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

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI A.T. VARKEY, JUDICIAL MEMBER

ITA No.1860/Del./2011
(ASSESSMENT YEAR : 2007-08)

DCIT, Circle 11 (1), New Delhi.	vs.	M/s. Escorts Construction Equipment Ltd., 11, Scindia House, Connaught Circus, New Delhi.

(PAN : AAACE2339R)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri R.M. Mehta, Advocate
REVENUE BY : Smt. Parwinder Kaur, Senior DR

Date of Hearing : 28.07.2015
Date of Pronouncement : 16.10.2015

O R D E R

PER A.T. VARKEY, JUDICIAL MEMBER :

This appeal, at the instance of the revenue, is directed against the order of the Commissioner of Income-tax (Appeals)-XIII, New Delhi dated 11.02.2011 for the assessment year 2007-08.

2. The assessee company was engaged in the business of manufacturing, trading and renting of construction and material handling equipments. The return of income was e-filed on 25.10.2007 declaring an income of Rs.23,83,41,236/-. The return was processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter 'the Act') and a demand of

Rs.4,30,820/- was worked out to be payable. Meanwhile, it is seen that the assessee's case was selected for compulsory scrutiny under CASS norms and notice u/s 143(2) was issued on 22.09.2008. Subsequently, notice u/s 142(1) along with questionnaire was issued on 16.06.2009. In response to these notices, the assessee was represented through the AR and filed the requisite details / information. The assessment was completed u/s 143(3) of the Act at a total taxable income at Rs.29,53,77,030/- by making various disallowances.

3. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT (A) had partly allowed the appeal of the assessee.

4. The revenue, being aggrieved, is in appeal before us.

5. The grounds of appeal are as given below :-

> "1. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.24,88,741/- on account of under the head development expenses.
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> 2. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.2,00,00,000/- on account of sale of land.
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> 3. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.61,16,062/- on account of royalty expenditure made by the assessee.
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> 4. On the facts and circumstances of the case and law, the CIT(A) has erred in deleting the addition of Rs.2,50,00,000/- on account of 35 AB of IT Act.
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> 5. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.1,07,550/- on

account of interest paid to delayed deposit of service tax, FBT etc.

6. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.10,00,000/- on account of unclaimed liability u/s 41 of IT Act.

7. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.16,43,928/- on account of unpaid sales tax amount.

8. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing."

6. Ground 1, apropos deletion of addition of Rs.24,88,741/- on account of development expenses claimed by the assessee. The AO asked the assessee to give details of development expenses of Rs.19,31,554/- which had been though deferred in the books has been found to have been claimed as deduction as a revenue expense u/s 37(1) of the Act and the assessee was asked to show-cause why the same should not be disallowed. The assessee replied that there was no expenditure during this assessment year under the head 'development expenses'. The details of the debits showing the nature of expenses were filed and it was reiterated that during the year under consideration, the said sum of money was only the amount written off. The AO did not accept the assessee's arguments because in earlier years too, the disallowance had been made on this issue and accordingly, he made a disallowance of Rs.24,88,741/- on account of development expenses, whereas the claim of assessee was only to the tune of Rs.19,31,554/-.

7. The ld. CIT (A), after considering the submissions of the counsel, observed that this issue is covered by the order of the ITAT for AY 2002-03 and also by the orders passed by his predecessors for other assessment years. He observed that the AO had not pointed out any change in facts in the year under appeal as compared to the preceding assessment years and accordingly, ordered deletion of the disallowance made by the AO at a figure of Rs.24,88,741/-.

8. Ld. DR relied on the order of the Assessing Officer.

9. Ld. Counsel for the assessee reiterated the submissions made before the ld. CIT (A). He submitted that the Assessing Officer had made an addition of Rs.24,88,741/- whereas the claim made by the assessee was only to the tune of Rs.19,31.554/-. He further submitted that this issue is covered in favour of the assessee by the order of the ITAT for AYs 2002-03, 2003-04, 2005-06 & 2006-07.

10. We have heard the rival submissions and perused the material on record. We find that this issue is covered against the revenue by the orders of the ITAT dated 08.10.2007 in the assessee's own case for AYs 2002-03, 2003-04, 2004-05 and 2005-06. The relevant finding of the coordinate Bench of the ITAT in ITA Nos.5687 & 5688/Del/2010 for AYs 2005-06 & 2006-07 order dated 25.02.2011 is reproduced as under :-

> "4. We have heard both the parties and gone through the material available on record. ITAT Delhi Bench "C" in I.T.A.

No. 3925/Del/2007 for the Assessment Year 2003-04 deleted the addition by observing as under :

> "2. The assessee is engaged in the business of manufacture and sale of loaders, rollers, cranes and other earthmoving equipments. In order to modernize its products line and keeping in view the market demand the assessee keeps on adding new products, new models and, hence, to expand its business and diversify the product line, the assessee has incurred a sum of Rs.24,36,293/- towards the development of new products, namely, high speed 51 tonne pick and carry tray, High Speed 10 Pick and Carry Recovery Crane, Vibratory Compactors and Slew Cranes. The details of these expenses reveals that these expenses reveal that these were on account of salary, allowances and traveling of employees who are connected with the development of new products and are routine business expenses. As such type of expenditure were claimed by the assessee in earlier year also as revenue expenditure, these were claimed as revenue expenditure. It was submitted by the assessee that there is a complete unity, interlacing, inter dependence and interconnection of the management, financial, administrative and production aspect among all divisions of each unit and amongst all units of the business as a whole and, thus, it is the claim of the assessee that these are allowable. The Assessing Officer treated them capital expenditure and after allowing depreciation, a sum of Rs.19,49,054/- was added back to the income of the assessee. It was submitted before the Assessing Officer that the CIT(A) has allowed similar claim of the assessee for assessment year 2002-03. However, the A.O. has mentioned that the said order of the CIT(A) has not been accepted by the Revenue and an appeal has been filed against that order. The CIT(A) has admitted the claim of the assessee following the order of the CIT(A) for assessment year 2002-03 and for assessment year 200102. The revenue is aggrieved, hence, in appeal. At the outset, it was submitted by Ld. Counsel that for assessment year 2002-03 similar ground of revenue has been dismissed following the order of the Tribunal in assessee's own case for assessment year 2001-02 and he has produced before us the copy of the said order and it

was pleaded that the issue is covered by the said order of the Tribunal dated 8 th October, 2007 passed in I.T.A. No.4185/Del/2005. Copy of the said order was also given to Ld. DR. The contents of the said order is as under:-

> "This appeal has been filed by the Revenue against the order of Commissioner of Income-tax(Appeals) dated 4.8.2005 by taking the following effective ground of appeal:-
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> > "On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.73,22,427/- made by the Assessing Officer on account of expenditure incurred for development of new products which brought an enduring benefit to the business of the assessee."
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> 2. We heard the rival submissions and carefully considered the same along with order of the Commissioner of Income-tax(Appeals). We find that the ground taken by the Revenue is duly covered by the decision of this Tribunal in I.T.A.2649/Del/2005 for the assessment year 2001-02 in the case of the assessee in which this Tribunal vide order dated 28.2.2007 has held as under:-
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> > 5. We have heard the rival contentions of both the parties and perused the records. It may be mentioned that the jurisdictional Delhi High Court in the case of CIT vs. Modi Industries Ltd., 200 ITR 341 has held that the expenditure incurred by the assessee in the year in which the unit had not started working is allowable as a business expenditure since the management of the new unit and the earlier business were the same and there was unit of control and a common fund. It has further been held that the manufacturing of another product is only the extension of assessee's business and not a new business. It is further mentioned that

the identical issue came up for consideration before the Income-tax Appellate Tribunal Delhi Bench "E", in the case of Dalmia Cement (Bharat) Ltd., in I.T.A. Nos. 685/Del/97 & 4/Del/97, for assessment year 1991-92, wherein the tribunal has held that –

> "3. After hearing both the parties, we find that the expenditure has been incurred by the assessee for exploring the setting up of a new project i.e. Sugar plant, pig iron plant using the iron ore mined etc. Admittedly, the present business of the assessee is in the field of manufacturing of various products at different locations. The impugned expenditure has been incurred by the assessee with the object of studying and identifying new areas of activities which would result in increased profits from business of manufacturing. The expenditure on feasibility study does not mean that it is incurred towards any new business. We find that the Tribunal in the assessee's own case in assessment year 88-89 vide I.T.A. No.3698/Del/98 considered similar expenditure and held that the expenditure was allowable as revenue expenditure. In view of the aforesaid discussion, we reverse the orders of the lower authorities and allow the claim of the assessee on this issue."

6. In view of the aforesaid legal position, we find no infirmity in the order passed by the Commissioner of Income-tax(Appeals) deleting the disallowance made by the Assessing Officer. We, therefore, confirm the order of Commissioner of Income-tax (Appeals).

> 4. In the result, the appeal of the Revenue stands dismissed.
>
> Pronounced in the open court during the course of hearing on 8th October, 2007.

> 3. In this view of the situation, after hearing both the parties, we find that the issue is covered in favour of the assessee by the aforementioned order of the Tribunal for assessment year 2001-02 and 2002-03 and this ground of the Revenue is dismissed."

