

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No:- 2161/Del/2023  
(Assessment Year: 2012-13)**

DCIT, Central Circle-17, New Delhi.	Vs.	M/s Pico Deepali Overlays Consortium, New Delhi.
<b>PAN No: AABAP1880F</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue by** : Shri Vivek Vardhan, Sr. DR  
**Assessee by** : Shri Tapas Misra, Adv. &  
Shri Manpreet Singh Bagga, CA.

**Date of Hearing** : 28.02.2024  
**Date of Pronouncement** : **04.03.2024**

**ORDER**

**PER N.K. BILLAIYA, AM**

This appeal by the Revenue is preferred against the order of the CIT(A)-27, New Delhi dated 31.05.2023 pertaining to A.Y. 2012-13.

2. The solitary grievance of the Revenue is that the CIT(A) erred in deleting the addition of Rs. 3,13,72,363/- and further erred in accepting

copies of bills and vouchers as evidence of the genuineness of direct and indirect expenses.

3. Having heard the representatives, we have carefully perused the orders of the authorities below.

4. Briefly stated the facts of the case are that the assessee is a consortium of three entities. i.e. M/s Pico Hong Kong Limited, M/s Deepali Design & Exhibition Private Limited & M/s Pico Event Marketing (India) Private Limited. The consortium was formed for providing overlays on turnkeys basis including supply, installation, testing, commissioning, operation, maintenance, decommissioning and removal of the overlays at commonwealth Games 2010 in Delhi. The return for the year was filed at a loss of Rs. 2,88,90,538/-. The return was selected for scrutiny assessment and accordingly the statutory notices were issued and served upon the assessee. A questionnaire along with notice u/s 142(1) of the Act was issued to the assessee to submit the submission. However, none appeared on behalf of the assessee and the AO was forced to complete the assessment u/s 144 of the act ex-parte. The AO found that during the year, the assessee has not done any work and therefore he disallowed

the entire expenses claimed being direct and indirect expenses and made addition of Rs. 3,13,72,363/-.

5. The assessee challenged the addition and the assessment before the CIT(A). Before the CIT(A) the assessee moved an application for admission of additional evidences claiming that no proper opportunity was given to the assessee by the AO. After considering the facts and the submissions, the CIT(A) admitted the additional evidences and send them to the AO for verification and Remand Report. The AO submitted his Remand Report dated 24.02.2023 which was considered by the CIT(A). The relevant finding of the CIT(A) reads as under:

**"4. Admission of additional evidence under Rule 46A**

*I have gone through the contents of the remand report of the Assessing Officer, rejoinder of the appellant and also the additional evidences filed under Rule 46A of the IT Rules 1962. The appellant has submitted that it was unable to participate in the assessment proceedings for reasons beyond its control and did not have any knowledge of the impugned assessment order for a long time. The lead member of the Consortium, Pico Hong Kong Limited was prevented due to circumstances beyond its control including departure of key employees involved with this one-time project in India, and prolonged incapacitation of its chief executive for the CWG project due to heart attack, from participating in the proceedings and keeping track. I concur with the submissions of the appellant. Further the additional evidences filed were relevant and vital that would go to the root of the matter while deciding the issues to which they relate. In the case of CIT vs. Virgin Securities Credit P. Ltd. (2011) 332 ITR 396 (Del) the Jurisdictional High Court has held that, evidence which is crucial in disposing of the case can be admitted. Since, the documents filed by the appellant as additional evidence are of the nature that may advance the interest of natural justice, the same need to be admitted and considered. Therefore, the documents filed as additional evidence in the*

*course of appeal proceedings are admitted for consideration and adjudication of the issues raised in the grounds of the appeal. Accordingly, I proceed to adjudicate the issues raised in the grounds of appeal in the following paragraphs."*

6. The CIT(A) concluded by holding that all the three parties are existing and expenses made are for the purpose of business. Since the assessee is following the cash system of accounting and the same has been accepted by the Department in the earlier years. Just because there is no income during the year, disallowing the expenses of earlier years but paid during the year, is not found to be sustainable. In the light of the Remand Report, the CIT(A) deleted the addition.

7. We have given a thoughtful consideration to the findings of the CIT(A). The undisputed fact is that the assessee is following cash system of accounting and therefore even if there is no income during the year the expenses incurred / paid during the year cannot be disallowed by following the method of accounting. Further, there is no dispute that the impugned three parties have furnished necessary details which have been examined and accepted by the CIT(A). Therefore, findings of the CIT(A) cannot be faulted with.

8. In the result, appeal of the Revenue is accordingly dismissed.

Order pronounced in the Open Court on 04 .03.2024

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

**Sd/-**  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Dated: 04/03/2024.  
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT 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	
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Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	