

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.6813/DEL/2018**

**[Assessment Year: 2014-15]**

M/s Chadha Power, C/o-M/s RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi-110049	Vs	Asst. CIT, Circle-28(1), New Delhi
<b>PAN-AACFC8094N</b>		
Assessee		Revenue

**ITA No.6975/DEL/2018**

**[Assessment Year: 2014-15]**

Asst. CIT, Circle-28(1), Room No.1001, E-2 Block, 10 <sup>th</sup> Floor, Civic Centre, J.L.N. Marg, Income Tax Officer, Delhi-110002	Vs	M/s Chadha Power, C/o-M/s RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi-110049
<b>PAN-AACFC8094N</b>		
Revenue		Assessee

Revenue by	Sh. S.L. Anuragi, Sr. DR
Assessee by	Dr. Rakesh Gupta, Adv. Sh. Somil Agarwal, Adv.

<b>Date of Hearing</b>	<b>12.07.2022</b>
<b>Date of Pronouncement</b>	<b>18.07.2022</b>

**ORDER**

**PER SHAMIM YAHYA, AM,**

These are cross appeals by the assessee and Revenue arising out of the order of the Ld. CIT(A)-10, New Delhi, dated 23/08/2018, pertaining to Assessment Year 2014-15.

2. The grounds raised in assessee's appeal read as under:-

*"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.89,01,870/- relating to reimbursement of expenditure to its 100% subsidiary i.e. Chadha Project JLT-Dubai alleging that the same were not for the purpose of business and further erred in by applying the provisions of section 40(a)(i) of the Act and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

*2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.89,01,870/- by treating the same as non business expenditure and also u/s 40(a)(i), is bad in law and against the facts and circumstances of the case.*

*3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging the interest u/s 234A, 234B and 234C of Income Tax Act, 1961.*

3. The grounds raised in Revenue's appeal read as under:-

*1. On the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 2,68,10,716/- made on account of diversion of income belonging to the assessee firm to an entity incorporated in tax-free jurisdiction for avoidance of tax".*

*2. "On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs 14,92,638/- made on account of reimbursement of expenses which is not backed by commercial expediency and at the same time cannot be allowed as per the provisions of section 40(a)(i) as on the same TDS has not been deducted".*

*3. "On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the reimbursement expenses can be reasonably attributed as 'fee for management services' and as per the provisions of section 40(a)(i) any amount paid to a non-resident is not deductible as an expense if the requisite TDS under Chapter-XVIIIB has not been deducted and paid".*

*4. "On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that it is only if the business or profession is carried outside India, 'Fee for technical/management services' payable by a resident is not taxable in India".*

5. "On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that so-called support services provided by Chadha Projects JLT to the assessee is in the nature of fee for technical services since the so-called work order procured by Dubai entity for the benefit of the assessee firm have been executed from India and hence taxable in India".

6. "On the facts and circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that there were only two employees of Dubai entity, one of which is already a partner in assessee firm and hence diverting the income of assessee firm but also inflating the expenses of the assessee firm in the garb of support services where no such services were required from the angle of commercial expediency".

4. At the outset, in these cases, the ld. counsel for the assessee submitted that all the issues are arising in these appeals have already been considered and decided in assessee's own case for Assessment Year 2013-14 by the ITAT in ITA No.3055/Del/2018 vide order dated 23.12.2021 in Revenue's appeal. The ld. counsel for the assessee took us to the relevant portion of the assessment order, CIT(A)'s order and the corresponding part of ITAT order of earlier order and submitted that all the issues have decided in favour of the assessee. He submitted following chart for ready reference:-

Before Hon'ble Income Tax Appellate Tribunal, New Delhi, 'B' Bench			
In the Case of M/s Chadha Power For AY 2014-15 in ITA Nos. 6957/2018 and 6813/2018			
Particulars	Assessment Order	CIT(A) Order	ITAT Order for AY 2013-14
Department's Grounds of Appeal:			
<b>Ground No. 1</b>	Page 10	Discussion on Pages 11-13 & Findings on Page 12-13 and Ld.CIT(A) relies on AY 2013-14	Para 14 at Pages 13-14
<b>Ground No. 2</b>	Page 10-11	Discussion on Pages 13-17 & Findings on Page 17 and Ld.CIT(A) relies on AY 2013-14	Para 12-13 at Pages 12-13
<b>Note: The Ground nos. 3 to 6 are connected with Ground nos. 1 &amp; 2 only and Ground no. 7 is General.</b>			
Assessee's Grounds of Appeal:			
<b>Ground Nos. 1 &amp; 2</b>	Page 9	Discussion on Pages 2-11 & Findings on Page 10-11	Para 12-13 at Pages 12-13
<b>Note: Ground No. 3 is Consequential and Ground no.4 is General.</b>			

5. Per contra, the ld. DR did not dispute the aforesaid proposition.

6. We have gone through all the materials produced and submission of the parties. Facts in brief are that the assessee is a partnership firm and is engaged in the business of supply, installation, commissioning, and maintenance of DG sets, power equipments and its spare parts/ accessories. Pursuant to the disallowance & additions made by the Assessing Officer, the Ld. CIT(A) partly allowed the assessee's appeal.

7. Against this order, the Revenue and the assessee are in cross appeal before us.

**Revenue's Appeal (ITA No.6975/Del/2018)**

8. There are two issues arising in the Departmental appeal. First is with respect to deleting the addition of Rs.2,68,10,716/- made on account of diversion of income belonging to the assessee firm to an entity incorporated in tax-free jurisdiction for avoidance of tax and second issue is that the Ld. CIT(A) erred in deleting the addition of Rs.14,92,638/- made on account of reimbursement of expenses which is not backed by commercial expediency and at the same time cannot be allowed as per the provision of section 40(a)(i) of the Act. On both the issues pursuant to Assessing Officer's observation, the Ld. CIT(A) had deleted the addition by following his predecessors order for Assessment Year 2013-14. The said order was duly considered by the IAT in assessee's own case referred above and the ITAT has dealt with the issue herein as under:-

*"12. We have carefully considered the submissions and gone through the impugned order as well as material placed on*

record. Insofar as disallowance of reimbursement of expenses made to two non-resident entities i.e. Chadha Projects JLT, Dubai of Rs.1,30,51,568/- and Rs.21,33,805/- to Chadha Power (SA) Pty. Ltd., South Africa. The assessee's case has been that the said reimbursement of expenses of both the entities were for carrying out market research for feasibility and expansion of market in neighboring countries particularly in Gulf and African region and day-to-day coordination in activities for the assessee, negotiation and procurement of orders, securing of materials, supply and distribution of materials to destination sites, logistic support and follow up and liaisoning for projects under execution etc.. It is also undisputed fact that these firms were actually carrying out these activities as it has secured work order of more than Rs. 35 crores for the assessee. The copy of work orders were filed before the AO along with various documents and relied upon the correspondence which shows that the efforts were made for getting the new business there. Sans any adverse material, AO cannot question the wisdom and business expectancy in which wake of such evidences and record which has been duly appreciated and taken note of by the ld. CIT (A). The documents which have been referred to in the first appellate order, as incorporated above, clearly show that both the entities i.e. Dubai based and South Africa based has assisted in the business development as well as procurement of huge business orders which was in line with the assessee's business i.e. supply, installation, commissioning and maintenance of DG sets, power equipment and its spares/accessories. There is no adverse material on record to rebut the aforesaid documents as highlighted by the ld. CIT (A) above. Therefore, we do not find any reason to uphold the addition on the ground that there are no commercial activities. Accordingly, the finding of ld. CIT (A) is confirmed.

13. Insofar as the disallowance made u/s 40(a)(i) of the Act is concerned, the AO held that the said payment of reimbursement of expenses is in the nature of fee for technical services. As noted by the ld. CIT (A), there is no FTS clause in the India UAE DTAA regarding fee of technical services and, therefore, there cannot be any question of withholding of tax. Accordingly, disallowance u/s 40(a)(i) cannot be made. The aforesaid finding of ld. CIT (A) is accordingly confirmed.

14. Lastly, coming to the addition on account of diversion of income, we are unable to subscribe to the view taken by the AO that it is a paper entity and, therefore, there was diversion of profit. First of all, Chadha Projects JLT, Dubai is an independent entity incorporated under the laws of UAE and was carrying out various activities helping, assisting and

*getting contracts and procurements of orders for assessee firm and has also disclosed profits in its balance sheet of AED 7,92,674 including mark-up. If the non-resident entity has shown profit, then same cannot be added in the hands of the assessee company as income in India. Firstly, there is no evidence to prove that this was some kind of sham arrangement of profits along with markup and secondly, catena of documents and evidences were filed that the said entity is working there and for which mark-up of 10% of management fees is given, therefore, it cannot be held that all those documents are bogus or sham without any material information on record. Accordingly, findings of ld. CIT (A) on this score are also confirmed.”*

9. Since, the identical issue has been decided by the ITAT in favour of the assessee in assessee's own case and no case has been made out that the facts are different or the aforesaid order of the ITAT has been set-aside by the Hon'ble High Court, we follow the aforesaid order of the ITAT and confirm the order of the Ld. CIT(A). Hence, the Revenue's appeal is dismissed.

**Assessee's appeal (ITA No.6813/Del/2018)**

10. The issue arises in assessee's appeal is relating to the order of the Ld. CIT(A) in confirming the action of the Assessing Officer in disallowing the reimbursement of expenses to its 100% subsidiary Chadha Projects JLT, Dubai .

11. Pursuant to Assessing Officer's order, the Ld. CIT(A) on this issue, noted that the Assessing Officer has made disallowance. He also noted that his predecessor in earlier order has decided the same issue in favour of the assessee. Still, he observed that it appears that the factual matrix of the case was not considered by his predecessors, therefore, he was

differing by simply writing that considering the entirety of facts, he confirmed the addition.

12. Against this order, the assessee has filed appeal.

13. As submitted by the Ld. Counsel for the assessee, ITAT on the same issue has confirmed the Ld. CIT(A)'s order in earlier year, which the Ld. CIT(A) has chosen to differ. The adjudication by the ITAT is as under:-

*"12. We have carefully considered the submissions and gone through the impugned order as well as material placed on record. Insofar as disallowance of reimbursement of expenses made to two non-resident entities i.e. Chadha Projects JLT, Dubai of Rs.1,30,51,568/- and Rs.21,33,805/- to Chadha Power (SA) Pty. Ltd., South Africa. The assessee's case has been that the said reimbursement of expenses of both the entities were for carrying out market research for feasibility and expansion of market in neighboring countries particularly in Gulf and African region and day-to-day coordination in activities for the assessee, negotiation and procurement of orders, securing of materials, supply and distribution of materials to destination sites, logistic support and follow up and liaisoning for projects under execution etc.. It is also undisputed fact that these firms were actually carrying out these activities as it has secured work order of more than Rs. 35 crores for the assessee. The copy of work orders were filed before the AO along with various documents and relied upon the correspondence which shows that the efforts were made for getting the new business there. Sans any adverse material, AO cannot question the wisdom and business expectancy in which wake of such evidences and record which has been duly appreciated and taken note of by the ld. CIT (A). The documents which have been referred to in the first appellate order, as incorporated above, clearly show that both the entities i.e. Dubai based and South Africa based has assisted in the business development as well as procurement of huge business orders which was in line with the assessee's business i.e. supply, installation, commissioning and maintenance of DG sets, power equipment and its spares/accessories. There is no adverse material on record to rebut the aforesaid documents as highlighted by the ld. CIT (A) above. Therefore, we do not find any reason to uphold the addition on the ground that there are no commercial activities. Accordingly, the finding of ld. CIT (A) is confirmed.*

13. *Insofar as the disallowance made u/s 40(a)(i) of the Act is concerned, the AO held that the said payment of reimbursement of expenses is in the nature of fee for technical services. As noted by the ld. CIT (A), there is no FTS clause in the India UAE DTAA regarding fee of technical services and, therefore, there cannot be any question of withholding of tax. Accordingly, disallowance u/s 40(a)(i) cannot be made. The aforesaid finding of ld. CIT (A) is accordingly confirmed.”*

14. We find that the facts are identical and before us the Revenue has not disputed that the facts are different. Hence, we follow the aforesaid order of the ITAT and decide the issue in favour of the assessee.

15. Before parting, we may add that the issue of expenditure pertaining to Chadha Projects JLT, Dubai and Chadha Power SA Pvt. Ltd. before us is appearing in assessee's appeal and Revenue's appeal respectively. They were all dealt with by the ITAT in Revenue's appeal together in the ITAT paragraphs quoted above and that is the reason, the ITAT order in combined manner has adjudicated the issues. This is only for the sake of clarity.

16. In the result, Revenue's appeal is dismissed and assessee's appeal is allowed.

Order pronounced in the open court on 18/07/2022.

**Sd/-**

**[YOGESH KUMAR US]  
JUDICIAL MEMBER**

**Sd/-**

**[SHAMIM YAHYA]  
ACCOUNTANT MEMBER**

**Delhi;** 18.07.2022.

*Shekhar,*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi