IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.1613/Del/2011
Assessment Year : 2006-07

M/s Consulting Engineers Corporation India Branch Office, D-6, Pamposh Enclave, New Delhi – 110 048. PAN : AAAAC1196J.	Vs.	Assistant Director of Income Tax, Circle-1(1), International Taxation, Drum Shape Building, New Delhi.
(Appellant)		(Respondent)

Appellant by	:	Ms. Lalitha Krishnamurthy and Shri M.P. Rastogi, Advocates.
Respondent by	:	Shri Anil Kumar Sharma, Senior DR.
Date of hearing	:	27.07.2016
Date of pronouncement	:	08.08.2016

ORDER

PER G.D. AGRAWAL, VP :-

This appeal by the assessee for the assessment year 2006-07 is directed against the order of learned CIT(A)-XI, New Delhi dated 6th January, 2011.

2. The assessee has raised the following grounds of appeal :-

"1. That the ld.CIT(Appeals) has failed to provide a reasonable opportunity to the appellant by not keeping the proceeding in abeyance, as sought for, even without any dismissal of the request.

2. That in the absence of any PE in India in terms of DTAA (Double Taxation Avoidance Agreement), no profits alleged to have accrued to the appellant are there and

consequently the levy of tax as made by the AO is arbitrary, unjust and bad in law.

3. That the appellant functions as a Branch of the US Nonresident involving only in preparatory and auxiliary activities for US Nonresident the cost whereof is reimbursed by US hence there could be no income accrued to the appellant and consequently the assumption of income at Rs.33,63,300/- is arbitrary, unjust and bad in law as this is far from reality. Even in US where the firm has its HO and is based, even they are not making even a part of this profit %. How can a branch who is simply doing a small portion of the job such as drafting and engineering can be deemed as making so high % of profit, when the most of the crucial job of the project lies with the HO, including the liabilities of the design if the building fails at any given time.

4. That in the absence of any income embedded in the amount reimbursed by US Nonresident to its Branch (Appellant), acting as a pure a cost centre the assessment at a figure of Rs.33,63,300/- is bad in law. CEC is a firm and not a company even in US. It is 100% owned by single individual hence does not fall in the category of a Company.

5. That there is no international transaction with an Associated Enterprise (AE) as contemplated under Section 92C of the Income Tax Act, 1961 hence no income ought to have been deemed under Section 92C of the Income Tax Act, 1961.

6. That the provisions of Section 92C in terms are not applicable and consequently the assessment made at Rs.33,63,300/- as made by the AO is arbitrary, unjust and at any rate very excessive.

7. Without prejudice to above grounds :

(i) That the CIT(Appeals) has not given any valid reason to uphold the addition made by the AO.

(ii) That in the absence of any comparables brought on record either by the AO or by CIT(Appeals) the addition of Rs.17,98,320 as sustained by CIT(Appeals) is arbitrary, without any basis and bad in law.

(iii) That the AO and CIT(Appeals) have not given any valid reason in adopting the markup rate @ 10% instead of the global rate @5.33% as per US tax return for calendar year 2005 as done by AO in earlier years.

(iv) That the AO and the CIT(Appeals) both, after working out the profit attributable, if any to the Branch in India ought to have further allowed margin for functions performed, assets employed, working capital available and risks assumed and consequently the adoption of a markup rate of 10% is very high.

8. That the authorities ought to have adopted the status of the appellant as individual instead of foreign company.

9. The above grounds are independent and without prejudice to one another."

3. At the time of hearing before us, it is submitted by the learned counsel that the appeal of the assessee is squarely covered by the decision of ITAT in assessee's own case for assessment year 2003-04 and 2004-05 vide ITA No.1597 & 1598/Del/2009. He stated that the ITAT has not accepted the assessee's contention that there is no PE in India. The ITAT has given the direction how the profit is to be attributed to the PE in India. He, therefore, submitted that for the year under consideration also, the income may be computed as per the direction of the ITAT in earlier years.

4. Learned DR has no objection to the above submission of the assessee and he stated that the matter may be sent back to the file of the Assessing Officer for computing the income as per the direction of the ITAT for assessment year 2003-04 & 2004-05.

5. In view of the above submission of both the parties, we set aside the orders of authorities below in respect of the issues raised before us

and direct the Assessing Officer to recompute the income of the assessee in the light of the decision of ITAT in assessee's own case for assessment year 2003-04 & 2004-05 (supra).

6. In the result, the appeal of the assessee is deemed to be partly allowed for statistical purposes.

Decision pronounced in the open Court on 08.08.2016.

Sd/-	Sd/-
(SUDHANSHU SRIVASTAVA)	**(G.D. AGRAWAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Appellant : **M/s Consulting Engineers Corporation India Branch Office, D-6, Pamposh Enclave, New Delhi – 110 048.**
2. Respondent : **Assistant Director of Income Tax, Circle-1(1), International Taxation, Drum Shape Building, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar