

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. C.N. PRASAD, JUDICIAL MEMBER**

ITA No.2796/Del/2018
Assessment Year: 2014-15

ACIT Circle – 27 (2) New Delhi	Vs	Zen Energy Consultants P. Ltd. C-349, Defence Colony, New Delhi PAN No.AAACZ2992H
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. T. Kipgen, CIT DR
Respondent by	Sh. Vivek Sehgal, CA

Date of hearing:	18/01/2022
Date of Pronouncement:	18/01/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-32, New Delhi dated 25.11.2017 pertaining to A.Y.2014-15.

2. The solitary grievance of the revenue is that the CIT(A) erred in deleting the disallowance of Rs.24,01,00,000/-.

3. Briefly stated the fact of the case during the course of the scrutiny assessment proceedings the AO noticed that the assessee has received Rs.50 lacs from KMC Construction Ltd. Fee as KMC Construction Limited intend to bid for large projects of the Indian Railways, in particular for the modernization of the New Delhi Railway Station. It was agreed that in case the bid is not successful Rs.50 lacs taken as advance of consultancy in full. The AO further noticed that there was a credit balance in the name of KMC construction Ltd amounting Rs.190467000/-. The assessee was asked to justify the credit balance.

4. In its reply the assessee stated that it is an advance receipt from KMC Construction Ltd. for providing the consultancy services for the modernization of the New Delhi Railway Station. MOU entered with KMC Construction Limited was submitted.

5. It was further explained that the said project of KMC Construction Limited could not be materialized in concrete terms up till now in view of several complexities and approvals pending at the end of Indian Railways. It was further explained that the mobilization advance payments received from M/s. KMC Construction Pvt. Ltd. have been shown as liabilities under the head sundry creditors and same are liable to be paid back. The AO was not convinced with the reply of the assessee and was of the firm belief that since the advance is pending from many years.

It is no more a liability and invoking the provisions of section 28 (iv) of the Act. The AO made the addition of Rs.2,401,00,000/-.

6. Assessee carried the matter before the CIT(A) and vehemently contended that the advance receipt from KMC Construction is a liability duly shown in the balance sheet and duly confirmed by KMC Construction Ltd. Since it is not a benefit or perquisite, in the light of the provisions of section 28 (iv) of the Act the additions made by the AO deserves to be deleted.

7. The CIT(A) was convinced with the contentions of the assessee and was of the opinion that the provisions of section 28 (iv) of the Act are applicable only for benefits or perquisites otherwise then in cash and deleted the addition.

8. Before us the DR strongly supported the findings of the AO. The Counsel for the assessee placed reliance on the order of the CIT(A).

9. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that KMC Corporation had given advance to the assessee and in the books of KMC Corporation the assessee has been shown as “debtor”. In the books of the assessee KMC construction Limited is shown as “creditor”. KMC Construction has confirmed the transaction and the confirmation certificate is placed on record. In our considered opinion the liability is not ceased to exist, it is still there in the

books of the assessee. The provisions of section 28 (iv) of the Act do not apply on the transaction of the assessee as no benefits or perquisites have been received otherwise than in cash. The Hon'ble High Court of Gujarat in the case of CIT Vs. Alchemic Private Limited 130 ITR 168 has held that "Question of including the value of the benefit or perquisites would arise only if the benefit or the perquisites is not in cash for money".

10. Considering the fact in totality we do not find any error or infirmity in the findings of the CIT(A).

11. In the result, the appeal filed by the revenue is dismissed.

12. Decision announced in the open court in the presence of both representatives on 18.01.2022

Sd/-
[C.N. PRASAD]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 18.01.2022

Neha

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	18.01.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	