IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA No.4149/Del/2024
[Assessment Year : 2020-21]

DCIT Faridabad	vs	M V Agro Engineers Pvt.Ltd. Village-Paali Badkhal Faridabad-121001 ***PAN-AAICM3960C***

APPELLANT	**RESPONDENT**
Appellant by	Ms. Baljeet Kaur, CIT DR
Respondent by	Ms. Rajkumari, CA & Sh. Amit, Adv.
Date of Hearing	13.01.2025
Date of Pronouncement	12 .02.2025

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed at the instance of the Revenue seeking to assail the First Appellate order dated 19.06.2024 passed under s. 250 of the Income Tax Act, 1961 ["the Act"] by Commissioner of Income Tax (A), National Faceless Appeal Centre ("NFAC"), Delhi ["CIT(A)"] arising from the assessment order dated 26.09.2022 passed under s. 143(3) r.w.s. 144B of the Act pertaining to assessment year 2020-21.

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

1. *"Whether on the facts and circumstances of the case, the CIT(A) erred in calling for and admitting fresh evidence on the issue of commission payment of Rs.9,96,49,705/- and salary paid outside India, and allowing relief without offering an opportunity to the AO to assess the veracity and relevance of such information, all the*

more so when assessee failed to produce the same during assessment proceedings. despite specifically being asked to do so?

2. *Whether on the facts and circumstances of the case, the CIT(A) erred in calling for and admitting fresh evidence on the issue of salary of Rs 3,38,94,000/-) paid outside India in violation of the provisions of section 40(1)(iii), and allowing relief without offering an opportunity to the AO to assess the veracity and relevance of such information, all the more so when assessee failed to produce the same during assessment proceedings, despite specifically being asked to do so?*

3. *Whether on the facts and circumstances of the case, the Ld CIT(A) erred in merely relying upon the provision of section 5(2) and section 9(1)(ii) of the Act without verifying the basic facts as to whether salary payment was actually made to non-residents, a sine qua non for claiming exemption from the provisions of section 40(a)(iii)?"*

3. Briefly stated, the assessee is a Private Limited Domestic Company engaged in the business of manufacturing of flour mills, rice mills etc.. For AY 2020-21 in question, the assessee e-filed its return of income declaring income at INR 2,79,16,870/-. The Return filed by the assessee was selected for scrutiny through CASS for which notice under s. 143(2) & 142(1) of the Act were issued and served.

3.1 As stated, the assessee company entered into a supply contract with the Federal Ministry of Agriculture and Rural Development Abuja Nigeria i.e Government of Nigeria for supply, installation and setup of Ten (10) rice mills in the country of Nigeria. The scope of the agreement qua Indian Assessee is broadly to supply machinery but also includes incidental works such as loading from the assessess's factory, designing the site, preparing the site and structural construction including electrical job, foundation, commissioning and trial run of set up. The obligations cast upon the assessee were further amplified by the Federal Ministry of Agriculture through an addendum by the Ministry. The duration of project was agreed to be 18 months calculated from

the date of hand over of the site and establishment of letter of credit and standby letter of credit etc. in favour of the contractor i.e assessee as mutually agreed. The copy of contract agreement dated 09.07.2018, copies of letter of credit and copy of addendum etc. in support of the contract and obligations arising therefrom were placed before the AO.

3.2 The contract was executed between Government of Nigeria as party of the first part on the one hand and MV Agro Engineers Nigeria Limited (Nigerian partner) & MV Agro Engineers Private Limited (Indian partner) parties of the second part. The total work mentioned in the contract was to execute T.K.EPC (turnkey project of engineering procurement and construction) of designing, engineering, manufacturing and constructions of ten (10) integrated large scale Rice Processing Plants in Nigeria. Significantly, as per Article 8.3 of the Contract, there are total 3 segments of the total project undertaken to executed by the parties of the second part.

(i) As per first segment of the contract, Civil aspects of the turnkey project was to be carried out locally and therefore, the expenses were to be incurred in local currency 'Naira'. The sum agreed to be paid by the party of the first part stands at Naira N 3154740214.50

(ii) the second segment of the contract was towards procurement of equipment and machinery from outside Nigeria for which the cost was to be incurred in USD. The sum agreed to be paid by the party of the first part stands at 1,82,20,000 USD for second segment.

(iii) the third segment of the contract was again local component which comprises activities such as the cost of port changes, cleaning, transportation to the sites of all machinery and equipment, erection & installation expenses as well as training. The entire work of setup of rice processing plant was not solely related to the assessee company. The assessee company was only responsible for supply of machinery equipment and all other related to plant & machinery such as designing, setup, civil structure etc.

3.3 The work contract was thus divided in three parts wherein numerous works and processes were segmented. The first and third segment was required to be done locally and payment was to be made in local currency by the Ministry of Nigeria to a local company in Nigeria carrying job which was 'M.V.Agro Engineering Nigeria Ltd.' The second segment wherein supply and installation work related to machinery needed to be completed was assigned to Indian Company i.e. 'M.V.Agro Engineering Pvt. Ltd.' in which contract value of $ 1,82,20,000 [aprox 131 cr.] was involved. The payment details / letter of credit in favour of the assessee co. from Nigeria Govt. also vouches that second segment belonged to the Indian assessee co. Other segments namely segment I and segment III involving execution of work contract in local currency of Nigeria belonged to local company i.e. MV Agro Engg Nigeria Ltd.

3.4 As observed, the Indian assessee co. as per contractual terms, was liable to supply the machinery as well as erection and commissioning of the same at the client site at Nigeria only. In order to procure such sale orders for supply and commissioning of Machinery and Equipments outside India, the assessee *inter-alia* incurred commission expenses payable to its Non-resident foreign agent Mr. Jamu Babba Dan' Agundi. In the course of assessment proceedings, the Assessing Officer ("AO") *inter-alia* observed that the assessee has claimed INR 20,87,97,481/- as commission expenses towards procurement of sales order. The AO, however for verification of remittances towards such commission expenses from India to non-resident beneficiary in Nigeria, enquired into Form No.15CA/15CB submitted by the assessee to its banks for remittances of commission expenses. On enquiry, the AO observed that the assessee has made aggregate foreign remittances of INR 21,27,73,715/-. The AO also observed that the assessee could substantiate incurring of commission expenses only to the extent of INR 11,31,23,010/- and failed to substantiate the corroborative documentary evidence for remaining expenses to the tune of INR 9,96,49,705/- . The AO made necessary inquiries in this regard from the assessee. In reply, the assessee pointed out that the payments were made

towards commission payments to Mr. Jamu Babba Dan Agundi and also submitted that the total commission expenses incurred stands at INR 20,87,97,481/- out of which INR 11,56,80,117/- (including INR 4,66,991 towards fluctuation loss) was actually paid during the year whereas INR 9,31,17,363/- remained unpaid and shown outstanding. The AO however, observed that the assessee has failed to substantiate the commission expenses with reference to different Form 15CA. The assessee pointed out that the mismatch in the figures has occurred due to cancellation of certain remittances by bank which has been incorrectly accounted for by the AO. The AO made addition of INR 9,96,49,705/- (being difference between payment of INR 21,27,72,715/- debited to Profit & Loss Account and evidences of actual remittances submitted of INR 11,31,23,010/-) to the total income returned holding such amount as excess amount of commission expenditure.

3.5 The AO also disallowed salary expenditure of INR 3,38,94,000/- stated to be incurred outside India towards the staff hired outside India by the assessee for installation of Machinery & Equipment supplied for Rice project. The disallowance was carried out on the ground that the assessee has failed to deduct TDS on the amount of salary paid outside India and hence, applied provision of s. 40(a)(iii) of the Act to carry out the disallowance.

3.6 The AO also made some other disallowances which are not the subject matter of appeal from either side and thus we are not concerned at present.

4. Aggrieved, the assessee challenged various additions before the CIT(A).

5. With reference to disallowances of INR 3,38,94,000/- towards salary expenses, the assessee pointed out before the CIT(A) that the disallowance of salary expenses incurred outside India in relation to execution of segment II of the contract carried out in relation to Nigeria Rice Mills Project was not justified as the salaries have been paid to their local residents outside India and the services were also utilised outside India. Such income in the hands of recipients of Nigeria not being chargeable to tax in India, the provisions of

s. 195 would not apply and consequently provisions of section 40(a)(iii) is not attracted in the facts of the case. It was submitted before CIT(A) that such salary payments have been made to residents of Nigeria. The assessee was liable to supply machinery as well as the erection and commissioning of the same at the client site at Nigeria. The salary expenses have been incurred for commission of Machinery & Equipment. The AO has not raised any challenge on allowability of quantum of salary expenses. The disallowances of salary have been carried out due to alleged non-compliance of s. 195 of the Act. To contest the disallowances , the assessee referred to the provision of s. 195 of the Act and the law expounded on applicability of s. 195 in the light of various judicial precedents and submitted that none of the conditions prescribed under s. 5 and s. 9 of the Act are applicable in the instant case. As stated, all the payments were made outside India through the banking channel after appropriate approval from Authorized agent of the RBI i.e. banker of the assessee which was duly verified by the AO. Hence, there being no chargeable income arising in the hands of non-resident recipients of the salary, obligation exists under s. 195 to deduct tax at source on such payments. The assessee thus contended that income in the hands of recipients being not chargeable to tax in India, the obligation to deduct TDS do not arise under s. 195 of the Act. It was thus contended that the assessee company, not being assessee in default under s. 195 of the Act, the consequences of disallowances under s. 40(a)(iii) could not apply.

5.1 The oral and written submissions made on behalf of the assessee were duly recorded by the CIT(A) while determining the issue. In eventual analysis, the CIT(A) recorded the findings in favour of the assessee.

5.2 The CIT(A) has dealt with the issue as under:-

> ***6.4. Ground of appeal No. 2(d):***
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> *This ground of appeal No. 2(d) pertains to disallowance of the expense on account of salary paid of Rs. 3,38,94,000/- outside India to the staff hired outside India specifically for completion of project for the reason no TDS was deducted.*

6.4.1. During the course of assessment proceedings, the AO observed that the appellant has made payment of Rs. 3,38,94,000 as salary paid out of India. Further, it was noticed by the AO from the Column no. 34 of the Audit report in form 3CD for the FY 2019-20 that TDS of Rs. 6,93,490/- was deducted on the salary payment of Rs. 52,49,250/-. It was understood by the AO that the above TDS deduction was made on the Salary and other benefits paid of Rs. 63,43,516/- and on Director Remuneration paid of Rs. 44,19,250/- only. Therefore, it was concluded by the AO that the appellant had failed to deduct TDS on the amount of salary paid out of India and hence, an amount of Rs. 3,38,94,000/- was disallowed u/s 40(a)(iii) of Act and added back to the total income of the appellant.

6.4.2. During the course of appellate proceedings, the appellant submitted that the salary payments were made outside India to the non-residents during the process of execution of contract of supply of equipment and machinery, its installation and commissioning at the sites located in Nigeria. Therefore, as the payments made to non-residents was not chargeable to tax in India as per the provisions of the Act, the appellant was not required to deduct the TDS as per the provisions of section 195 of the Act and hence the appellant would not be treated as assessee in default. The appellant also submitted that the provisions of Section 5 and 9 would not be also applicable. The appellant also claimed that all the payments were made outside India through banking channel and same were verified by the AO. Vide notice u/s. 250 of the Act dated 07.06.2024, the appellant was requested to submit the details of salary payments outside India, evidences of payments made through banking channel and names and addresses of the persons whom the salary payments were made.

6.4.3. On verification of the submission filed by the appellant in response to notice Issued dated 07.06.2024, it was found that the appellant made payments to Director of the appellant company Shri Ved Prakash Khare in USD for payments of salary in Nigeria. In turn the payments were found made from the bank account of Shri Ved Prakash Khare to M/s. D'lord Finger Ltd. The AO had not questioned that genuineness of salary payments made outside India and disallowed the salary payments u/s. 40(a)(iii) of the Act for not deducting TDS on salary paid outside India. However, for the payments made outside India the provisions of section 40(a)(iii) of the Act would not be applicable as the payments made outside India are not chargeable under the Act under the head Salary in India. For further clarity provisions of section 40(a)(iii) are reproduced as follows.

Amounts not deductible.

40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",-

(a) in the case of any assessee-

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..
..

(iii) any payment which is chargeable under the head "Salaries", if it is payable-

(A) outside India; or

(B) to a non-resident,

and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B;

From the provisions of section 40(a)(ii) of the Act, it is very much clear that the payment made by the appellant is not chargeable under the head salary in India as the payments were found made outside India and all the recipients were non- residents. Further contrary to the provisions of section 5(2) of the Act, the income of le provisions of the non-residents was not received or deemed to be received or accrued or deemed to be accrued in India. For further better understanding, provisions of section 5 of the Act are reproduced below.

Scope of total income.

5. ……
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(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.-Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

In view of the above, It is clear that, as the salary was paid outside India for the services rendered outside India, the salary income is not taxable in India and hence TDS not liable to be deducted on such salary payments. This fact further gets strength in the light of provisions of section 9(1)(ii) of the Act which describes the conditions for income to be treated as deemed to accrue or arise in India. The provisions of section 9(1)(ii) are as follows.

Income deemed to accrue or arise in India.

9. (1) The following incomes shall be deemed to accrue or arise in India :-
..
..
..

(ii) income which falls under the head "Salaries", if it is earned in (India.

Explanation. For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for-

(a) service rendered in India, and

(b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment,

shall be regarded as income earned in India;

In view of the above it is further clear that the salary payments by the appellant are not deemed to accrue or arise in India as the same was not earned in India and the services were rendered outside India. Hence the hence TDS not liable to be deducted on such salary payments. The appellant also produced the judicial decisions which substantiate the above observations. Therefore, the appellant was not liable to deduct TDS on salaries paid outside India to non-residents. In view of the above discussion, the addition of Rs. 3,38,94,000/- made by the AO on account of salary paid outside India to non-residents is deleted.
Accordingly, the Ground of appeal No. 2(d) is allowed."

5.3 As per Ground Nos. 2 & 3 of its appeal, the Revenue seeks to challenge the reversal and cancellation of disallowances by the CIT(A) towards salary expenses carried under the shelter of s. 40(a)(iii) r.w.s. 195 of the Act.

5.4 At the time of hearing, the Ld. CIT(DR) sought to assail the action of the CIT(A) on the ground that the disallowances carried out by the AO have been reversed by the first appellate authority without confronting the AO on the fresh evidences filed before the CIT(A) and without enabling the AO to assess the veracity and relevance of information made available to the CIT(A).

5.4 Per contra, the Ld. Counsel appearing for the assessee adverted to the assessment order as well as CIT(A) to contend that the disallowances under s. 40(a)(iii) were made based on gross misconception of law on the part of the AO. The AO applied wholly incorrect interpretation of the provisions of s. 195 to fasten obligations towards deduction of withholding taxes on salary payments made to non-resident employees who were locally engaged in Nigeria to enable the assessee to execute the supply contract of Machinery & Equipments and installations of Rice Mills awarded to assessee in Nigeria as per the segment II of the contract with the Nigeria Govt. All the relevant facts were placed before the AO which came for appraisal and appreciation before the CIT(A) in the first appellate proceedings. No fresh evidences *per se* were placed before the CITA) in this regard. The existing evidences placed before the AO in the form of ledger copy, bank statement of the assessee co., bank account of director opened in Nigeria to facilitate payments, payments made by the director to employee hiring agency [D'lord Finger Ltd.] situated in Nigeria for onward payment to employees in local currency of Nigeria etc. itself were sufficient to arrive at a rational conclusion in accordance with law. The CIT(A) has merely applied correct law on the facts emanating from records. Notwithstanding the such facts, to effectuate the agreement executed with Govt. of Nigeria for supply of Equipment and Machinery and associated work of Installation thereof etc., it was incumbent upon the assessee to obtain local help by engaging local employees. There is nothing untoward which could raise any concern for the revenue. The Ld. Counsel thus submitted that incorrect findings rendered by the AO based on wrong appreciation of law governing deduction of TDS has been rightly modified by the CIT(A) which is squarely in accord with the

position of law and hence such findings of the CIT(A) do not call for any interference of the Tribunal.

6. We have dispassionately considered the rival submissions on the controversy towards disallowance of salary expenses. It has all along been the case of the assessee before the AO as well as before the CIT(A) that the salary expenses have been incurred in local currency of Nigeria in lieu of services availed from local persons in Nigeria to enable the assessee to perform the contract of supply and Installation of Equipments and Machinery in Nigeria. The disallowance of salary expenses have been carried out by the AO on the sole ground that the deduction of TDS obligated under s. 195 rws. 40(a)(iii) for payment of salary outside India has not been discharged.

6.1 The CIT(A), in our view, has applied the correct position of law and granted relief to the assessee. The obligation for deduction of TDS under s. 195 would arise only where the income of the recipient is chargeable to tax in India. The fact that the payments by way of salary have been made to local persons in Nigeria and the services have been utilized for installation of Equipments and Machinery in Nigeria resonates with the documentary evidences in the form of agreement, remittances from India for payment in local currency at the place of site, invoices of D'Lord Finger Ltd. (Nigerian Co.). The obligation towards deduction of withholding taxes under s. 195 is founded upon the 'chargeability' of income in the hands of Nigerian employees under Indian Tax Laws. The salary income in the hands of Local Employees in Nigeria being outside the ambit of taxation under Indian Income Tax Laws, the obligation to deduct tax under s. 195 on such expenses by the payer i.e. assessee do not arise. The law is settled on this aspect and do not call for any elaboration. The applicability of s. 40(a)(iii) is also dependent on chargeability of payment to trigger Chapter XVII-B. Hence, in the absence of chargeability of corresponding income in the hands of recipients, the provisions of s. 195 as well as s. 40(a)(iii) are not attracted as rightly concluded by the CIT(A). We see no perceptible reason to interfere with the findings of the CIT(A). The objection of the Revenue thus fails.

6.2 Ground no. 2 & 3 concerning the issue are thus dismissed.

7. With reference to disallowance of Rs. 9,96,49,705 attributable to commission expenses, the assessee contended before the CIT(A) that the part disallowance of commission expenses incurred by the assessee for securing supply contract of Equipment and Machinery from Nigerian Govt. are driven by misconception of facts and applicable law. The commission was paid to foreign agent namely Jamu Babba Dan'agundi who is resident of Nigeria and a non resident of India. The commission income earned and arose to commission agent outside India and the services were also utilised outside India. Hence in the light of provisions of s. 5(2) r.w.s 9(1)(iii), there was no obligation to deduct TDS on such remittances in the absence of chargeability of such income in India. The AO wrongly took into account instances of dishonoured remittances by the authorised bank in India and also committed other arithmetical mistakes. The Assessee incurred total commission expenses of Rs. 20,87,97,481/- but made remittances to Nigerian counterpart of Rs. 11,56,80,117/- only through authorised agent of RBI. The remaining amount of Rs. 9,31,17,363/- was shown as outstanding liability of the assessee in its financial statement for the year placed before the AO and CIT(A). Based on applicable law and appreciation of reconciliation statement of remittances with reference to multiple Form 15CA issued for the purposes of each part of payment from time to time, the CIT(A) found that the assessee has reconciled the error committed by the AO resulting in impugned disallowance.

7.1 The CIT(A) extracted the oral and written submissions in its order including reconciliation statements. Based in material placed and explanations offered on behalf the assessee, the CIT(A) concluded in favour of the assessee and dethroned the additions made by the AO. The relevant findings of the CIT(A) are reproduced hereunder:

6.3. Ground of appeal No. 2(b):

"This ground is related to disallowance of excess commission expenses claimed by the appellant of Rs. 9,96,49.705/-.

6.3.1. During the course of assessment proceedings on verification of Form No. 15CA submitted by the appellant to the bank, the AO observed that the appellant has made foreign remittances of Rs. 21,27,72,715/-. The appellant submitted that the payments were made to one Mr. Jamu Babba Dan'agundi as commission for procuring sales orders outside India. However, during the course of assessment proceedings, the appellant submitted evidences of payments along with copies of bills only to the extent of Rs. 11,31,23,010/- an claimed that the difference was on accounts of cancellation of 2 Form 15CA by the bank. The AO also observed that the appellant didn't submit the Tax Resident Certificate (TRC) of Mr. Jamu Babba Dan'agundi and all the commission expenses were claimed by the appellant during the year under consideration. Accordingly, the AO made the addition of Rs. 9,96,49,705/- as excess amount of expenditure being difference between payment of Rs. 21,27,72,715 debited to profit and loss account and evidences of actual payments submitted of Rs. 11,31,23,010/-.

6.3.2. I have gone through the assessment order and submission made by the appellant and relevant documents including Form No. 15CA submitted by the appellant along with the calculation submitted during the course of assessment and appellate proceedings. On verification, it was observed that the appellant made payments of Rs. 11,56,80,117/- through bank accounts against the total commission expenses claimed at Rs. 20,87,97,481/-. Further, the AO reported that all the payments have been claimed in during the year under consideration and no amounts shown as payable for other years. However, on verification of financial statements of the appellant, it was found that the appellant debited commission expenses of Rs. 20,87,97,481/- to the profit and loss account. Further, payments of Rs. 11,56,80,117/- were made through bank accounts and amount of Rs. 9,31,17,363 was shown as payable in balance sheet. The AO has not doubted the genuineness of commission expenses paid to Mr. Jamu Babba Dan'agundi, but only disallowed the difference amount of expenditure claimed and evidences produced by the appellant. On verification of evidences submitted by the appellant, it was observed that total 17 Form No. 15CA were issued by the bank regarding remittances made outside India. On verification of the calculation made by the AO and the appellant, it was observed that out of 17 forms, 2 forms were rejected by the bank amounting to Rs. 10,05,01,820/- and balance 15 forms were accepted and executed by the bank amounting to Rs. 11,56,80,117. The appellant also submitted request letters for withdrawal of 2 Form 15CA filed as on date 29.07.2019 and 17.08.2019 vide letter dated 20.08.2019 & 05.09.2019 respectively to ITO, Faridabad. In the letters submitted the appellant clearly mentioned that due to wrong purpose code or limit of bank, banker rejected Form 15CA after 15 days and withdrawal option in portal had been expired.

6.3.3. In view of the above discussion, it was observed that the appellant made payments of Rs. 11,56,80,117/- through bank accounts during the year under consideration against the total commission expenses claimed at Rs. 20,87,97,481/-. The balance payments of Rs. 9,31,17,364 was reported as balance payable in the balance sheet. During the course of assessment proceedings, the AO failed to appreciate the fact that the bank has rejected 2 12 Form 15CA out of total 17 Form 15CA, amounting to Rs. 10,05,01,820/- and balance amount of remaining 15 Form 15CA of Rs. 11,56,80,117 was accepted and executed by the bank. This fact was also verified from the submission and supporting evidences submitted by the appellant. There was no dispute over genuineness of the commission expenses paid as same was also found reported in shipping bill, bill of entry and invoice commercial. The difference in commission expenses claimed and evidences submitted was observed on account of 2 Form 15CA rejected by the bank which was not considered by the AO during the course of assessment proceedings. Therefore, in view of the submission of the appellant and supporting evidences submitted by the appellant, the addition of excess commission expenses of Rs. 9,96,49,705/- made by the AO is deleted. Accordingly, the Ground of appeal No. 2(b) is allowed."

7.2 The revenue has challenged the relief granted by the CIT(A) on the issue. The Ld. CIT-DR questioned the action of the CIT(A) on the ground that the reconciliation statement and other evidences placed before the CITA) ought to have been confronted to the AO for his response.

7.3 Per contra, the Ld. Counsel contended that the reconciliation is nothing but assimilation of data based on material which were placed before the AO. All relevant material facts were placed before the AO and no new evidence of material nature has been placed afresh before the CIT(A). The CIT(A) has merely acknowledged the arithmetical and computational errors committed by the AO in right perspective and decided the issue in the light of applicable law. The Ld. Counsel thus submitted the appeal of the revenue is preferred on frivolous grounds without any substance and thus do not call for any indulgence.

8. We have carefully considered the rival submissions on the point of disallowance of commission expenses. The issue is essentially a question of fact. The CIT(A) has taken cognizance of factual matrix in right perspective. The reconciliation statement towards truncated remittances of commission

expenses qua Form 15CA have been taken into account by the CIT(A). The remittances of commission expenses by the assessee in relation to ongoing Rice Mills project in Nigeria are well documented and corroborated. The CIT(A), in our view, has exercised due diligence while arriving at the findings reproduced in preceding para. We do not see any necessity to reiterate the findings of the CIT(A). While the CIT(A) has addressed the issue in an objective manner based on material available on record, the revenue, on the other hand, is merely seeking to chase the *will o' the wisp* to impugn the justifiable action of the CIT(A). No material has been brought on record by the revenue to dislodge the findings of the CIT(A). We see no error in the action of the CIT(A) and thus endorse its findings.

9. The Ground No. 1 of the Revenue's appeal is thus dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 12.02.2025.

Sd/-	***Sd/-***
(SUDHIR KUMAR) **JUDICIAL MEMBER** **Amit Kumar, Sr.P.S**	**(PRADIP KUMAR KEDIA)** **ACCOUNTANT MEMBER**

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ITAT, NEW DELHI