

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.5159/Del./2018  
(ASSESSMENT YEAR : 2014-15)**

Dee Developments Engineers Ltd.,  
R/o 1255, Sector 14,  
Faridabad – 121 002 (Haryana).

vs. DCIT, Circle 7 (1),  
New Delhi.

**(PAN : AACCD0207H)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Vipul Kashyap, Sr. DR

Date of Hearing : 17.01.2023

Date of Order : 19.01.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-3, New Delhi dated 03.05.2018 pertaining to the Assessment Year 2014-15.

2. The grounds of appeal taken by the assessee read as under :-

“1. On the facts and circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals) is bad, both in the eye of law and on facts.

2. On the facts and circumstances of the case, the CIT(A) has erred, both on facts and in law, in making addition of Rs.7,18,125/- on Account of transaction entered with related

party M/s A K Engineers by treating the expenditure excessive and or unreasonable u/s 40A 2(a) of the Income Tax Act.”

3. The assessee company is engaged in the business of pipe and pipe fittings and is one of the leading international engineering enterprise. In the course of assessment, AO noted that assessee has taken services in respect of fabrication charges for a sum of Rs.1.80 crores during the previous year from M/s. A.K. Enterprises, one of its related parties. AO examined the transaction in terms of section 40A(2)(b) of the Income-tax Act, 1961 (for short 'the Act'). He referred to several case laws that excessive expenditure in these cases should be disallowed. On a query from the assessee why the fabrication charges paid to M/s. A.K. Enterprises should not be disallowed u/s 40A(2)(a), the AO put the assessee's submissions as under :-

“Hon'ble Sir, M/s A K Engineers is a proprietorship firm and is one of our related party with in the meaning of section 40A(2)(b). This firm has no plant and machinery however it has got many supervisor technical staff skilled, semi skilled and unskilled workers who are proficient in the various fabrication jobs. Please find enclosed the following documents in respect of the transaction for your kind perusal.

Copy of Pan Card and ITR for the A/Y 2014-15  
Copy of Audited Balance sheet  
Copy of ledger confirmation

Hon'ble Sir all the fabrication charges paid to M/s A K engineers are at a reasonable and Arm's Length price and the party has been dealt absolutely in the ordinary course of business as any other party Further we are producing the following documents for your kind verification.

Copy of bills  
List of Employees  
Copy of PF and ESIC return for the period  
Copy of labour registration certificate

Hon'ble Sir as the above documents are bulky in nature therefore your good self may call for copy of any of such material to be placed in the file.”

4. After reproducing the above, AO observed that proprietor of M/s. A.K. Enterprises, Ms. Shikha Bansal has derived profit of Rs.7,18,125/- from the business with the assessee. He noted that such profit would not have been earned if all the activities had been carried out by the assessee. Accordingly, he proceeded to disallow the sum of Rs.7,18,125/- u/s 40A(2)(b) of the Act.
5. Upon assessee's appeal, Id. CIT (A) confirmed the addition.
6. Against this order, assessee is in appeal before us.
7. We have heard the Id. DR for the Revenue. None appeared on behalf of the assessee despite notice. Hence, we proceed to adjudicate the issue by hearing Id. DR for the Revenue and perusing the records.
8. We find that in this case, AO has noted that assessee has entered into transaction with M/s. A.K. Enterprises which falls u/s 40A(2)(b) for a sum of Rs.1.80 crores. AO found the profit earned by the said company on this transaction amounting to Rs.7,18,125/- as excessive liable to be disallowed. We find that there is no mention to any comparison as to

how such sum found to be excessive. Without mentioning to any reason or comparability as to how the said sum is excessive, the addition is only based on surmises and conjectures. The reasoning given by the AO is that had the assessee done it himself, the profit to that extent would not have to be paid. We find that this reasoning is totally bizarre and has no legal basis for sustenance. Ld. DR, in this regard, tried to submit that AO has been very fair that he disallowed only a sum of Rs.7,18,125/- and not the total transaction worth Rs.1.80 crores. We do not find any cogency in this submission. It is not the case that the Revenue is in appeal in this case on this issue also. The disallowance has to be made on planks which are legally not sustainable. Disallowance on whims and fancies is not sustainable. Accordingly, we set aside the orders of the authorities below and delete the addition in this case.

8. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 19<sup>th</sup> day of January, 2023.**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 19<sup>th</sup> day of January, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-3, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.