

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 3291/DEL/2018 (A.Y 2008-09)

(THROUGH VIDEO CONFERENCING)

DCIT Circle-11(1) New Delhi (APPELLANT)	Vs	Hero Motocrop Ltd. 34, Basant Lok, Vasant Vihar, New Delhi 110034 AAACH0812J (RESPONDENT)
---	----	--

Appellant by	Ms. Sunita Singh, CIT DR
Respondent by	Sh. Rohit Jain, Adv a/w Ms. Manisha Sharma, Adv

Date of Hearing	05.10.2021
Date of Pronouncement	11.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 01/02/2018 passed by CIT (A)-42, New Delhi for assessment year 2008-09.

2. The grounds of appeal are as under:-

“Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing relief of Rs. 38.57 crores on expenditure which has neither been ascertained or crystallized during the year and nor was the TDS deduced during the year.”

3. The assessee is a Public Limited Company and is engaged in the business of manufacturing and sale of two wheelers since 1984. The assessee filed return of income for the relevant Assessment Year on 26/09/2008

declaring total income of Rs. 1307,37,84,038/- under the normal provisions of Income Tax Act, 1961. The draft assessment order u/s 144C of the Act was passed on 13/6/2012 at total income of Rs. 4595,86,49,565/- after proposing various additions/disallowances. Against the said draft assessment order, the assessee filed objections before the DRP which were disposed off by the DRP vide order dated 28/3/2013 in accordance with the directions given by the DRP, the final assessment order was passed u/s 143(3) read with Section 144C of the Act on 30/05/2013. Determining the total income at Rs. 4585,87,70,541/- after making additions/disallowances amounting to Rs.3355,12,31,399/- (before deducting 2007-08 adjustment Rs.76.62 crores) to the returning amount. Against the final assessment order, the assessee filed appeal before the Tribunal which was disposed off vide order dated 13/6/2014 wherein the majority of the aforesaid additions/disallowances to be extent of Rs. 3279.25 crores were deleted by the Tribunal. Further, additions/disallowances to Rs.68.60 crores were set aside by the Tribunal to the file of the Assessing Officer for reconsidering the matter in light of the observations finding given in the appellate order passed by the Tribunal. The remaining additions/disallowances of Rs. 7.28 crores were confirmed by the Tribunal. The assessee filed appeal before the Hon'ble High Court which is pending. The Assessing Officer completed the assessment vide order dated 26/2/2015 passed u/s 254/143(3) thereby making additions/disallowances of Rs. 38.57 crores towards disallowances of expenditure incurred on account of provisions for advertisement expenses u/s 40A(IA) and disallowances u/s 14A towards Rs. 123.39 lakhs.

4. Being aggrieved by the assessment order u/s 254/143(3), the assessee filed before the CIT(A). The assessee CIT(A) partly allowed the appeal of the assessee.

4. The Ld. DR submitted that the CIT(A) erred in allowing relief of Rs. 38.57 crores on expenditure which has neither been ascertain or crystallised during

the year and nor was the TDS deducted during the year. The Ld. DR relied upon the assessment order.

5. The Ld. AR relied upon the order of the CIT(A).

4. We have heard both the parties and perused all the relevant materials available on record. The CIT(A) has given a clear cut finding in Para 5.6 and 5.7 wherein it is categorically mentioned that the Assessing Officer never disputed the fact of deposit of tax deducted at source before the due date of filing the Income Tax Return for the subject year. Therefore, the CIT(A) rightly held that once the Assessing Officer was directed to verify the amount on which tax has been paid before the due date of filing the return of income and allow the same in the first round of appeal before the Tribunal. Thus, the Assessing Officer was not right in disallowing the deduction under Section 40(a)(ia) of the Act for failure to deduct and deposit the tax at source. Hence, there is no need to interfere with the finding of the CIT(A). Hence, appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on this 11th Day of October, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 11/10/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI