

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.5299/Del/2011
Assessment Year: 2008-09
With
ITA No.5223/Del/2012
Assessment Year: 2009-10

PJSC Stroytransgaz, Block EP-15, Dr. Hose P. Rizal Marg, Chanakya Puri, New Delhi	Vs.	Addl. CIT, Range-2, International Taxation, New Delhi
PAN :AAHCS2254E		
(Appellant)		(Respondent)

With
ITA No.1133/Del/2014
Assessment Year: 2010-11

PJSC Stroytransgaz, C/o- Deepak Chopra, 140, Aspen Greens, Nirvana Country, South City-II, Sector-50, Gurgaon	Vs.	DDIT, Circle 2(2), International Taxation, New Delhi
PAN :AAHCS2254E		
(Appellant)		(Respondent)

With
ITA No.7846/Del/2017
Assessment Year: 2011-12

PJSC Stroytransgaz, C/o- Deepak Chopra, 324, E-Space, Nirvana Country, South City-II, Sector-50, Gurgaon	Vs.	DDIT, Circle 2(2), International Taxation, New Delhi
PAN :AAHCS2254E		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Vizay B. Vasanta, CIT(DR)

Date of hearing	16.05.2023
Date of pronouncement	24.05.2023

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeals are by the same assessee. Appeals for the assessment years 2008-09, 2009-10 and 2010-11 are against the final assessment orders passed in pursuance to the directions of Dispute Resolution Panel (DRP). Whereas, the appeal for assessment year 2011-12 is against the order passed by the Commissioner of Income Tax (Appeals). However, since, the issues raised in all these appeals are common, they have been clubbed together and disposed of in a consolidated order, for the sake of convenience.

2. When the appeals were called out for hearing, none appeared on behalf of the assessee to represent the case. Even, the assessee has not filed any application seeking adjournment. On perusal of record, it is noticed that, though, on multiple occasions the appeals were fixed for hearing and several notices of the hearing were issued to the assessee through RPAD, however, the assessee has remained non-compliant. Since, two of these

appeals are pending for more than a decade and two other appeals are pending for substantial number of years and the assessee is completely negligent in its approach in the matter of disposal of the appeals, we are inclined to dispose of the appeals *ex parte* qua the assessee after hearing learned Departmental Representative and based on materials available on record.

ITA No.5299/Del/2011
AY: 2008-09

3. Briefly the facts are, the assessee is a non-resident corporate entity and incorporated under the laws of Russia. As stated by the Assessing Officer, it is engaged in the business of construction of oil and gas pipelines of large diameters in Russia and other countries. For the purpose of carrying out its business activity in India, the assessee opened a branch office on 1st October, 2003 and rendered technical and consultancy services in connection with various projects. In course of assessment proceeding, while examining the profit and loss account forming part of the audit report, the Assessing Officer noticed that under the head 'project expenses', the assessee had claimed the following expenses:

1.	<i>Performance Guarantee</i>	<i>Rs.22,27,00,000/-</i>
2.	<i>Liquidated Damages</i>	<i>Rs.2,10,80,544/-</i>
3.	<i>Owners Claim</i>	<i>Rs.46,15,27,917/-</i>

4. After calling upon the assessee to furnish details of project-wise profit and loss account and various other materials, including expenses incurred, the Assessing Officer observed, the assessee explained that the expenses claimed were not actual expenses, but were in the nature of provisions made in the books of account. After examining in detail the claim of the assessee relating to provisions made of various expenses, the Assessing Officer found that expenses were actually not incurred by the assessee, but were in the nature of provisions. Holding that the expenses claimed by the assessee are not ascertained liabilities, the Assessing Officer disallowed them. Though, the assessee contested the disallowances by raising objections before learned DRP, however, the DRP upheld the disallowances.

5. Before us, the assessee has neither appeared nor led any evidence to demonstrate that the provisions of expenses debited to the profit and loss account were actually incurred and are in the nature of ascertained liability. Thus, in absence of any cogent materials furnished by the assessee to establish its claim, we do not find any reason to interfere with the decision of the departmental authorities. Accordingly, grounds are dismissed.

6. In the result, appeal is dismissed.

ITA No.5223/Del/2012
AY: 2009-10

7. Most of the issues raised in this appeal are identical to the issues raised in ITA No.5299/Del/2011. Therefore, our decision in ITA No.5299/Del/2011 will apply mutatis mutandis to this appeal. Accordingly, ground nos. 1 to 6 are dismissed.

8. In ground no. 7, the assessee has challenged the addition of Rs.1,48,23,267/- as income from royalty.

9. Briefly the facts are, in the return of income filed for the impugned assessment year, the assessee declared royalty income from the Bharuch Jamnagar Project amounting to Rs.1,48,23,267/- and offered it to tax by applying the rate of 10% on gross basis, as per Article 12 of India – Russia Double Taxation Avoidance Agreement (DTAA). The Assessing Officer, however, did not accept assessee's claim. He observed that in assessment years 2004-05, 2005-06 and 2006-07, the Assessing Officer had held that such royalty income is effectively connected to the fixed place Permanent Establishment (PE) in India, hence, such income has to be taxed on net basis. Accordingly, following the decision taken in earlier assessment years, the Assessing

Officer proceeded to tax the royalty income on net basis. Learned DRP upheld the decision of the Assessing Officer.

10. Before us, the assessee has neither appeared nor furnished any evidence to demonstrate that royalty income is not connected to the PE. Accordingly, we find no reason to deviate from the decisions taken by the departmental authorities. Accordingly, ground is dismissed.

11. In the result, appeal is dismissed.

ITA No.1133/Del/2014
AY: 2010-11

12. The first issue arising for consideration is disallowance of Rs.5,59,37,328/-. As could be seen from the facts on record, in course of assessment proceeding, the Assessing Officer noted that the assessee had claimed an amount of Rs.1,25,77,629/- as disallowance under section 40(a)(ia) of the Income-tax Act, 1961 (in short 'the Act'), being payment of TDS amount deducted for assessment year 2009-10 and not paid that year but paid in assessment year 2010-11. After perusing the details furnished by the assessee, the Assessing Officer observed that the assessee has not furnished the challans evidencing deposit of TDS to Government account, amounting to Rs.5,59,37,328/-. Thus, in

absence of proper evidence, the Assessing Officer disallowed the amount in dispute. Learned DRP also upheld the disallowance.

13. Before us, the assessee has neither appeared, nor furnished any evidence to demonstrate that the TDS amount of Rs. 5,59,37,328/- was actually deposited in Government account. Thus, in absence of necessary evidence, we are inclined to uphold the disallowance.

14. The next issue relates to taxability of royalty income on net basis. This issue is identical to the issue raised in ground no. 7 of ITA No.5223/Del/2012. The decision taken therein would apply *mutatis mutandis* in this appeal also. Accordingly, the decision of the departmental authorities is upheld.

15. The next issue relates to disallowance of Rs.32.98,997/-, being deduction claimed towards transit office/site office facility expenses. As could be seen from the facts on record, the departmental authorities have disallowed assessee's claim of deduction on the reasoning that the expenditure is not related to the business activity of the assessee.

16. Before us, the assessee has not brought on record any evidence to demonstrate that the expenditure incurred is wholly and exclusively for its business activity. That being the case, we

are inclined to uphold the decision of the departmental authorities.

17. The next issue raised by the assessee relates to set off of brought forward losses. As could be seen from the facts on record, assessee's claim of set off of brought forwards losses has been rejected by the Assessing Officer on the reasoning that there is no brought forward losses in view of the additions made in assessment year 2009-10. Keeping in view the aforesaid factual position, we uphold the decision of the departmental authorities.

18. The assessee has raised one more issue of double disallowance of Rs.5,59,37,328/-. On perusal of record, we find, learned DRP has issued necessary direction to the Assessing Officer in this regard and, pursuant to which, the Assessing Officer has passed the final assessment order. In this view of the matter, we uphold the decision of the departmental authorities.

19. In the result, the appeal is dismissed.

ITA No.7846/Del/2017
AY: 2011-12

20. The first issue arising in the appeal relates to taxability of royalty income on net basis. This issue is identical to the issue raised in ground no. 7 of ITA No.5223/Del/2012 decided in the

foregoing paragraphs. The decision taken in ITA No.5223/Del/2012 by us will apply mutatis mutandis to this appeal also. Accordingly, we uphold the decision of the departmental authorities.

21. The next issue relates to disallowance of transit office/site office expenses. While deciding identical issue in assessee's appeal in ITA No.1133/Del/2014, we have upheld the disallowance, since the expenditure incurred is not wholly and exclusively for the purpose of business. Following our decision therein, we uphold the disallowance.

22. The next issue relates to disallowance of Rs.4,000/-, being service tax penalty on late filing of service tax returns. Having perused the orders of the departmental authorities, we find, the amount in dispute was paid towards service tax penalty on late filing of service tax returns. No material has been brought on record by the assessee to demonstrate that the payment made was not prohibited by law or due to infraction of law. Therefore, we uphold the addition.

23. The next issue relates to disallowance of Rs.23,37,382/- representing professional expenses.

24. Having perused materials on record, we find, the assessee had made certain payments, which were claimed as deduction. However, while making such payments, the assessee had not deducted tax at source. Accordingly, payments made were disallowed under section 40(a)(ia) of the Act. It is observed, before the departmental authorities, the assessee had merely stated that the payments made were in the nature of reimbursement of actual cost without any breakup.

25. Before us, the assessee has failed to appear and furnish any evidence to substantiate its claim. Therefore, we are inclined to uphold the decision of departmental authorities on the issue.

26. The next issue relates to addition of Rs. 23,53,40,021/-. In course of assessment proceeding, the Assessing Officer found that, though, there are credit entries of Rs.23,53,40,021/- in various bank accounts, which according to the assessee, were received from various projects, however, the assessee did not offer them for tax. Accordingly, the Assessing Officer treated them as income and brought it to tax. While deciding the issue, the Commissioner (Appeals) has observed that, though, the assessee claimed that these receipts from projects have already been

offered to tax in earlier years, however, the assessee could not furnish any cogent evidence to establish such claim.

27. Learned Commissioner (Appeals) has recorded a finding of fact that neither the assessee could explain the credit entries, nor furnish any evidence to demonstrate that the receipts found in the bank statements are identical to the receipts from projects offered to tax in the earlier assessment years.

28. Before us, the assessee has not led any evidence to rebut the factual finding of the departmental authorities. In this view of the matter, we do not find any reason to interfere with the decision of learned Commissioner (Appeals). Accordingly, the addition made is sustained.

29. In the result, the appeal is dismissed.

30. To sum up, all the appeals are dismissed.

Order pronounced in the open court on 24th May, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 24th May, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi