

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

Before Dr. B. R. R. Kumar, Accountant Member,

Sh. Anubhav Sharma, Judicial Member

ITA No. 3916/Del/2023 : Asstt. Year: 2021-22

MSV International INC, 514, 515 & 516, Suncity Success Tower, Sector-65, Gurgaon, Haryana-122002	Vs	DCIT, Circle-International Taxation, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AADCM1304M		

**Assessee by : Sh. Ved Jain, Adv. &
Ms. Supriya Mehta, Adv.
Revenue by : Sh. Vizay B. Vasanta, CIT-DR**

Date of Hearing: 08.04.2024

Date of Pronouncement: 27.06.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 31.10.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the final assessment order passed by learned AO u/s 143(3) u/s 144C(13) of the Income Tax Act, 1961 is bad both in the eyes of law and on facts.

2. On the facts and circumstances of the case, the final assessment order passed u/s 143(3) r.w.s. 144C(13) by learned AO is bad and liable to be quashed as the same is issued beyond the time limit prescribed under the Act and thus barred by limitation.

3. On the facts and circumstances of the case, the final assessment order passed u/s 143(3) r.w.s. 144C(13) by learned AD is bad and liable to be quashed as the same has been passed without complying to the directions of the DRP issued

under section 144C(5) of the Act and thus, violated the provisions of section 144C(13) of the Act 4. On the facts and circumstances of the case, the directions issued by the DRP is invalid, illegal and contrary to the provisions of section 144C(8) of the Act.

5. On the facts and circumstances of the case, the final assessment order passed u/s 143(3) r.w.s 144C(13) by the AD is illegal and liable to be quashed as the same has been passed in pursuant to the directions of the Dispute resolution panel (DRP) under section 144C(5) of the Act wherein DRP has issued the directions and set-aside the proposed variation for making further examination/re-verification which is prohibited as per the provisions of section 144C(8) of the Act.

6. On the facts and circumstances of the case, the DRP has erred both on facts and in law in rejecting the contention of the assessee that the draft assessment order has been passed and additions has been proposed without providing reasonable opportunity of being heard to the assessee.

7. On the facts and circumstances of the case, the final assessment order passed u/s 143(3) r.w.s. 144C(13) by learned AO is illegal, invalid and non-est as no valid computer-generated Document Identification Number (DIN) has been quoted in the body of the said order.

(1) That the above action of the AD is in violation of the instructions issued by the CBDT Circular No. 19/2019

8. On the facts and circumstances of the case, the assessment order passed by the learned AO are illegal and void-ab-initio as the same have been issued and passed without application of mind.

9.(i) On the facts and circumstances of the case, the learned AO has erred both on facts and in law making the disallowance of Rs.1,58,86,933/-on account of Rent expense claimed by the assessee.

(ii) That the above said disallowance has been made ignoring the explanation and evidences, including all of the rent agreements submitted by the assessee before the DRP as well as during the final assessment proceedings

(iii) That the above said disallowance has been made despite the fact that these expenditures have been incurred wholly and exclusively for the purpose of the business and are the allowable expenditure under the Income Tax Act.

10. (i) *on the facts and circumstances of the case, the learned AO has erred both on facts and in law making the disallowance of Rs. 6,20,26,102/- on account of consultancy fee.*

(ii) *That the above said disallowance has been made ignoring the contention of the assessee that these expenditures pertain to FY 2020-21 and have been claimed as per the mercantile system of accounting followed by the assessee.*

(iii) *That the above said disallowance has been made ignoring the explanation and evidences, including all of the invoices submitted by the assessee before the DRP as well as during the final assessment proceedings.*

(iv) *That the above said disallowance has been made despite the fact that these expenditures have been incurred wholly and exclusively for the purpose of the business and are the allowable expenditure under the Income Tax Act.*

11. *On the facts and circumstances of the case, the learned AO has erred both on facts and in law making the above said disallowances by indulging in surmises and conjectures without bringing on any evidence against the assessee, only on the basis of presumption and assumption.*

12. *On the facts and circumstances of the case, the learned AO has erred both on facts and in law in not providing the credit of tax deducted at source (TDS) amounting to Rs. 17,45,265/- as claimed by the assessee in the return of income.*

13. *On the facts and circumstances of the case, the learned AO has erred both on facts and in law in charging interest under Section 234A, 234B, 234C and 234D of the Act."*

3. Brief facts of the case are that the assessee is a foreign company, incorporated in United States of America. It is a multi-disciplinary consulting organization specializing in engineering, procurement, construction management and project management activities. The assessee has filed its ITR on 12.03.2022.

4. Heard the arguments of both the parties and perused the material available on record along with the paper book containing 2809 pages.

Disallowance of Rental Expenses: Rs.1,61,11,333/-

5. During the course of scrutiny assessment proceedings, the assessee vide reply dated 23.11.2022 explained that agreements are bulky in nature and therefore a sample of rent agreements were submitted. The Id. DRP allowed Rs.2,24,400/- only pertaining to three agreements out of the rental expenses of Rs.1,61,11,333/- holding that assessee did not furnish the rental agreements for the remaining amounts. After hearing both the parties, we find that it is a fact on record that the assessee has paid rentals to 69 parties and the agreements have also been submitted. The ledger account of rent paid has also been submitted before the Id. DRP. We observed that the Id. DRP failed to examine the business model of the assessee wherein receipts have been accounted from various places and rent has been paid to the premises spread all over India. The Id. DRP erroneously affirmed the action of the Assessing Officer inspite of the facts discernable are available on record. Hence, we hold that no disallowance is called for on account of rent expenses.

Consultancy Expenses:

6. The Id. DRP affirmed the action of the AO disallowing consultancy expenses of Rs.6,20,26,100/- out of the total consultancy expenses claimed of Rs.13,46,72,588/-. The Id. DRP held that the expenses of Rs.7,26,46,400/- have only been proved as the assessee has filed 87 bills pertaining to this amount and the remaining have not been substantiated. After hearing both the parties, we find that it is a fact on record that

the assessee has submitted the details before the Id. DRP which is at page no. 2368 to 2392 of the paper book. The details of cheque nos., address, amount paid and the purpose have been duly mentioned in the invoices. The assessee has submitted all the details and the invoices (at page no. 2393 to 2749) before the Id. DRP which the Id. DRP choose to ignore. Since, the entire evidences have been filed and available on record, we hold that the directions of the Id. DRP cannot be sustained.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 27/06/2024.

Sd/-

(Anubhav Sharma)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 27/06/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR