

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 3563/Del/2013 : Asstt. Year : 2005-06**

**ITA No. 3564/Del/2013 : Asstt. Year : 2006-07**

Deputy Director of Income Tax, Circle-3(1), International Taxation, New Delhi	Vs	M/s Joint Stock Company Centrodorstroy, EP-15, Diplomatic Enclave, Chanakyapuri, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACJ9551G</b>		

**Assessee by : Sh. S. D. Kapila, Adv.**

**Revenue by : Sh. Umesh Takyar, Sr. DR**

**Date of Hearing: 08.07.2021**

**Date of Pronouncement: 05.10.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the revenue against the orders of Id. CIT(A)-XXIX, New Delhi dated 05.03.2013.

2. Since, the issues involved in both the appeals are identical, which were heard together.

3. In ITA No. 3563/Del/2013, following grounds have been raised by the revenue:

*"1. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in allowing partially claim of expenses incurred in Russia for realization of contracts*

*in India on the ground of additional evidences admitted for the assessment year 2006-07.*

*2. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in admitting the claim of Assessee about the expenses incurred in Russia for realization of contracts in India without any additional evidences in support of expenses and also by not allowing any opportunity to the AO for rebuttal of the hypothetical grounds of the Assessee.*

*3. Without prejudice to the above, whether the Id. CIT(A) has erred in allowing claim of expenses incurred in Russia by ignoring the fact of the case that claimed expenses were never entered in the books of accounts maintained in India and also never audited by any qualified auditor in India."*

The facts have been taken from the order of the Id. CIT(A).

4. Brief facts of the case are that the Assessee is a non-resident company incorporated in Russia and engaged in construction of the Airport Pavement, highways and bridges.

5. The Assessee company was awarded contracts by National Highways Authority of India (NHAI) for construction of highways in state of Uttar Pradesh for four laning and strengthening of the existing two lane sections on NH-2. The Assessee sub-contracted part of its contract to M/s Mukund Ltd., Thane. The Assessee opened a project office in India after obtaining requisite approvals from RBI.

6. The Assessee filed its return of income on 22.09.2005 declaring a loss of Rs.11,94,45,763/-. The Assessee has claimed an expense of Rs.8,41,52,121/- as "expenses incurred in Russia during the period from April 1, 2004 to March 31, 2005 for

realization of contracts IIC and IIIC in India. The Assessing Officer disallowed these expenses on the grounds that,

- a. The expenses have not been entered in the books of a/c maintained by the Assessee in India and produced before him.
- b. No TDS has been made on the payments regarding expenses in question.
- c. No audit has been done by the auditor in India.
- d. The AR of the Assessee could furnish reliable details regarding these expenses. In absence of the reliable details, the genuineness of these expenses could not be verified.

7. The only issue involved is deductibility of expenses against income attributable to Indian PE when these expenses are claimed to have been entered in books of accounts of head office in Russia. The appellant claimed before AO that these expenses were actually incurred by parent company in Russia in relation to projects in India. Debit notes were raised and sent to India. These debit notes were certified by Russian auditors and these were passed through books of accounts maintained in India. The AO disallowed these expenses on the ground that no details thereof were furnished and also no TDS was made and therefore these were not to be allowed as deduction u/s 40(a)(i).

8. During appellate proceedings before the Id. CIT(A), the Assessee furnished invoices / documents in support of various expenses claimed by it for AY 2006-07. Since these were not

furnished before AO during assessment stage, these were sent to AO for his remand report u/s 46A, being additional evidences.

9. The AO furnished his report vide letter dated 10.01.2013. A copy of this remand report was later made available to counsel of the appellant who furnished rejoinder vide letter dated 19.02.2013. In his remand report, the AO has stated that the assessee did not produce any invoices during assessment stage despite adequate opportunity given for the purpose. Further, since no TDS had been made on these payments, the case falls under provisions of section 40(a)(i) of the Act. The appellant has submitted in rejoinder that all the books of a/c and various vouchers were maintained in Russia in Russian language and given the volume and complexity of the records, it was not possible to reconcile it & produce it before AO within the time allowed by him during the assessment proceedings. In view of these peculiar facts, the Id. CIT(A) held that the Assessee was prevented by sufficient cause from producing these supporting documents at assessment stage within the time allowed for the purpose. Since these supporting documents are vital to decide the issue under appeal, the Id. CIT(A) admitted these as additional evidence u/r 46A in view of the said facts and circumstances of the case.

10. Having admitted the additional evidences, the Id. CIT(A) further went ahead in determining whether the expenses are allowable under the provisions of the Income Tax Act and also with specific reference to TDS and Section 40(a)(ia). The Id. CIT(A) examined the various expenses like salary for Russian specialists, cost of equipment transportation, depreciation of

equipment deployed in India, supply of spare parts, taxes paid for equipment and other project expenses. Having examined, the Id. CIT(A) allowed/disallowed various heads of expenditure.

11. Hence, the grounds taken up by the revenue that the Id. CIT(A) erred in admitting the additional evidences cannot be held to be valid on facts of the case. Further, the grounds of the revenue that the Id. CIT(A) erred in allowing the claim of the expenses cannot be held to be valid as the Id. CIT(A) has verified each and every expenses claimed by the Assessee before allowing the same.

12. In the result, both the appeals of the revenue are dismissed.

Order Pronounced in the Open Court on 05/10/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 05/10/2021**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**