



assessment order was passed determining total income at Rs.8,00,57,050/-under section 143 (3) of the act wherein the assessing officer made several additions.

4. The appellant assessee raised the ground no-1as under:

*on the facts and in the circumstances of the case and in law, the learned CIT-A – 4 Kolkata was wrong in conforming the disallowance of the commission of Rs.2,58,315.000 disregarding the submission of the appellant.*

5. During the course of assessment proceedings assessee submitted that the said amount was paid to 2 parties who are engaged to drop tenders forms and to coordinate with the alias departments. According to the assessing officer the assessee did not produce any document to substantiate its claim. Before the CIT-A assessee submitted that during the year under consideration that the assessee engaged in electric and civil contract business in various states like Assam, Manipur, Tripura and Arunachal Pradesh and engaged consultants to coordinate with various departments and to get the works contracts in the aforesaid states. The CIT-A confirmed the order of the assessing officer.

6. Before us the learned AR reiterated the submissions made before the authorities and further stated that both the parties for whom commission paid are affiliated to Government of Bhutan and drew our attention to the additional evidence in the form of paper book specifically pointed out Ledger copy of M/s Janu Hussain and bill copies of D.M. Enterprises. Learned DR submit that no material has been shown before the authorities below and relied on the order of CIT-A and assessing officer.

7. Heard rival submissions and perused the relevant material on record and paper book. we find that the fact remains undisputed that the assessee was engaged in rural

electrification works in the aforesaid states having head office at Kolkata and also we noticed that out of such 2 parties the assessee deducted TDS to an extent of Rs.12,000/- from DM Enterprises and the complete address of such party was provided to the assessing officer. It is therefore very clear that the assessee has been incurring such expenses during the course of its business and is a genuine expenditure incurred for the purpose of its business. We find that the impugned disallowance was made for the reason for not producing any documents on whatsoever in support of claim of assessee. Now, the Id.AR before us filed additional evidences in support of its claim and submitted that the amount of Rs.1,38,315/- was paid to M/s. Bhutan Foreign Recruitment Agency for certain charges e.g. processing TP, web photo, service charges, cost of forms etc. through M/s. Janu Hussain – an authorized agent. The copies of the bills are enclosed in pages 3-14 of the additional paper book. Similarly, the details of the commission paid to M/s. D.M Enterprises is also enclosed at pages 15 to 30 of the additional paper book. These are the additional evidences filed before us, which in our considered view needs to be verified by the lower authorities. In view of above, we, therefore, are inclined to restore this issue to the file of AO in the interest of justice and fair play for fresh adjudication as per law. Hence, this ground is allowed for statistical purpose.

8. Ground number – 2 is relating to disallowance of Rs.4,20,494/- wherein the assessee claimed the said amount as business expenditure under the head printing and stationary wherein the assessing officer found the assessee did not deduct TDS where all the amounts exceeded Rs.75,000/- with each of the parties shown therein. According to assessing officer that the assessee confessed that by inadvertence did not deduct TDS from the payments made to said parties, thereby the assessing officer added above said amount to the income of the assessee. Before the CIT-A the assessee

contended that the AO ought to have allowed an amount of Rs.44,814/- where the said amount is within limit of Rs.75,000/- as contemplated under section 194C of the act. The CIT-A however confirmed the said disallowance made by the AO.

9. Before us Ld.AR submits that the assessee incurred various expenses for the purpose of its business and charged under the head printing and stationary like i.e Xerox copies etc.. and there was no oral or written agreement between the assessee and the said two parties and application of U/s 194C of the Act is bad under law. Further learned AR pointed to the paper book page number 19 to 29 wherein the statement of amounts paid to state bank of India and copies of Cash memos of Elite Xerox, details of payments to Prasanta Kumar Ghosh and Sri Sai graphics. The learned DR relied on the orders of both the authorities below.

10. Heard the submissions of both the parties and perused the relevant material on record. In view of the additional evidence filed before this Tribunal we're of the view that the issue shall go to the file of assessing officer for fresh consideration. Therefore assessee is liberty to file any evidence before the AO in support of his claim. Accordingly the ground number 2 is allowed for statistical purposes.

11. Ground number – 3 involving an amount of Rs.13,30,115/- wherein the assessee claimant said amount as business expenses under the head that expenses on contract, the assessing officer added such amount for not deducting TDS under section 40 (a)(ia) of the act. In challenge before the CIT-A the assessee contended that the TDS was collected but however it was a short deduction and it is not a case of non deduction of TDS. The CIT-A confirmed the order of AO for not producing any evidence before the authorities.

12. Before us the learned AR submits that the assessee deducted TDS from the parties but it was a short deduction and relied on the order dt: 16-6-2015 of 'B' Bench Kolkata Tribunal in ITA 1076/Kol/2014. The learned DR relied on the orders of CIT-A and AO.

13. Heard the rival submissions and perused the material on record. We find that 'B' Bench Kolkata Tribunal in ITA 1076/Kol/2014 decided the same issue wherein the assessee therein made short deduction TDS at 1% and held that for the short deduction no disallowance can be made by invoking the provisions of section 40 (a)(ia) of the act, the relevant portion is reproduced here under:-

*“4. We have heard rival submissions and gone through facts and circumstances of the case. We find that this is merely a case of short deduction of TDS. Admittedly, the assessee has made labour payment or debited labour payment in the P & L Account at Rs.82,40,116/- and deducted TDS at Rs.87,490/- i.e. @ 1%. At best this can be a case for short deduction. In the case of short deduction no disallowance can be made by invoking the provisions of section 40(a)(ia) of the Act. This view of ours is fortified by the decision of Hon'ble Calcutta High Court in the case of CIT Vs. S.K Tekriwal (2014) 361 ITR 432 (Cal), wherein Hon'ble High Court has confirmed the findings of Tribunal by observing as under :*

*“S. 40(a)(ia) can be invoked only when the two conditions, namely, that tax is deductible at source and such tax has not been deducted is satisfied. Where tax is deducted by the assessee under a wrong provisions of TDS and there is a shortfall, s. 40(a)(ia) disallowance cannot be made.*

*As the issue of short deduction is settled by Hon'ble jurisdictional High court in the above cited case, the revision proceedings initiated by CIT u/s. 263 of the Act are invalid and hence, quashed. Appeal of assessee is allowed. “*

14. The 'B' Bench Kolkata Tribunal in ITA 1076/Kol/2014 decided the aforesaid issue by taking support from the decision of Honourable High Court of Calcutta and in view of the same we allow ground number -3 raised by the assessee.

15. The assessee filed an application dated 29<sup>th</sup> of January 2016 praying to admit an additional ground stating that the assessee inadvertently omitted to raise a specific ground before the CIT-A but however mentioned and discussed in the written statement. Before the AO the assessee claimed an amount of Rs.4,38,762.75 under the head subscription expenses as business expenditure. The assessing officer disallowed such expenses not permissible as per section 37 of the act as it were paid to various underground outfit and political parties. The learned AR submits that the assessee paid such amounts to 32 parties under the corporate social obligations to achieve smooth and peaceful exclusion of jobs works in the remotest areas. The learned DR submits that it is not a business expenditure and it was not raised before the CIT-A.

16. Heard both parties and perused the material on record. We find that the assessee has incurred these expenses by donating the money to the underground outfit and political parties, which is not business connected expenses and there is no provision to allow the same under the Income-tax Act. Therefore, we find no reason to interfere with the order of CIT-A and hence this ground of appeal of assessee is dismissed.

17. In the result the appeal of the assessee is partly allowed for statistical purpose as stated above.

Order pronounced in the open Court on 10<sup>th</sup> August, 2016

Sd/-  
Waseem Ahmed  
Accountant Member

Sd/-  
S.S. Viswanethra Ravi  
Judicial Member

Dated: 10.08.2016

\*\*PP/SPS

Copies of order forwarded to :-

- (1) M/s. Indo Power Projects Limited  
Now known as Indo Nabin Projects Limited 1582 Rajdanga Main  
Road, South End Enclave, 7<sup>th</sup> Floor, Kolkata-107.
- (2) The DCIT, Cir-10, Aaykar Bhavan, 3<sup>rd</sup> Floor, P-7  
Chowringhee Square, Kol-69.
- (3) Commissioner of Income-tax (Appeals)-, Kolkata
- (4) Commissioner of Income Tax, Kolkata
- (5) The Departmental Representative
- (6) Guard File

True copy

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata