IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'I', MUMBAI

BEFORE S/SHRI D.K.AGARWAL (JM) AND T.R.SOOD (A.M)

ITA No.407/Mum/2010
(Assessment Year:2003-04)

Dy. Commissioner of Income Tax, Range 17(2), Room No.217, Piramal Chambers, Mumbai-400012	V/s	M/s Eastern Overseas Corporation, Framroz Court, 60, D.Phalke Road, Dadar (E), Mumbai-400014 **PAN:AAAFE0602J**
APPELLANT		**RESPONDENT**

Appellant by : Shri S.K.Singh
Respondent by : Mrs.Uma Mahadeokar

ORDER

PER D.K.AGARWAL (JM)

This appeal preferred by the Revenue is directed against the order dated 23.10.2009 passed by the Learned Commissioner of Income Tax (A) for the assessment year 2003-04.

2. Briefly stated facts of the case are that the assessee firm is engaged in the business of supply, erection, testing and commissioning of hydro electric project and also is sole selling agents of M/s Gilbut Gilkes and Garden Ltd. U.K. It filed return declaring total income at Rs.71,37,390/-. During the course of assessment proceedings, it was interalia observed by the AO that the assessee has claimed an amount of Rs.10,60,362/- towards foreign travel. On being

asked, the assessee submitted that the purpose of the visit was towards export exploration and to discuss the financially attractive concept of small hydro electric projects. As part of the visits the persons contacted were Mr. Mohd. Arafat and M/s Gilkes. However, the AO was of the view that the assessee has not furnished any other details or correspondence other than the submissions. He further observed that this stock supply given by the assessee year after year. He further observed that the assessee contacted M/s. Gilkes, the party from whom different items of plant and machinery are imported by the assessee. He further observed that the machinery is being used in on going projects of K.T., T.P. and Likimro. The receipts from these projects have not been offered to tax as the assessee is following project completion method. Hence, according to the AO, the expenses have to be capitalized and accordingly, the AO disallowed the entire expenditure of foreign travel of Rs.10,60,362/-. The AO after making some other disallowances completed the assessment at an income of Rs.86,78,634/- vide order dated 29.3.2006 passed under section 143(3) of the Income Tax Act, 1961(in short the Act). On appeal, the learned Commissioner of Income Tax (A) while observing that the visits has been done by an employee of the company and managing partner, it cannot be said that the visit was personal in nature, the traveling expenses relating to particular project have been duly capitalized in the books of the assessee, there is enough evidence that the visit to London by Mr. Joginder Kumar and Ms.Pam Sauares was for the purpose of business and accordingly, he deleted the disallowance of traveling expenses of Rs.7,49,074/- and confirmed the balance disallowance of Rs.3,11,288/- on the ground that the assessee has not furnished sufficient evidence in support of the trip to Dubai.

3. Being aggrieved by the order of the learned Commissioner of Income Tax (A), the Revenue is in appeal before us challenging in the ground of appeal the deletion of disallowance of travelling expenses of Rs.7,49,074/-.

4. At the time of hearing the learned D.R. submits that for the reasons as mentioned in the assessment order, the learned Commissioner of Income Tax (A) was not justified in deleting the disallowing of foreign travelling expenses to the extent of Rs.7,49,074/- and therefore, the disallowance made by the AO be restored.

5. On the other hand, the learned counsel for the assessee while reiterating the same submissions as submitted before the AO and learned Commissioner of

Income Tax (A) further submits that since the assessee has filed complete details of foreign travelling expenses of Rs.7,49,074/- which were incurred for the purpose of business, the learned Commissioner of Income Tax(A) was fully justified in deleting the same and therefore, the order passed by the leaned Commissioner of Income Tax (A) be upheld.

6. Having carefully heard the submissions of the rival parties and perusing the material available on record, we find that there is no dispute that the assessee has filed his explanation before the AO to show the purposes of export exploration and to discuss the financially attractive concept of small hydro electric projects and as part of the visits the persons contacted were Mr.Mohd. Arafat and M/s Gilkes. It was disallowed by the AO on the ground that the assessee has not furnished any other details or correspondence and the person contacted M/s Gilkes, the party from whom different items of plant and machinery are imported by the assessee and that the machinery is being used in ongoing projects of K.T., T.P. and Likimro, the receipt from these projects have not been offered to tax as the assessee is following the project completion method. Thus, according to the AO the expenses should have been capitalized by the assessee. However, we find that it is not the case of the Revenue that the foreign visit was not made for the purpose

of business or it was for personal in nature or the assessee has not contacted the concerned persons. We further find that it is also not in dispute that the traveling expenses relating to the project Likimro amounting to Rs.11,91,458/- has been capitalized by the assessee and the same has not been claimed as business expenditure. This being so and keeping in view that the Revenue has placed no contrary material against the finding of the learned Commissioner of Income Tax (A) to show that the foreign travel expenses have not been incurred for the purpose of business, we are inclined to uphold the findings of the learned Commissioner of Income Tax (A) in deleting the disallowance of foreign traveling expenses to the extent of Rs.7,49,074/- and accordingly the ground taken by the Revenue is rejected.

7. In the result, the Revenue's appeal stands dismissed.

Order pronounced in the open court on 24th June, 2011.

Sd/-	Sd/-
(T.R.SOOD)	**(D.K.AGARWAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 24th June, 2011

SRL:

Copy to:
1. Appellant
2. Respondent
3. CIT Concerned
4. CIT(A) concerned
5. DR concerned Bench
6. Guard file.

BY ORDER

ASSTT. REGISTRAR,

ITAT, MUMBAI

		Date	Initials	
1.	Draft dictated on	13.6.2011		Sr.PS
2.	Draft placed before author	13.6.2011		Sr.PS
3.	Draft proposed & placed before the Second Member			AM
4.	Draft discussed/approved by Second Member			AM
5.	Approved Draft comes to the Sr. PS			Sr.PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the Head Clerk			
9	Date on which file goes to AR			
10.	Date of dispatch of Order			