S. GODARA)

JUDICIAL MEMBER

Hyderabad, Dated: 27th August, 2021.

Sd/-

(L. P. SAHU)

ACCOUNTANT MEMBER

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Copy to :

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3	<i>CIT(A) - 5, Hyderabad.</i>
4	<i>Pr. CIT - 5, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	