

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “F” DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3397/Del/2018
Assessment Year 2014-15

M/s. Punj Lloyd Alcon LK Goyal (JV) 95, Institution Area, Sector-32 Gurgaon	Vs.	ITO, Ward-3(3) Gurgaon
TAN/PAN: AABAP8972A		
(Appellant)		(Respondent)

Applicant by:	Shri Ashwani Kumar, Chartered Accountant Shri Ankur Agarwal, Chartered Accountant		
Respondent by:	Shri Vivek Vardhan, Sr.DR		
Date of hearing:	09	05	2024
Date of pronouncement:	07	08	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-I, Gurgaon ('CIT(A)' in short) dated 22.02.2018 arising from the assessment order dated 19.12.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2014-15.

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

“That the order dated 22-02-2018 passed u/s 250 of the Income-tax Act, 1961 by the Learned Commissioner of Income-Tax (Appeals), Gurgaon is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Income Tax Officer, Ward-3(3), Gurgaon in making disallowance of mobilization advance of Rs. 1,89,04,421/- under section 40(a)(ia) of the Act on the ground that tax has allegedly not been deducted at source thereon u/s 194C of the Income-Tax Act, 1961 without rebutting the claim of the Appellant that tax

has been deducted and deposited to the credit of Central Government during the immediately preceding financial year i.e 2012-13 but has been claimed as expenditure in A.Y 2014-15.”

3. Briefly stated, the assessee is a Joint Venture (JV) and was engaged in earthwork formation, ground improvement, construction of Bridges, P-way works, Workshop Building, S & T, Electrical and Misc. works in connection with augmentation of MGR System and Railway siding of 2500 MW Anpara ‘D’ TPP at Anpara Dist. Sonbhadra (U.P.) during the year under consideration.

3.1 The assessee filed return of income for A.Y. 2014-15 on 29.11.2014 under Section 139 of the Act declaring total income of Rs.830/-. The return filed by the assessee was subjected to scrutiny assessment under Section 143(3) of the Act. The AO passed assessment order under Section 143(3) dated 19.12.2016 by making disallowance of Rs.1,89,04,421/- under Section 40(a)(ia) of the Act on the grounds of alleged failure of Tax Deducted at Source on payments made towards mobilization advances of Rs.1,89,04,421/- to M/s. Punj Lloyd Ltd.

4. Aggrieved, the assessee preferred appeal before the CIT(A). It was submitted before the CIT(A) that the mobilization advances to joint ventures partners have been shown in income and expenses on back to back basis and routed through Profit and Loss Account and has neutral effect. The assessee further submitted that it has already deducted TDS on mobilization advances in A.Y. 2013-14 and deposited in the account of Central Government as reflected in the TDS return. The assessee thus essentially submitted before the CIT(A) that the impugned payment of Rs.1,89,04,421/- was made during F.Y. 2012-13 on which TDS was duly deducted and such payment was merely mobilization advances for which the expenditure was booked in F.Y. 2013-14 relevant to A.Y. 2014-15 in question. The CIT(A) however denied relief on the ground that the expenditure corresponding to the year of deduction of TDS ought to have been claimed in that assessment year and that the assessee is not permitted to change the year of claim of any expenditure in accordance with its own requirement. The CIT(A) further noted that the assessee has not filed any return of income for A.Y. 2013-14, i.e., the year in which it claims to have deducted TDS and therefore, it was not open to the assessee to claim

expenditure pertaining to F.Y. 2012-13 in A.Y. 2013-14, i.e., current assessment year. The CIT(A) thus denied any relief.

5. Aggrieved, the assessee preferred appeal before the Tribunal.

6 The Id. counsel broadly submitted that:

(a) the assessee has paid Mobilisation advance aggregating to Rs.17,99,43,391/- during Financial Year 2012-13 on which tax has been deducted at source as per the following details:

Sr. No.	Date of Payment	Qtr	Name of the Party	Amount Paid	TDS Deducted
1	10.05.2012	1	Punj Lloyd Ltd.	6,39,36,962	12,78,739
2	24.08.2012	2	Punj Lloyd Ltd.	3,32,04,501	6,64,090
3	31.08.2012	2	L K Goyal	5,25,000	52,500
4	19.12.2012	3	Punj Lloyd Ltd.	3,56,80,582	7,13,612
5	22.02.2013	4	Punj Lloyd Ltd.	3,69,39,249	7,38,785
6	22.02.2013	4	Alcon Builders & Engg. P. Ltd.	96,57,097	1,93,142
			Total	17,99,43,391	36,40,868

	Less Expenses Booked in F.Y. 2012-13	14,06,74,870	
	Balance Advance as on 31.03.2013 on which Tax has already been deducted at source during F.Y. 2012-13	3,92,68,521	

(b) Out of Rs. 17,99,43,391/-, Rs 14,06,74,870/- was booked as an expense by the assessee Firm in F.Y. 2012-13 itself.

(c) The balance of Rs. 3,92,68,521/- was carried forward to the year under appeal. Further out of the above, only a sum of Rs 1,89,04,421/- has been claimed as an expense in A.Y. 2014-15. The balance of Rs.2,03,64,100/- was claimed and allowed in later years.

(d) In order to evidence the same copies of returns of Tax deducted at Source in Form 26Q along with TDS certificate in Form 16A enclosed.

6.1 The Id. counsel also submitted that the said documentary evidences clearly

proves that tax had been deducted at source on impugned amount of Rs. 1,89,04,421/- during F.Y. 2012-13. The ld. counsel further submitted that Punj Llyod Limited has booked such income in the Financial Year 2012-13 relevant to Assessment Year 2013-14 and certificate to this effect was filed with Commissioner of Income Tax (Appeals)-1, Gurgaon. However, the said expense was booked by the assessee during the Financial Year 2013-14 relevant to Assessment Year under appeal on accrual of expenses.

6.2 The ld. counsel next submitted that the appeal filed before the Commissioner of Income Tax (Appeals)-1, Gurgaon was dismissed vide order dated 22.02.2018 and concluded that since the assessee had not filed its return of income for A.Y. 2013-14, it was not eligible to claim any expenditure pertaining to the A.Y. 2014-15. To address the point, the ld. counsel submitted that the Assessee-Company had filed a petition for condonation of delay in filing return on 25th July, 2017 i.e. before the date of the order passed by the Commissioner of Income-Tax (Appeals). On receipt of the approval for the same, the assessee filed the return of income for A.Y. 2013-14 on 13.03.2019.

6.3 The ld. counsel submitted that in the light of the submissions made, the disallowances carried out is without appreciation of facts in prospective and thus deserves to be reversed and cancelled.

7. The ld. DR for the Revenue, on the other hand, relied upon the first appellate order and submitted in furtherance that the issue requires factual verification. The onus is on the assessee to establish that TDS on impugned expenditure claimed during the year has been actually deducted to shun the applicability of Section 40(a)(ia) of the Act and a mere theoretical submission is not sufficient.

8. We have carefully considered the rival submissions and perused the material available on record.

9. It is the case of the assessee that the assessee an AOP is a joint venture engaged in the earthwork formation, construction of bridges, etc. The assessee contends that it has paid mobilization advance of Rs.17.99 crore in aggregate during

the preceding F.Y. 2012-13 relevant to A.Y. 2013-14 and it has duly deducted TDS on such advances. As against the advances of 17.99 crore, the assessee has booked Rs.14.06 crore during A.Y. 2013-14 owing to incurring of expenditure. The balance amount of Rs.3.92 crore was carried forward to subsequent assessment years. In the Assessment Year 2014-15 in question, the assessee has further claimed Rs.1.89 crore as expense out of Rs.3.92 crore for which the TDS was already deducted in A.Y. 2013-14. The assessee thus submitted that provisions of Section 40(a)(ia) is not attracted since the TDS has already been deducted at the time of payment of advance. The claim of revenue expenditure is dependent upon year of incurring expenses and not in the year of payment / advance notwithstanding the fact that assessee was under statutory obligation to deduct TDS at the time of advance payment itself.

10. We find merit in the plea of the assessee on first principles. The disallowance under Section 40(a)(ia) is not permissible in law where TDS has been already deducted at the time of advance payment as claimed by the assessee however such issue requires factual verification. The matter is thus restored to the file of the AO. It shall be open to the assessee to demonstrate that TDS has been duly deducted and paid to the coffers of the Central Government on the impugned sum of Rs.1,89,04,421/- claimed as expenditure during the A.Y. 2014-15 in question. The assessee shall also be entitled to demonstrate that expenses of Rs.1.89 crore in question are revenue in nature and relatable to A.Y. 2014-15 in question. The AO shall pass a speaking order in accordance with law.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 07 August, 2024.

Sd/-
[SUDHIR KUMAR]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: August, 2024
Prabhat