

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

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI I.P.BANSAL, JUDICIAL MEMBER

ITA No.4700/Del/2011
Assessment Year : 2007-08

Assistant Commissioner of
Income Tax,
Circle-3(1),
New Delhi.

Vs. M/s Caparo Maruti Limited,
101-104, 1st Floor,
Naurang House,
21, K.G.Marg,
New Delhi.
PAN : AAACC6423G.

(Appellant)

(Respondent)

Appellant by : Shri K.K.Mishra, Sr.DR.
Respondent by : Shri Ravi Gupta & Shri Rajesh Jain,
Advocates.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the Revenue is directed against the order of learned CIT(A)-VI, New Delhi dated 16th August, 2011 for the AY 2007-08.

2. Ground No.1 of the Revenue's appeal is general in nature and needs no separate adjudication.
3. Ground No.2 of the Revenue's appeal reads as under:-

"2(i) On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) has erred in deleting the addition of Rs.1099583/- made by disallowing the traveling expenses.

(ii) The Id.CIT(A) has ignored the fact that no evidence for use of Chartered Aircraft for actual inspection of press machines at various places in a short span of time was filed either before the AO or before the CIT(A)."

4. At the time of hearing before us, it is stated by the learned DR that during the year under consideration, the assessee has claimed the deduction for payment of ₹10,99,583/- on account of chartering of aircraft. The assessee could not give any satisfactory explanation for incurring of such expenditure on chartering of aircraft, therefore, the Assessing Officer disallowed the same. The learned CIT(A) allowed the same on the ground that the bill for hiring of the aircraft was issued by International Air Charters and copy of TDS certificate evidencing the TDS was produced. He further submitted that the Assessing Officer has put the burden on the Revenue to establish that the expenditure was not for the purpose of business. It is the other way round. The burden is upon the assessee to establish that the expenditure was incurred wholly and exclusively for the purpose of business. Since the assessee was unable to discharge this burden, the Assessing Officer has rightly disallowed the payment for chartering of aircraft. He, therefore, submitted that the order of learned CIT(A) should be reversed and that of the Assessing Officer may be restored.

5. The learned counsel for the assessee, on the other hand, stated that the assessee derives income from manufacturing of parts for Maruti Limited. He stated that during the year under consideration, the assessee had installed press machines located at various places and the inspection was required to be completed in the short span of time, therefore, the aircraft was hired. The assessee had already produced the bill for the hiring of the aircraft. The payment thereof was made by cheques and also that the tax was deducted. He submitted that the Assessing Officer never asked the assessee to

produce the evidence that the aircraft was utilized for inspection of working of press machines by the director who was looking after the production/quality control. He, therefore, submitted that the order of learned CIT(A) is quite fair and reasonable, the same should be sustained. He alternatively stated that if a view is taken that the assessee has not produced necessary evidence before the Assessing Officer, the matter may be set aside to the file of the Assessing Officer and the assessee will produce further evidence to establish that chartering of aircraft was for the purpose of business.

6. The learned DR, in the rejoinder, stated that he had no objection if the matter is set aside to the file of the Assessing Officer for examining whether the chartering of aircraft was for the purpose of business.

7. We have carefully considered the arguments of both the sides and perused the material placed before us. It is a settled law that the burden is upon the assessee to establish that the expenditure was incurred wholly and exclusively for the purpose of business. Therefore, we are unable to agree with the views of the learned CIT(A) that in order to disallow an expenditure or part of it, it is essential to record a finding that such expenditure or part thereof was for non-business purposes. However, we further find that the assessee has stated before the Assessing Officer that the aircraft was hired for the purpose of inspection of press machines located at various places. Since the inspection was required to be completed in a short span of time, chartered aircraft was used for this purpose. However, no evidence in support of this claim was produced, but, at the same time, if the Assessing Officer was dissatisfied, he should have asked the assessee to produce the evidence in support of this argument. From the assessment order, we do not find any opportunity having been given by the Assessing Officer to the assessee to produce the documentary

evidence. The Assessing Officer simply rejected the assessee's contention by mentioning that the assessee has failed to submit any documentary evidence. In view of the above, we deem it proper to set aside the matter to the authorities below and restore the matter back to the file of the Assessing Officer. We direct him to allow adequate opportunity to the assessee of producing the necessary evidence in support of its claim of chartering of aircraft. We also direct the assessee to produce necessary evidence/explanation before the Assessing Officer. Thereafter, the Assessing Officer will readjudicate the issue in accordance with law.

8. Ground No.3 of the Revenue's appeal reads as under:-

"On the facts and in the circumstances of the case and in law, the Id.CIT(Appeals) has erred in deleting the addition of Rs.55802/- made on account of excess depreciation claimed on computer peripherals."

9. We have heard both the sides and perused the material placed before us. The Assessing Officer allowed the depreciation on computer accessories and peripherals at the rate of 15% as against 60% claimed by the assessee. The learned CIT(A) directed the Assessing Officer to allow depreciation at the rate of 60% following the decision of Special Bench of ITAT in the case of DCIT Vs. Datacraft India Ltd. – 40 SOT 295 (Mum)(SB). In that case, the Special Bench of ITAT held that router and switches which are necessary for the operation of computer are to be classified as computer and, therefore, entitled to 60% depreciation. In our opinion, the ratio of the above decision would be squarely applicable to the case under appeal before us. The accessories and peripherals purchased during the year under consideration are an integral part of the computer. Therefore, the same are entitled to

depreciation as a computer. Accordingly, we uphold the order of learned CIT(A) and ground No.3 of the Revenue's appeal is rejected.

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

Decision pronounced in the open Court on 13th April, 2012.

Sd/-

(I.P.BANSAL)
JUDICIAL MEMBER

Sd/-

(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 13.04.2012

VK.

Copy forwarded to: -

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

Assistant Registrar