IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai

Before Shri D. Manmohan, Vice President
and Shri N.K. Billaiya, Accountant Member

ITA No. 338/Mum/2011
(Assessment Year: 2007-08)

Income Tax Officer-9(1)(4) Room No. 224, Aayakar Bhavan M.K. Road, Mumbai 400020	Vs.	M/s. Growel Energy Co. Ltd. Growel House, Akurli Road Kandivali (E), Mumbai 400101

PAN - AABCG9989L

Appellant **Respondent**

Appellant by: Shri Shrikant Namdeo
Respondent by: Shri Pradip Kedia

Date of Hearing: 10.06.2014
Date of Pronouncement: 13.06.2014

O R D E R

Per D. Manmohan, V.P.

This appeal by the Revenue is directed against the order passed by the CIT(A)-19, Mumbai and it pertains to A.Y. 2007-08.

2. At the outset it may be mentioned that the Income Tax Officer, who is the appellant herein, as well as the Commissioner of Income Tax, who has authorised the AO to prefer an appeal, did not apply their mind in the correct perspective and in a very lacklustre and routine manner filed the appeal which, in turn, resulted in wastage of time of the court which would be highlighted at appropriate places.

3. Assessee company is engaged in the business of developing, building and implementing hydroelectric projects on built, own and operate basis. For the previous year ended on 31.03.2007 the assessee declared Nil income. Though the return was processed accordingly, it was later on taken up for scrutiny by issuing notice under section 143(2)/142(1) of the Act. During the course of scrutiny proceedings the AO noticed that the claims made by the assessee were not in accordance with law, which were

disallowed and ultimately completed the assessment on a total income of ₹57,91,270/-. We shall take up the facts concerning each ground separately.

4. Ground No. 1 reads as under: -

> *"1. On the facts and in the circumstances of the case, the Hon'ble CIT(A) is justified in law in deleting the addition of Rs.12,76,655/- made u/s. 69C of the Act being the unexplained expenditure in the books of the assessee."*

5. During the course of assessment proceedings the AO noticed that under the head "Capital Work-in-Progress" the assessee showed gross expenditure of ₹12,76, 655/- on account of professional fees paid. Assessee furnished names of the parties, amount paid and proof of TDS. In the opinion of the AO merely because tax was deducted on payment made it does not automatically lead to justification of the purpose; assessee has to establish the purpose, genuineness and business expediency of such expenditure. It is not in dispute that the assessee claimed it as capital expenditure but the AO proceeded to treat it as unexplained expenditure within the meaning of section 69C of the Act and accordingly brought to tax a sum of ₹12,76,655/-.

6. Section 69C refers to a situation where the source of expenditure is not properly explained. Section 69C reads as under: -

> ***"****69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year."*

A careful perusal of the relevant provision shows that when an assessee incurs expenditure from known sources section 69C does not get attracted; in order to invoke the section it has to be shown that the assessee had not explained about the source of such expenditure or part thereof. In the instant case there is no dispute with regard to the source of expenditure and it is also not in dispute that the assessee incurred expenditure. It is not the case of the Revenue that the assessee claimed it as business expenditure. It was only added to the "capital work-in-progress".

7. Assessee contended before the CIT(A) that it had furnished complete details of the expenditure such as names of the consultants to whom professional fees has been paid, address of the party/parties alongwith relevant details. After the said details were filed the AO called upon the assessee to explain as to why the said expenditure should not be disallowed under section 40(a)(ia) of the Act. Again, in response to the said letter, the assessee furnished its reply dated 25th August, 2009 alongwith copies of quarterly TDS certificates and a summary of the TDS paid to show that no part of the expenditure can be disallowed under section 40(a)(ia) of the Act. However, the AO disallowed the entire expenditure on the ground that there was no justification of having incurred such expenditure, which is totally illogical and without any basis.

8. The learned CIT(A) examined the issue in the backdrop of the facts placed before him and noticed that the assessee explained the source of the expenditure and hence the case falls outside the ambit of section 69C of the Act. In this regard he observed as under: -

> *"4.2 I have considered the findings of the AO as contained in paragraph 3.1 of the assessment order and also submissions as made by the appellant. It is a fact that AO does not dispute genuineness of the expenses as claimed. In fact it is on record that details of the payment as made to various parties along with their names, complete address, PAN details, amounts paid and further the TDS deducted were furnished before the AO. It is not disputed that from the details as furnished before the AO, it is seen that said parties are mainly consultants to whom the payments have been made. Thus on the said expenditure, the appellant had offered all the details which the AO had called for. It is not as though no explanation about the said expenditure or it source thereof were not explained to the satisfaction of the AO. Only objection taken by the AO is that justification for having incurred said expenditure has not been established. This reasoning of the AO is certainly outside the scope and ambit of the provisions of section 69C. In fact the condition precedent for applying the provisions of section 69C are not present in this case. The condition precedent is to establish existence of expenditure which is not explained satisfactorily by evidence or material on record. In fact the burden on the assessee has been discharged with all available details furnished, as called for by the AO. The names, address & PAN were available before him. In fact it is not that as though the expenses were not explained, the disallowance is based only on the reason that there was no justification for the same. From the facts of the case, it is held that the conditions precedent for invoking provisions of section 69C are absent*

> *in this case, that the expenditure has been explained by adducing evidence and other relevant material and hence it was not open to the AO to disallow the said expenditure or to treat the same as deemed income under s. 69C of the I.T. Act. When the books of account have been maintained and expenditure recorded with full details and supported by vouchers, then no addition can be made under S. 69C vide* ***CIT Vs. Pratap Singh Amar Singh (1993) 200 ITR 788 (Rajasthan)****. Under the circumstances, the addition made under s. 69C cannot be sustained and is hereby deleted."*

A plain look at the findings of the CIT(A) clearly indicate that the AO was desperate to make addition initially under section 40(a)(ia) of the Act thereafter under section 69C of the Act by stretching the language of the section to an extent where no person with a reasonable understanding of law would not have applied section 69C in the said context. However, he chooses to file a further appeal and seeks permission of the Commissioner who has immediately granted permission. At this juncture it may be noticed that the power is vested in the Commissioner of Income Tax and not with the AO because the Legislature, in its wisdom, thought that a superior/ senior officer can take a more balanced decision so as to avoid filing frivolous appeals in routine manner. However, even the Commissioner has not given his reasons as to why he has authorised the AO to file an appeal on this issue. The AO, while filing the appeals, supports the stand taken by the CIT(A) in ground No. 1 by the very fact that ground No. 1 does not begin with the expression "Whether". In other words, the ground raised by the AO shows that the CIT(A) is justified in deleting the addition. Either he should have used the expression "CIT(A) is not justified in law in deleting the addition" or he should have questioned "whether the CIT(A) is justified in law". The ground raised by the AO, on the other hand, appears to have come from his heart i.e., the true position on this issue was reflected in the grounds of appeal. Though the Revenue preferred an appeal, neither the learned D.R. cared to look at the grounds nor the AO intended to change the grounds of appeal. Even if it is assumed that the AO seeks to challenge the order passed by the CIT(A) on this issue, even before us no material, whatsoever, was placed to show as to under which provision of law addition can be made with regard to the sum of ₹12,76,655/- which as admittedly not claimed as business expenditure but was added to the capital work-in-progress.

9. Having heard the learned D.R. and the learned counsel for the assessee in this regard we are of the firm view that the AO has raised a soulless ground which deserves to be dismissed in limine. We could have saved a lot of time had the Commissioner not given his authorisation on such frivolous issues. On the contrary, it is incumbent upon the Commissioner, as a supervisory authority, to admonish the AO for making an addition without basic understanding of legal position.

10. Ground No. 2 reads as under: -

> *"2. On the facts and in the circumstances of the case, the Hon'ble CIT(A) is justified in law in allowing the capitalization of expenses Rs.18,83,222/- representing expenditure of penal nature incurred by assessee for breach on contract."*

11. This issue was dealt with in para 3.2 of the assessment order. During the course of assessment proceedings the AO noticed that the assessee capitalised a sum of ₹18,83,222/- referable to rent, rates, fees, taxes, etc. under the head "capital work-in-progress". The Assessing Officer was of the opinion that the actual rent works out to ₹28,000/- whereas the assessee claimed more. Similarly, a sum of ₹8,00,000/- paid to Fisheries Development Fund was considered as a payment in the nature of penalty. The assessee also paid a sum of ₹7,88,845/- for extension of implementation agreement for Anni Hydroelectric Project. This was also treated as in the nature of penalty within the meaning of provisions of section 37 of the Act. In his opinion these amounts cannot be permitted to be capitalised. It is not in dispute that no expenditure was claimed as deduction but if the expenditure has to be treated as capital in nature the assessee may claim depreciation in the subsequent years. The total disallowance works out to ₹15,91,645/-. In other words, the AO himself has not disallowed ₹18,83,222/- but restricted the disallowance to ₹15,91,645/-. However, in the grounds of appeal filed before the Tribunal the figure of ₹18,83,222/- is mentioned and here also the ground merely says that the CIT(A) was justified in law in allowing the capitalisation of expenses. This figure finds place even in the authorisation memo issued by the Commissioner of Income Tax, which clearly shows that neither the AO nor the CIT have

applied their mind to what was the issue, how much is the expenditure which was disallowed from the capital work-in-progress and the reasons therefor. Though the AO on one hand says that the excess rent claimed is ₹2,000/- but the actual disallowance is ₹2,800/- Following were the disallowances: -

(a)	Amount paid to Fisheries Development Fund for obtaining NOC	₹8,00,000/-
(b)	Amount paid for extension of implementation agreement for Hydroelectric project	₹7,88,845/-
(c)	Excess rent alleged to have been claimed	₹2,800/-

12. Assessee challenged the disallowances before the CIT(A). It deserves to be noticed that copy of the grounds of appeal and statement of facts (if any) were not furnished by the Revenue at the time of filing the appeal before the ITAT but the learned D.R. appears to have been fully prepared without even knowing whether all the papers were available with him or not. Any way, we have gone through the order passed by the CIT(A) to understand as to what was the contentions of the assessee. It was stated before the learned CIT(A) that ₹8,00,000/- had been paid to the Directorate of Fisheries, Himachal Pradesh for issue of NOC to the assessee's power project. It was submitted that the said expenditure was incurred to get clearance of flow of water downstream, since the nature of business of the assessee is to generate hydroelectric power and it is not possible to generate the same without flow of water. The assessee also produced a copy of the NOC from the Directorate of Fisheries, Himachal Pradesh to emphasise that it is not in the nature of penalty.

13. Similarly, as regards payment of ₹7,88,845/- it was contended that the assessee having not commenced commercial operations, the expenditure incurred in the normal course was capitalised. This expenditure pertains to extension fees for implementation of its project and it was paid to Himachal Pradesh Energy Development Agency. Assessee produced copy of the letter from Himachal Pradesh Energy Development Corporation. Thus, it was contended that it cannot be treated as expenditure in the nature of penalty.

14. With regard to the balance disallowance it was stated that it is not understood as to why the AO disallowed a sum of ₹2,800/-.

15. Having regard to the circumstances of the case the learned CIT(A) directed the AO to permit the assessee to capitalise the sum of ₹15,91,645/- by observing as under: -

> *"5.4 I have considered the submissions as made and perused the documents as filed which were earlier filed before the AO. As per letter from the Directorate of Fisheries and in the context of setting up ANNI (5.00 MW), Hydro Electric Project in Kullu District (Himachal Pradesh) for the purpose of grant of NOC, as per said letter, it was decided to charge Rs.8,00,000/- as fishery development fund in lieu of loss of fishery resources. From the said letter it can be inferred that said amount was charged for the purpose of grant of NOC for setting up Hydro Electric Project. As earlier stated, the nature of business of the appellant is to generate hydro power. Under the circumstances, it is held that there is no infirmity in the action of the appellant in claiming expenses under capital work-in-progress. It is nowhere mentioned that the said payment is in the nature of penalty. As regards the expenditure of Rs.7,88,845/-, as per copy of the letter from the Himachal Pradesh Energy Development Agency on record, the said sum denotes the extension fees paid since the appellant company had requested for 6 months extension of time period for implementation of agreement. This was on account of the fact that the company was not able to start work on the date as stipulated. Therefore it was in order to require extension in the implementation of agreement in respect of Anni Hydro Electric Project for a period of 6 months that the said expenditure was incurred. Since the appellant's commercial operations had not yet started, the appellant had capitalized the said expenditure. It is held that since the expenditure is incidental to the business carried on by the appellant, it has been correctly capitalized. As regards the balance of Rs.2,800/-, it is seen that said sum has been disallowed without assigning any specific reason or details. On the basis of the above discussion, it is held that the claim of the appellant for capitalization of the above stated expenditure in a sum of Rs.15,91,645/- requires to be allowed and is therefore directed to be allowed to be capitalized to the work-in-progress."*

16. Revenue preferred an appeal and, as already noticed, the AO justifies the action of the CIT(A). It also deserves to be noticed that despite specific findings of the CIT(A) the Revenue did not choose to file papers to contradict the findings of the CIT(A) but merely relied upon by the order passed by the AO. The learned counsel for the assessee, on the other hand, adverted our attention to the paper book filed by the assessee company to submit that the

payment for obtaining NOC and towards extension fees cannot, by any stretch of imagination, be treated as penalty in nature. With regard to the balance amount of ₹2,800/- he submitted that it is not known as to why this disallowance was made but it has to be presumed that it is concerned with the excess rent claimed, if any, but because of the smallness of the amount he did not argue in detail. Even the learned D.R. could not furnish any details as to how this sum ₹2,800/- was arrived at. In fact the learned CIT(A) has set aside the disallowance mainly on the ground that the AO sought to disallow without assigning any specific reason or details. The learned counsel for the assessee adverted our attention to pages 42 and 43 of the paper book to highlight that the payment of ₹8,00,000/- and ₹7,88,845/- are in the normal course of business and they cannot be treated as penalty.

17. Having regard to the circumstances and contentions of the learned counsel for the assessee as well as the learned D.R. in this regard we are of the firm view that the order passed by the CIT(A) does not call for any interference on this issue and we hold accordingly.

18. Grounds No. 3 & 4 pertain to the addition made by the AO under section 68 of the Act which was set aside by the CIT(A). These grounds are extracted for immediate reference: -

> *"3. On the facts and in the circumstances of the case, the Hon'ble CIT(A) is justified in law in deleting the addition of Rs.45,14,610/- made u/s. 68 of the Act being the unexplained credits in the books of the assessee.*
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> *4. On the facts and in the circumstances of the case, the Hon'ble CIT(A) is justified in admitting the additional evidences in violation of provisions of Rule 46A of I.T. Rules 1962."*

19. The AO noticed that the assessee had shown share application money pending allotment as on 31.03.2007 at ₹67,19,610/- as against preceding year's figure of ₹22,05,000/-. Therefore there is a net receipt of ₹45,14,610/- during this year towards share application money. The AO further noticed that the assessee's paid up capital also increased by ₹4,80,390/-. He appears to have specifically asked the assessee to furnish the details vide letters dated 04.08.2009 and 21.08.2009. In this regard the AO observed

that despite specifically asking for details the assessee merely forwarded a letter from M/s. Toptrack Garments Pvt. Ltd., which is an associate company of the assessee company, wherein they have stated that a sum of ₹62,00,000/- was paid towards share application money. The confirmation letter was not even singed by the Director of the company and no documentary evidence to prove the genuineness of the transaction, source and creditworthiness of the person advancing such amount was produced. He then referred to section 68 of the Act to highlight that the assessee has to fulfil three ingredients and mere explanation is not sufficient. If there is no explanation about the nature and source thereof a sum so credited can be charged to income tax under section 68 of the Act. In his opinion there is a difference between 'burden of proof' and 'onus of proof'; burden of proof lies on the person who has to prove a fact and it never shifts but the onus may shift. In his opinion the assessee did not discharge its initial onus even after availing sufficient opportunities and therefore by applying the doctrine of 'notorious fact' he assumed that the aforementioned share application money must have flown from the assessee and accordingly added the sum under section 68 of the Act. In the instant case the assessee stated to have received money from M/s. Toptrack Garments Pvt. Ltd. towards share application, but subsequently refunded share application money.

20. Aggrieved, assessee contended before the first Appellate Authority that the initial onus was discharged by furnishing details such as confirmation letter and source of money; the assessee had forwarded a letter of M/s. Toptrack Garments Pvt. Ltd. stating that the said company had paid a sum of ₹62,000,000/- towards share application money. In fact, the total share application money, as per the Balance Sheet, pending allotment as on 31.03.2007, is ₹67,19,610/- out of which ₹45,14,610/- was received in the current year. The AO rejected the letter from M/. Toptrack Garments Pvt. Ltd. for the reason that the confirmation was not signed by the Director of the company and the address of the company is the same as that of the assessee company.

21. The case of the assessee, on the other hand, was that in response to the notice dated 04.08.2009 the assessee furnished details of increase in

share capital with name and address of the party, PAN, confirmation and bank statement to prove the source of fund. Details showing the cheque number, date and amount received along with confirmation letter from M/s. Toptrack Garments Pvt. Ltd. are on record. Merely because the said company has the same correspondence address it will not make the transaction non-genuine. Assessee's Registered Office is in Mumbai whereas the other company's Registered Office is in New Delhi. Further, both the companies neither have common Director nor any common shareholder and therefore it is incorrect assumption of the AO that the assessee is an associate company. With regard to the plea of the AO that confirmation letter is not signed by the Director and therefore not acceptable, it was contended before the CIT(A) that confirmation was singed by a person duly authorised by the Board and therefore it is not correct to say that it has no validity. Evidence of authorisation was placed in the form of copy of Board Resolution. It was thus contended that identity of the party was proved. Payment was through cheque and PAN etc. were available on record and hence the AO could have issued summons to party or directed the assessee to produce the party but AO had not done and arbitrarily proceeded to make addition under section 68 of the Act without making further/proper enquiry.

22. The learned CIT(A) was satisfied with the plea of the assessee and therefore called for a remand report from the AO. In the remand report the AO admitted, by observing that no adverse conclusion can be drawn on this issue; in the light of the facts brought on record the AO admitted that no case can be made out to make addition under section 68 of the Act. However, with regard to admission of new evidence the AO objected by stating that under Rule 46A of the I.T. Rules the assessee has to show reasonable cause for non-production of the evidence before the AO whereas in the instant case ample opportunities were given by the AO to produce the details and hence the new evidence should not be admitted.

23. The learned CIT(A) considered the issue in the backdrop of the facts available on record before the AO as well as the submissions made before him and the remand report obtained from the AO. He concluded that it is a fit case for admission of additional evidence and on the facts he was of the

view that no case was made by the AO to make the addition under section 68 of the Act. Detailed reasons given by the CIT(A) are extracted for immediate reference: -

> *"6.3. The findings of the AO and the submissions as made by the appellant were considered. It is indeed a fact that the name and address of the applicant along with PAN details were furnished to the AO. So also the details of cheques issued by the appellant detailing the cheque no. date and amounts were furnished. The appellant has also filed confirmation letter from Top Track Garments Pvt. Ltd. Said letter was signed by an authorized signatory. There is also on record a copy of the Board Resolution passed by the company on 12 January, 2008 authorizing one Mr. J.S. Rana to sign all papers, confirmations and all other documents as may be required to be submitted to the authorities. However, it was deemed necessary to remand the mater to the file of the AO to conduct necessary and proper enquiry in order to verify the claim as made by the appellant. The fresh material as furnished by the appellant such as confirmation letter signed by the director during the course of hearing of the appeal were thus remitted back to the AO. Copies of bank statement of the appellant, annual report, copy of IT return for A.Y. 2007-08 of the appellant i.e. all documents furnished in continuation of the details already filed before the AO, were remitted back to the AO for examination of report.*
>
> *6.4. After conducting necessary enquiry and after examining the documents that were filed before the CIT(A) during the course of hearing of the appeal, the AO furnished his remand report as per letter No. ITO. ((1)(4)/Remand Report/2010-11 dated 06.10.2010. It is stated by the AO in the Remand Report that details available on record as well as the details which were fresh produced were examined. The documents examined included audited accounts of the share applicant, the bank account of the appellant and the share applicant, and copies of the I.T. return of the share applicant. It is further stated that during the assessment proceedings, the AO had also examined the share register in original where from it was confirmed that share application pending allotment from Top Track Garments P. Ltd. was Rs.62,19,610/- as on 31.03.2007. It is reported by the AO that there was payment of refund application money to the extent of Rs.17,19,610/- in the subsequent year. The conclusion as arrived as in the Remand Report is quoted below.*
>
> *"The above submission of assessee with reverence to details available on record as well as the details produced now have been examined. In the audited balance sheet of M/s. Top Track Garments P. Ltd. of March 2007 in the Schedule IV (Investments) it is reflected that investment is made in 67000 shares @ Rs.10/- each of Growel Energy Co. Ltd. equivalent to Rs.67,00,000/- previous year it is shown at Rs.5,00,000/-. Further in the bank statement of M/s. Growel Energy Co. Ltd. and M/s Top Track Garments P. Ltd. the payments and receipt were duly reflected. Further in share allotment register shares numbering 46039 were shown against the name of M/s. Top Track*

Garments P. Ltd. As such no adverse conclusions can be drawn on this issue in light of the new facts brought on record."

6.5. The AO has raised objection regarding admissibility of the new evidence. In this regard it is to be stated that with regard to the share application money, the basic details such as name of the party, address, PAN and details of the cheque issued were already produced before the AO. Once preliminary details are furnished, then it is a settled legal position that the onus shift to the AO to controvert the assessee's stand if he is not agreeable with the submissions and evidence as furnished. Since on facts of the case, the AO had not disproved the material placed before him, it was found necessary to remand the matter back to the file of the AO for this limited purpose and to conduct proper enquiry with reference to the material already on record and that furnished afresh before the CIT(A), which was in continuation of the material already furnished. Under the circumstances, the case of the appellant comes within the ambit of Rule 46A. In the light of these findings and also the conclusion of the AO that no adverse inference can be drawn in the light of the facts which are on record, it is held that addition made under section 68 requires to be deleted. Therefore, addition of Rs.45,14,610/- is hereby deleted."

24. The AO, as usual, submitted in ground No. 3 that the CIT(A) was justified in deleting the addition and justified in admitting the additional evidence. However, even assuming that the Revenue is aggrieved by the order of the CIT(A), even at this stage the learned D.R. could have placed some material to contradict the findings of the learned CIT(A); except submitting that the learned CIT(A) should not have admitted the additional evidence under Rule 46A of the I.T. Rules, no material was filed by the Revenue to support their stand.

25. On the other hand, the learned counsel for the assessee submitted that even sans the remand report and the additional evidence submitted before the learned CIT(A) the addition made by the AO is arbitrary and without any basis; when the basic material is placed before the AO, it is the duty of the AO to make further enquiry by putting it to the assessee and in the absence of making proper enquiry the addition made by the AO under section 68 deserves to be set aside. He referred to the order passed by the CIT(A) and contentions made before the learned CIT(A) by the assessee company to submit that M/s. Toptrack Garments Pvt. Ltd. is an independent company and payments were made by cheque, PAN details etc. were furnished before the AO and once the identity of the party is

established and basic details were furnished establishing the genuineness and creditworthiness it is the duty of the AO to make further enquiry since the onus shifts upon him to prove that the amount received by the assessee, in the form of share application money, was unexplained income of the assessee. In the instant case no such efforts were made by the AO. In fact, under section 68 of the Act the AO is duty bound to prove that the assessee would have earned such additional income, by the use of the expression 'may' in section 68 of the Act, whereas in the instant case the AO tried to make a case on assumptions, without proving that the material available before the AO is wrong and insufficient. In fact only two opportunities were given and the assessee furnished the details. Thus the learned counsel for the assessee strongly supported the order passed by the learned CIT(A).

26. We have carefully considered the rival submissions and perused the record. The learned CIT(A) has taken note of the fact that M/s. Toptrack Garments Pvt. Ltd. cannot be treated as an associate company and duly authorised person has signed the confirmation letter. It is also not in dispute that payments were made by cheque and PAN details were also on record before the AO. Even at this stage the learned D.R. could not point out as to on what basis the Revenue can assail the order of the CIT(A). In such case it is the duty of the administrative Commissioner to take proper care to verify the facts thoroughly before appending his signature in the form of authorisation memo and the AO is equally responsible in furnishing necessary details in the form of paper book before the Tribunal if he is of the opinion that the plea raised before the Tribunal has some force. It is a very rare scenario in the Tribunal that the AO personally takes care to assist the Departmental Representative by furnishing necessary details to support the plea raised by him. In fact this is a peculiar case where even the Commissioner (Administration) who is supposed to supervise the proper functioning of the AO, under his charge, has allowed him to file appeals without properly examining the assessment order and the order of the learned CIT(A), which results in unnecessary expenditure to the assessee when appeal is filed by the Revenue and the assessee had to undergo the trauma of engaging counsel and paying substantial fees to defend the case when the Revenue has no case at all.

27. Having regard to the circumstances of the case we are of the firm view that the order passed by the learned CIT(A) does not call for any interference. We hold accordingly.

28. As we have already mentioned, on account of improper action on the part of the Commissioner of Income Tax as well as the AO, the assessee had to engage a counsel and incur substantial expenditure to defend its case. Therefore we award a token cost of ₹5,000/- upon the Commissioner of Income tax who has given the authorisation and cost of ₹10,000/- upon the AO who has filed this appeal.

29. The said payment should be made to the assessee within one month from the date of receipt of this order. Registry is also directed to mark a copy to the Chairman, CBDT so that in future the Income Tax Commissioners, who are responsible for filing appeal before the Tribunal, would take proper care to scrutinise the issues before authorising the AO to file appeals before the Tribunal. With these observations the appeal filed by the Revenue is treated as dismissed with costs.

Order pronounced in the open court on 13th June, 2014.

Sd/-	Sd/-
(N.K. Billaiya)	**(D. Manmohan)**
Accountant Member	**Vice President**

Mumbai, Dated: 13th June, 2014

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – 19, Mumbai*
4. *The CIT– 9, Mumbai City*
5. *The DR, "G" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.