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

BEFORE SHRI G.E.VEERABHADRAPPA, VICE PRESIDENT AND
SHRI C.L.SETHI, JUDICIAL MEMBER

ITA No.113/Del/2009
Assessment Year : 2005-06

Asstt.Commissioner of Income Tax, Circle-I, Faridabad. (Appellant)	Vs.	M/s Presco Mec Autocomp Pvt.Ltd., Plot No.9D, Sector-6, Faridabad. PAN No.AABCP7551K. (Respondent)

Appellant by : Shri H.K.Lal, Sr.DR.
Respondent by : Shri R.B.Mathur, CA.

ORDER

PER C.L.SETHI, JM :

The Revenue is in appeal against the order dated 12.11.2008 passed by learned CIT(A) for the AY 2005-06.

2. Ground No.1 is directed against the CIT(A)'s order in deleting the addition of `8,87,257/- made by the Assessing Officer on account of disallowance of freight and cartage charges.

3. In the course of assessment proceedings, it was found by the AO that the assessee claimed sum of `14,07,335/- on account of freight and cartage inward charges, 90% of which were found to be paid in cash. The AO scrutinized the vouchers and found certain discrepancies as mentioned in Item (a) to (e) in para 2(i) of his order. The AO also made local enquiry by issuing notice u/s 133(6) and by deputing the Inspector, and found that the rate of freight paid by the assessee company on the material purchased from Rakesh Steels should have been `50 per tonne and rate of loading and unloading should have been `10 per tonne. The AO

was of the view that the rate found in force in the local market is also to be applied on the material or goods sent for cutting and the material received back after cutting from suppliers. AO then worked out the allowable expenditure and found that a sum of `6,19,351/- has been claimed in excess by the assessee. AO also found that, similarly the assessee inflated other freight and cartage payment, and he thus disallowed the amount to the extent of `2,67,906/-. Thus, the total disallowance made by the AO was of `8,87,257/-.

4. On an appeal, assessee submitted a very detailed submission before the CIT(A) which has been reproduced by the CIT(A) in para 4 at pages 5 to 13 of his order. After considering the assessee's submission and the AO's finding, the learned CIT(A) deleted the disallowance by observing and holding as under:-

> "5. I have carefully considered the submissions of the ld.AR and perused the order of assessment. I have also gone through the documents submitted by the ld.AR to prove his case. It is found that on the very first page of his order, the AO has admitted that the books of account were produced and test checked. The AO only therefore proceeded to doubt the vouchers maintained by the appellant in respect of freight and cartage expenses. This means that the AO has not made any adverse comments about the books of account maintained by the appellant company. From the submissions of the ld.AR and the contents of the assessment order, it is found that the complete details of goods transport for loading and unloading charges paid were available on record. The discrepancy, if any, according to the A.O. found in the vouchers were not actually supplemented by any documentary evidences brought on record to prove their ingenuineness. It is found that out of 50% adhoc disallowance at Rs.2,67,906/- out of the total of Rs.5,35,812/- are inclusive of payments by cheques and yet the A.O. has made the disallowance summarily presuming them to be in cash. However if the nature of the job of the appellant company is concerned, there are valid justifications for the payments to be made in cash in respect of freight and cartage. This is the practical procedure to be acceptable in the normal course of business by any assessee in this line or in business. As far as the rates of freight and cartage doubted

by the AO are concerned, the ld.AR has sufficiently explained their genuineness and necessity at particular times. The AO has travelled into the foot steps of the business-man which is not desirable as per law unless there is a clear-cut case of inflation of expenditure to bring down the profits of business undertaking. The comparative chart of the present business undertaking over the years shows that this year percentage of freight charges on sales was 0.88% compared to the maximum of 1.01% in the assessment year 2003-04, while on the other hand, the GP has been 18.43% compared to the last year 17.64% vis-a-vis, on the same percentage of freight on sales 0.88%. All the facts and figures regarding sales, gross profit, cartage, freight charges etc reveal consistency and the veracity of the manufacturing results of the appellant company which are not proved otherwise. Just because of vouchers being doubted by the AO and not coming to correct conclusions on them, as he has resorted to only arbitrations in so far as he has presumed the rates of loading and unloading charges without bringing any material on record in support of them. The ld.AR has sufficiently clarified that fluctuation in cartage is always involved due to time factor, urgency of material, varying waiting time in process for labour which has to be necessarily paid accordingly. It is not the straight-jacket or fixed rate on which any freight or cartage is to be paid according to the assessee's whims or the AO's whims. It is determined by the market fluctuations and contingencies. Therefore, the AO was not justified when all the expenses were fully supported by vouchers and other relevant details and evidences. The addition has been worked purely on assumptions and presumptions and surmises. Therefore both on law and facts, the addition of Rs.8,87,257/- has no merits and stands deleted."

5. Rival contentions of both the parties have been considered and the material on record has been perused. In the light of the reasons given by the CIT(A) and considering the fact that AO has made disallowance purely on ad-hoc basis by applying certain rate which was found to be applicable in the market but no material was brought on record to falsify the claim made by the assessee either by examining the concerned parties or either by disputing that no amount was actually paid, we are of the considered opinion that learned CIT(A) has rightly deleted the addition. We are in full agreement with the reasons given by learned CIT(A) in deleting the addition. Thus, ground No.1 raised by the Revenue is rejected.

6. Next ground raised by the Revenue is directed against CIT(A)'s order in deleting the addition of `3,95,435/- made by the AO u/s 40(a)(ia) of the Act on account of assessee's failure to deduct tax at source.

6.1 In the course of assessment proceedings, the assessee was asked by the AO to explain as to why tax at source was not deducted on the following payments made by the assessee :-

	Payee	Amount	Paid for
(a)	M/s Bright Techno Devices Pvt.Ltd.	Rs.2,36,160/-	Job work
(b)	M/s Sumi Motherson Inte.tech.Ltd.	Rs.34,200/-	Job work
(c)	M/s Glovel Management Pvt.Ltd.	Rs.72,125/-	Professional charges
(d)	M/s Surya Consultants	Rs.71,138/-	Advertisement and Publication
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		Rs.3,13,623/-	

6.2 In addition to the above amount of `3,13,623/-, AO also found that the assessee has not deducted tax at source of `2,52,172/- made to M/s Haryana Freight Carrier on account of freight and cartage outward. In reply, the assessee stated before the AO that TDS has been deducted by the assessee wherever applicable except those pointed out by the AO. In the opinion of the AO, the assessee was required to deduct tax on the aforesaid payments and since no tax was deducted, the AO disallowed the expenses u/s 40(a)(ia) of the Act amounting to `6,65,795/- (i.e. `3,13,623 + `2,52,172).

6.3 Being aggrieved, the assessee preferred appeal before the CIT(A).

6.4 Learned CIT(A) upheld the disallowance to the extent of `2,70,360/- (`2,36,160 + `34,200), and deleted the balance amount of `3,95,435/-.

6.5 Hence, the department is in appeal against the CIT(A)'s order in deleting the disallowance to the extent of `3,95,435/- out of total disallowance of `6,65,795/- made by the AO. The assessee is not in appeal against the CIT(A)'s order in confirming the disallowance to the extent of `2,70,360/-. Hence, that issue regarding disallowance of `2,70,360/- upheld by the learned CIT(A) is not before us.

6.6 We have considered the rival contentions of both parties and have gone through the orders of authorities below. In this case, the learned CIT(A) has deleted the disallowance made by the AO u/s 40(a)(ia) to the extent of `3,95,435/- in respect of following items:-

(i)	M/s Glovel Management Pvt.Ltd.	Rs.72,125/-
(ii)	M/s Surya Consultants	Rs.71,138/-
(iii)	M/s Haryana Freight Carrier	Rs.2,52,172/-

6.7 With regard to payment of `72,125/- on account of professional charges, it has been submitted by the assessee that this payment has been made to M/s Glovel Management Pvt.Ltd. on account of wages of two persons sent by them for working in the factory of the assessee and thus, it was the payment of salary to employee through M/s Glovel Management and not on account of any professional charges. The learned CIT(A) has deleted this disallowance by accepting the assessee's contention that the payment of `72,125/- to M/s Glovel Management is actually the reimbursement of wages and hence, it was not covered u/s 40(a)(ia) of the Act. This view of the learned CIT(A) is not found to be supported by any evidence. Assessee has not produced before us any appointment letter with

regard to appointment of any employee provided by M/s Glovel Management. In the course of hearing, the assessee was specifically asked to substantiate his contention but nothing was pointed out to support the assessee's case. The total payment has been actually made to M/s Glovel Management on account of professional charges for services rendered by M/s Glovel Management through their employee and therefore, assessee was liable to deduct tax at source as per provisions of the Act. Since assessee has not deducted the tax at source, the same cannot be allowed as deduction as per provision of Section 40(a)(ia) of the Act. We, therefore, sustain the disallowance of `72,125/- made by the AO by reversing the order of CIT(A) and restore that of the AO.

7. Next item which has been deleted by CIT(A) is payment of `71,138/- paid to M/s Surya Consultants.

7.1 It has been contended by the assessee that this payment has been wrongly held to be in the nature of payment for advertisement as against the actual fact that the payment was actually a payment to newspaper for advertisement for recruitment of staff and this payment was for charges of the newspaper for which tax was not required to be deducted at source. The learned CIT(A) has deleted this disallowance by merely making a casual and non-speaking observation that payment of `71,138/- to M/s Surya Consultants is not covered u/s 40(a)(ia) as pleaded by the learned AR of the assessee. We have gone through the respective vouchers and found that the payment has been made to M/s Surya Consultants for making advertisement in the newspaper and it is not on account of any newspaper purchased by the assessee. Therefore, the assessee was required to deduct tax at source on advertisement expenses incurred by the assessee. We, therefore, hold that AO was justified in disallowing the payment of `71,138/- paid to M/s Surya Consultants for making advertisement in the newspaper as no tax was deducted at

source. The order of CIT(A) is thus reversed and that of the AO restored on this point.

8. Next item of disallowance which has been deleted by CIT(A) is the payment of `2,52,172/- made by the assessee to M/s Haryana Freight Carrier on account of freight and cartage outward. In this respect, the assessee has submitted as under:-

> "Payment of Rs.2,52,172 made during the whole year to M/s Haryana Freight Carriers Pvt.Ltd. – This payment was made in small parts to the said transporter over the year against this bills for small amounts. In the case of this transporter the assessee did not have any contract with the said company for the transportation of goods and each and every time the goods were sent through this transport it was under a separate individual contract defined by the "G.R.". Thus each GR constituted a separate contract the amount of which did not exceed Rs.20,000/- except in a single isolated case where the payment made was for Rs.21,490/-, and thus did not require the deduction of tax at source in terms of the provisions of section 40(a)(ia) as it stood at that point in time. This is also in line with the Board Circular No.715 dt 08-08-1995 which stated the following on the issue of deduction of tax at source in the case of the transporters."

8.1 We have gone through the details of payment made to M/s Haryana Freight Carrier. The assessee has only produced before us the GR wise details of payment to M/s Haryana Freight Carrier but has not produced any other evidence from which it could be gathered whether assessee had any contract with M/s Haryana Freight Carrier for the transportation of goods. Merely because some different GR were prepared that by itself is not sufficient to conclude that the payment was not made in respect of any contract for the transportation of goods. The assessee has stated that each and every time the goods were sent through M/s Haryana Freight Carrier, it was a separate individual contract defined by the GR but no evidence to that effect has been produced before us except by making a bald statement. Further, the aggregate payment of transportation of goods to M/s Haryana Freight

Carrier has also exceeded `50,000/- in a year. Therefore, the assessee was supposed to deduct tax u/s 194C of the Act. We, therefore, uphold the AO's order in disallowing a sum of `2,52,172/- paid to M/s Haryana Freight Carrier and reverse the order of CIT(A). In the result, the total disallowance of `3,95,435/- deleted by the CIT(A) is restored back inasmuch as assessee failed to deduct tax at source on the aforesaid payment of `3,95,435/- as required under the Act. Thus, ground No.2 raised by the Revenue is fully allowed.

9. Ground No.3 is regarding the addition of `3,93,904/- made by the AO u/s 40A(2)(b) which has been deleted by the CIT(A). The AO has disallowed the sum of `3,93,904/- u/s 40A(2)(b) on the ground that assessee has paid interest at the rate of 15% on unsecured loans to the persons covered by Section 40A(2)(b) while the bank rate applicable at that time was in the range of about 12%. The AO has taken a view that payment of interest at the rate of 15% was excessive and unreasonable. He, therefore, worked out the disallowance at `3,93,904/-.

9.1 On an appeal, CIT(A) deleted the addition by observing as follows:-

> "14. I have carefully considered the submissions of the ld.AR and perused the order of assessment. It is found that the AO has made the disallowance purely in a very routine manner without going into the facts. It is found that all the deposits/loans are old for more than 4 years, of which the statement was filed during the course of assessment proceedings u/s 143(3). But the AO has not looked into these details. Moreover, 15% rate as paid to these persons is a normal practice in business, and not in the matrix of relationships. Therefore, the disallowance worked out by the AO is unwarranted and hence it stands deleted."

9.2 We have heard both the parties and have gone through the orders of the authorities below.

9.3 In the course of hearing of this appeal, learned DR has not been able to point out as to how 15% of rate in the rate of interest in the open market can be said to be unreasonable and excessive so as to disallow the payment thereof by applying Section 40A(2)(b) of the Act. The AO has merely applied the bank rate without going into the market position and the circumstances under which loan was taken. We, therefore, uphold the order of CIT(A) in deleting the disallowance of `3,93,904/- made u/s 40A(2)(b) by the AO. Thus, this ground raised by the Revenue is rejected.

10. Ground Nos.4 to 11 raised by the Revenue are directed against CIT(A)'s order in deleting the following additions/disallowances made by the AO :-

(i) `43,860/- out of repair and maintenance treating the same to be of capital in nature.
(ii) `17,200/- out of staff welfare.
(iii) `1,05,450/- out of telephone expenses treating them to be a capital expenditure.
(iv) `68,250/- on account of depreciation on electrical equipments.
(v) `1,53,184/- on account of vehicle expenses.
(vi) `39,575/- on account of telephone expenses.
(vii) `33,490/- on account of late deposit of employees' contribution to EPF.
(viii) `5,347/- on account of traveling expenses.

10.1 We have heard both the parties and have gone through the orders of the authorities below. The sum of `43,860/- was incurred by the assessee towards exhaust fans which were used in the factory premises. This is an asset of capital in nature. Therefore, the AO has rightly disallowed the same as revenue deduction. Be it noted here that AO has already allowed depreciation at `5,560/- on this

item. Therefore, order of CIT(A) on this point is reversed and that of the AO is restored.

11. The sum of `17,200/- is in respect of expenditure incurred on LGM Oven which was used by the staff members in the staff canteen. The LGM Oven required in the canteen is undisputedly a capital asset in nature, owned by the assessee. Therefore, disallowance is justified. Be it noted here that AO has already allowed depreciation of `1,290/- on this item. Therefore, the order of CIT(A) is reversed and that of the AO is restored.

12. Next item is regarding disallowance of `1,05,450/- out of telephone expenses. Under the telephone expenses, the assessee has shown purchase of 13 mobile phones for an amount of `1,05,450/-. These were stated to be meant for staff members for their official use and they are not returnable once they are handed over to them. Since the mobile phones were permanently handed over to the staff members for their use, the same can be considered to be of revenue expenditure in nature. Therefore, the order of CIT(A) on this point is upheld.

13. Next item of disallowance is depreciation on electrical equipments at `68,250/-.

13.1 The AO disallowed depreciation on electrical equipments amounting to `2,10,000/- installed after September 2004 by granting depreciation at half of the prescribed rate applicable for furniture and fixtures whereas assessee has claimed depreciation at the rate of 80%. The AO applied the rate of depreciation on electrical equipments at 15% as against 80% claimed by the assessee. The electrical equipments were in the nature of automatic voltage stabilizers in respect of rate of depreciation prescribed is 80%. Therefore, the rate of depreciation applicable to the automatic voltage stabilizers would be 80%. Since the assessee

purchased the automatic voltage stabilizers after September, 2004, the depreciation shall be allowed to the extent of half of the full depreciation to be calculated at 80% of the cost. In this way, the disallowance of `68,250/- made by the AO has been rightly deleted by CIT(A).

14. Next four items are regarding disallowance of `1,53,184/- out of vehicle expenses, `39,575/- on account of telephone expenses, `33,490/- on account of employees' contribution to provident fund account and `5,347/- out of traveling expenses. The AO has disallowed vehicle expenses on the ground that they were used for personal purposes. CIT(A) has deleted this addition by observing that this is a case of a company which is a separate entity and no disallowance can be effected in the hands of a company for the personal use of the expenditure incurred by the company. But, at the most, it can be treated as a perquisite in the hands of the director. In this respect, CIT(A) relied upon Tribunal's decision in the case of Haryana Oxygen Ltd. – 76 ITD 32 (Del). Regarding telephone expenses, the original disallowance was made by the AO at `60,261/- which has been revised to `39,575/- vide his order u/s 154 dated 3.3.2008. The CIT(A) has deleted the addition of `39,575/- by saying that this is not justified. This is a case of a company and it cannot be said that the telephone installed in the company was used for personal purposes. CIT(A) has rightly deleted the disallowance of `39,575/-.

15. The next addition made by the AO is of `5,347/- on account of traveling expenses. These expenses were incurred mainly by senior executives for entertaining the customers of the company. In the light of this fact, CIT(A) has deleted the addition. We further find that amount is very nominal having regard to the turnover of the assessee company. The amount has been incurred by the company on account of entertaining the customers. Therefore, the amount has been rightly allowed by the CIT(A) as revenue deduction.

16. With regard to payment of employees' contribution to EPF account, we find that the payment has been made within five days grace period as so noted by the CIT(A) and against which, no material has been brought on record by the learned DR. Moreover, now it is well settled that the payment of contribution to EPF can be allowed even if the payment is made within due date of filing of the return of income applicable to the assessee's case. The order of CIT(A) on this account is thus upheld. In the light of our decision above, the AO shall modify the assessment order accordingly.

17. In the result, the appeal filed by the Revenue is partly allowed as indicated above.

Decision pronounced in the open Court on 18th February, 2011.

Sd/-	Sd/-
(G.E.VEERABHADRAPPA)	**(C.L.SETHI)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated : 18.02.2011.
VK.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar