

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, DELHI**

**BEFORE SHRI ANIL CHATURVEDI, AM &
SHRI N. K. CHOUDHRY, JM**

आयकरअपीलसं./ I.T.A. No. 1760/Del/2016
(निर्धारणवर्ष / Assessment Year: 2010-11)

**WSP Engineering Services
Ltd.**

(Now merged with WSP
Consultants India Pvt. Ltd.)
2nd Floor, FC-24, Sector-16A,
Film City, Noida,
UP-201301

**बनाम/
Vs.**

DCIT Cir-II,

4th floor, HSIIDC Building,
Vanijya Nikunj, Udyog Vihar,
Phase-V, Gurgaon.

स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACW5220F (WSP ESL:AAACW6766G)
(अपीलार्थी/**Appellant**) : (प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by** : Shri Arun Chhabra & Ms. Suchitra
Kanodia, Ld. ARs

प्रत्यर्थीकीओरसे/**Respondent by** : Shri Jitender Chand, Ld. DR

सुनवाईकीतारीख/
Date of Hearing : 07.03.2023

घोषणाकीतारीख /
Date of Pronouncement : 03.05.2023

आदेश / O R D E R

Per N. K. Choudhry, Judicial Member:

The Assessee/Appellant herein has preferred this appeal against the order dated 23.10.2015 impugned herein passed by Ld. Commissioner of Income Tax (Appeals), Gurgaon {in short 'Ld. Commissioner '} u/s 250 of the Income Tax Act 1961 (in short 'the Act') for AY 2010-11.

2. In the instant case, the Appellant declared its income of Rs. (-) 3,80,66,935/- by filing its return of income on 15.10.2010 which was processed u/s 143(1) of the Act. The case of the Appellant was subsequently selected for scrutiny under CASS and various notices were issued to the Appellant. The AO ultimately vide assessment order u/s 143(3) of the Act passed on 22.03.2013, assessed the income of the Appellant at Rs. (-) 1,21,31,113/- by making disallowance of Rs. 2,59,35,822/- in total (Rs. 73,24,367 + Rs. 1,48,26,990/- on account of consultancy fee + Rs. 9,25,801/- qua expenses allotted + Rs. 28,58,694/- qua reimbursement made).

3. The Appellant being aggrieved challenged the assessment order and the additions made by the AO, before Ld. Commissioner.

4. The Ld. Commissioner though allowed the claim of the Appellant against the disallowance of Rs. 1,48,26,990/- on account of consultancy fee qua transactions with WSP Middle East in respect of provisions of services given to the said company and deleted the said amount of Rs. 1,48,26,990/- and Expenses allotted to the tune of Rs. 9,25,801/- , however affirmed the disallowance of Rs. 1,01,83,031/- in total on account of consultancy and other expenses claimed by the Appellant total {Rs. 73,24,337/- qua consultancy fee + Rs. 28,58,694 qua reimbursement} . For brevity and ready reference, the conclusion drawn by the Ld. Commissioner is reproduced herein below:-

4. Ground No. 2:- This ground is against the disallowance of Rs1,11,08,832/- on account of consultancy and other expenses claimed by the appellant.

4.1 Brief facts are as discussed in para 3.1 and 3.2 above.

4.2 The submissions of the appellant have been reproduced in para 3.3, 3.4 and 3.5 above.

4.3 I have carefully considered the appellant's submissions. The disallowance in this case has been made on account of following expenses paid to M/s WSP Consultants India Ltd.:-

- (1) Consultancy fee of Rs. 73,24,734/-
- (ii) Expenses allotted Rs. 9,25,801/-
- (ii) Reimbursement made Rs. 28,58,694/-

4.4 Each of the aforesaid disallowance are being discussed as under:-

- (1) Expenses allotted Rs. 9,25,801/-

As seen from the appellant's submission, this was the expenditure allocated by the appellant to WSP CIL on account of photocopy expenses etc, and was in the nature of income and not expenses: Apparently this disallowance has been made on account of incorrect appreciation of facts. **The AO is directed to re-examine from the record as to whether this amount represents income or expenditure of the appellant and in case, as contended by the appellant, this amount represents income of the appellant, delete the disallowance made.**

(ii) Consultancy Fee Rs. 73,24,337/-

The AO had disallowed the expenditure claimed on this account on the ground that no evidence regarding the services rendered to the appellant for which this amount was claimed was produced. The AO has specifically pointed out that the appellant had not identified payment for each and every service which it was required to furnish. Even during the course of appellate proceedings no evidence in this regard was furnished by the appellant. The appellant was specifically asked by me during the course of appellate proceedings to submit documentary evidence regarding the receipt of service from M/s WSP Consultants India Ltd. The appellant submitted only a copy of the sub-consultancy agreement entered into with M/s WSP Consultants India Ltd. No documentary evidence for any

service rendered was furnished. No evidence in the form of any correspondence between the appellant and M/s WSP Consultants India Ltd. in the form of any e-mail exchange etc. to substantiate the claim of service rendered was furnished. Onus was on the appellant to furnish evidence for the service rendered by the M/s WSP Consultants India Ltd. in order to justify the claim of expenses. Moreover, it is fact on record that M/s WSP Consultants India Ltd. is a person specified u/s 40A(2)(b) and apparently the claim of expenses was an arranged affair between the two concerns. The AO was therefore, fully justify in disallowing the expenses claimed. Merely because the AO has referred to OECD guidelines and CUP method etc. does not in any way vitiate the disallowance. **The disallowance made by the AO on this account is accordingly confirmed.**

(iii) Reimbursement made Rs.28,58,694/-

The appellant had claimed that this expenditure was primarily on account of the appellant's share of rental expenses and other related expenses. During the course the appellate proceedings, the appellant was asked to substantiate this claim with documentary evidence. The appellant vide his letter dated 12/10/2015 submitted that the appellant was sharing common office space and other facility with its associated enterprise i.e. M/s WSP Consultants India Ltd. The appellant filed a copy of the rent agreement entered into by M/s WSP Consultants India Ltd. As per this agreement dated 01/12/2008, M/s WSP Consultants India bid had taken space on lease from Sh. R.C. Panwar Clause 14 of this agreement reads as under:-

"That the Lessee will not Sub-let, assign or part away with the possession of the tenanted premise or any portion thereof without the Lessor prior written consent/permission".

The appellant could have used the premises only if M/s WSP Consultants India Ltd. had received written consent from the landlord. Accordingly, during the

course of appellate proceedings, the appellant was asked to furnish the copy of the written permission from the landlord. The appellant could not furnish such evidence. The appellant therefore could not substantiate its claim that it had used common office space and other facilities with M/s WSP Consultants India Ltd. **The disallowance is accordingly confirmed.**

(Highlighted & underlined by us for clarity)

- 5.** The Appellant being aggrieved is in appeal before us.
- 6.** Heard both the parties and perusal the material placed on record. The Assess has raised the following additional ground:

"1.1. On the facts the circumstances of the case and in law, the Ld. AO and Ld. Commissioner erred in disallowing payments made to fellow subsidiary under section 40A(2) of the Act, ignoring that fellow subsidiaries did not fall within the ambit of section 40A(2)(b) for the said assessment year."

6.1 At the outset, Ld. AR by drawing our attention to the application under Rule 11 of the Income Tax Appellate Tribunal Rules 1963 (in short 'Rules') for admission of additional ground referred to, claimed that in continuation to the ground no. 1 raised in Form no. 36 filed in appeal, the Appellant has raised the additional ground which is legal in nature and would be essential for due dispensation of substantial justice and consequently goes to the root of the matter. The Appellant further claimed that additional ground appended herewith does not require examination of any fresh evidence/facts and therefore, in view of the judgment passed by the Hon'ble Apex Court in the

case of Jute Corporation of India Ltd. (187 ITR 688) (SC) and National Thermal Power Company Ltd. (1998) 229 ITR 383 (SC), the same may be admitted for adjudication and for substantial justice, be remanded to either of the authorities below for decision.

7. On the other contrary, the Ld. DR refuted the claim of the Appellant.

8. We have given thoughtful consideration to the peculiar facts and circumstances of the case. The Hon'ble Apex Court in the cases of **Jute Corporation of India Ltd. (supra) and National Thermal Power Company Ltd. (supra)** has clearly held that the appellate authority while hearing the appeal has all the powers which the original authority may have in deciding the question before it, if any prescribed by the statutory provisions. Further the Tribunal should not be prevented from considering the question of law arising in assessment proceedings although not raised earlier. Hence, considering the peculiar facts and circumstances of this case, as additional ground raised by the Appellant prima facie is legal in nature and goes to the root of the case and essential for real adjudication and just decision of the case, we are inclined to admit the additional ground raised by the Appellant and consequently for proper adjudication of the issue and just decision of the case and for the ends of justice, remit the issue qua additional ground referred to, to the file of the Ld. Assessing officer for determination afresh, on the basis of the material available on record and the legal provisions as applicable to the issue under consideration, suffice to say by affording reasonable and proper opportunity of being heard to the Appellant.

9. In the result, the appeal filed by the Appellant is **allowed for statistical purposes.**

Order pronounced as per Rule 34(4) of the Income Tax Appellate Tribunal Rules,1963, on 03-05-2023.

Sd/-

(Anil Chaturvedi)
Accountant Member

Sd/-

(N. K. Choudhry)
Judicial Member

Dhananjay Kumar
Sr.PS.

आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
4. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, / ITAT, Delhi

Sr. No.	Details	Date	Initial	Designation
1	Draft dictation sheets are attached	no		Sr.PS/PS
2	Draft dictated on PC			Sr.PS/PS
3	Draft Placed before author			Sr.PS/PS
4	Draft proposed & placed before the Second Member			JM/AM
5	Draft discussed/approved by Second Member			JM/AM
6	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
7	Order pronouncement on			Sr.PS/PS
8	File sent to the Bench Clerk			Sr.PS/PS
9	Date on which the file goes to the Head clerk			
10	Date on which file goes to the AR			
11	Date of Dispatch of order			