> 5. Since the issue is covered by the decision of ITAT in assessee's own case for the Assessment Year 2001-02 to 2003-04 and the facts of the case are identical to the facts of earlier years, respectfully following the decision of ITAT in assessee's own case, we confirm the order of Ld. CIT(A)."

The facts remaining the same this year too and the ld. DR failing to bring to our notice any change in facts, respectfully following the aforesaid coordinate Bench order, we uphold the impugned order of CIT(A) on this issue. It is ordered accordingly. Ground No.1 is rejected.

11. Ground No.2 is in respect of deletion of addition of Rs.2 crores made on account of sale of land. The AO observed that the assessee had taken an advance of Rs.2 crores from one Shri Satish Lamba and the AO asked the assessee to prove that section 68 of the Act is not attracted on the said sum. The assessee filed its submission vide letter dated 24.11.2009. After going through the submissions of the assessee, the AO observed that the assessee has not discharged its onus of proving the said advance and, therefore, the same was treated as income of the assessee from undisclosed

sources and accordingly, added to the total income of the assessee company.

12. The CIT (A) deleted the addition by observing as under :-

> "6.2 I have considered the submissions of the counsel and also perused the material on record to which my attention was invited during the course of the hearing. In my opinion the addition can be deleted on the short ground that during Asst. Year 2007-08 there is no credit entry evidencing receipt of money in the books of accounts maintained by the appellant and it is only during Asst. Year 2006-07 that a sum of Rs.4.50 Cr had been received by the appellant with reference to the sale agreement with Mr. Satish Lamba. The said amount had been received by cheques and complete details of Mr. Satish Lamba stand disclosed on the part of the appellant. The Provisions of Section 68 on the aforesaid facts are not attracted, as there is no such credit entry during the year and accordingly the addition for Rs. 2 Crs. therefore stands deleted."

10. Aggrieved, the Revenue is before us impugning the said deletion ordered by the ld. CIT (A).

11. The Ld. DR submitted that the assessee has not discharged its onus of proving the alleged advance to it and, therefore, the burden of proof lies with the assessee and the AO rightly made the disallowance. So he pleaded that the order of the Ld. CIT(A) be reversed and the order of AO be restored.

12. On the other hand, the ld. AR for the assessee submitted that a sum of Rs.2 crore had been taken as advance against sale of land from Shri Satish Lamba, r/o 1F/31, BP, NIT, Faridabad for proposed sale of 5 acre of industrial land belonging to the assessee which is located at 219, Sector 58,

Ballabgarh. He submitted that the total consideration was settled at Rs.2 crores, however, the sale deed could not be executed during the relevant assessment year for want of necessary transfer approvals and the said transaction was still pending for execution. Therefore, since execution of the sale is pending final execution, this amount had been treated as advance. The ld. AR further submitted that the said property was jointly owned by the assessee with its parent holding company, namely, M/s Escorts Limited. He submitted that in November 2005 both the joint owners negotiated with Mr. Satish Lamba for the sale of the entire land for a total consideration of Rs.11Crores and out of which Rs.9 Crores was received as advance which came in equal shares to the joint owners, namely, a sum of Rs.4.50 crores each. He submitted that the said sum of Rs.4.50 crores was received by the assessee on 28.10.2005 vide three separate cheques. Thus, according to ld. AR, the actual receipt of the sum was in AY 2006-07 and not in AY 2007-08, which is before us. Ld. AR further clarified that subsequently, the whole deal was re-negotiated by the joint owners of the property with Mr. Satish Lamba and it was agreed to sell only a part of the land and according to the terms of which, the assessee was entitled to receive a sum of Rs.2.00 crores only as against the sum of Rs.4.50 crores credited in its books of accounts in the preceding assessment year (i.e. AY 2006-07). He submitted that since the approval of Haryana Urban Development Authority (HUDA) for execution of

conveyance deed had not been received yet, the amount of Rs. 2 Crores still remained as an advance against sale of land in books of the assessee. He further submitted that during the year under consideration i.e. AY 2007-08, there was no physical receipt of money in the books of the assessee and all that had happened was that a sum of Rs.2.50 crores was transferred by the assessee to the account of Escorts Limited (parent company) by a book entry. The ld. counsel submitted that the Permanent Account Number (PAN) of Mr. Satish Lamba was furnished before the CIT (A) for further emphasizing and even at the earlier stage of the proceedings, complete details including address of Mr. Lamba was furnished to the Assessing Officer. In view of the above, he urged that the provisions of Section 68 were not attracted and the addition was rightly deleted by the CIT (A), which does not require any interference.

13. We have heard the rival submissions and perused the material on record. The ground in dispute is the advance from a property jointly owned by the assessee with its parent holding company, namely, M/s Escorts Limited. In November 2005, both the joint owners negotiated with Mr. Satish Lamba for the sale of the entire land for a total consideration of Rs.11Crores and out of which Rs.9 Crores was received as advance which came in equal shares to the joint owners, a sum of Rs.4.50 crores each. The said sum of Rs.4.50 crores was received by the assessee on 28.10.2005 vide three separate cheques. Therefore, the actual receipt of the sum was

in AY 2006-07 and not in AY 2007-08 which is for adjudication before us. We find that the whole deal was re-negotiated by the joint owners of the property with Mr. Satish Lamba and it was agreed to sell only a part of the land and according to the terms of which, the assessee was entitled to receive a sum of Rs.2.00 crores only as against the sum of Rs.4.50 crores credited in its books of accounts in the preceding assessment year (i.e. AY 2006-07). Since the approval of Haryana Urban Development Authority (HUDA) for execution of conveyance deed had not been received yet, the amount of Rs. 2 Crores still remained as an advance against sale of land in books of the assessee. We also find that during the year under consideration i.e. AY 2007-08, there was no physical receipt of money in the books of the assessee and all that had happened was that a sum of Rs.2.50 crores was transferred by the assessee to the account of Escorts Limited (Parent Company) by a book entry. We also take note that the Permanent Account Number (PAN) of Mr. Satish Lamba was furnished before the CIT (A) and complete details including address of Mr. Lamba was furnished to the Assessing Officer. Therefore, we find that the said sum of Rs.2 crores has been advanced against the agreement to sale of land from Mr. Satish Lamba ; and since sale has not taken place due to procedural delay and clearance from Haryana Urban Development Authority, the sale has not been executed and the assessee has rightly shown the said amount of Rs.2 crores as advance. Therefore, we do not

find any infirmity in the order of CIT (A) deleting the said addition made by the AO and uphold the order of the CIT (A) on this issue. This ground is deleted.

14. Apropos Ground No.3, deletion of addition of Rs.61,16,062/- on account of royalty expenditure. The Assessing Officer treated the expenditure claimed by the assessee on account of royalty as capital expenditure relying upon the judgement of the Hon'ble Supreme Court in the case of M/s Southern Switch Gear Limited vs CIT - 232 ITR 359. However, the CIT (A) deleted the disallowance by holding as under :-

> "7.2 After considering the detailed arguments of the counsel and perusing the material on record placed in the form of Paper Book, I am of the view that the payment of royalty to both M/s Harparshad & Co. Pvt. Ltd. and M/s HAMM, AG, Germany was in the revenue field rather than a capital expenditure. The Hon'ble ITAT, Delhi, in the decision of the appellant company, namely, M/s Escorts Limited in ITA No.2221/Del/2009 pertaining to AY 2004-05 has discussed the matter at length both on facts and in law to opine that the expenditure is of a revenue nature. The Tribunal has held the judgement of the Hon'ble Supreme Court in the case of M/s Southern Switchgears Limited (supra) to be distinguishable and in turn applied the judgement of the Hon'ble Jurisdictional High Court in the case of J.K. Synthetics Limited reported in 309 ITR 371. Respectfully following the Order of the ITAT, the disallowance on account of the royalty payment for Rs.61,16,062/- stands deleted both in respect of payment to M/s Harparshad & Co. Pvt. Ltd. and HAMM, AG, Germany."

15. Ld. DR relied on the order of the Assessing officer and submitted that the AO rightly treated the same as capital expenditure relying upon the judgment of Hon'ble Supreme Court in the case of M/s. Southern Switch

Gear Limited (supra) and pleaded to set aside the order of the CIT (A) on this issue and uphold the order of AO.

16. On the other hand, the ld. AR for the assessee submitted that this issue is covered in favour of the assessee company by the decision of ITAT in ITA No.2221/Del/2009 pertaining to AY 2004-05 in M/s. Escorts Limited vs. CIT and the Tribunal has rightly treated the same as revenue expenditure by following the decision of Hon'ble jurisdictional High Court in the case of J.K. Synthetics Ltd. reported in 309 ITR 371. Accordingly, he pleaded to uphold the order of the CIT (A) on this issue.

17. We have heard the rival submissions and perused the material on record. After going through the order of the CIT (A) and the submissions of the ld. AR for the assessee, we find that this issue has already been decided in favour of the assessee by the Tribunal in ITA No.2221/Del/2009 for assessment year 2004-05 and the same was followed by the CIT (A) in this relevant assessment year. Since the ld. DR could not bring to our notice any change in facts to persuade us to take a different view, we are respectfully following the order of the co-ordinate Bench for AY 2004-05, so we do not find any infirmity in the order of the CIT (A) and we uphold the same. It is ordered accordingly. Ground No.3 is rejected.

18. Ground No.4 is regarding deletion of addition of Rs.2.5 crores on account of Section 35AB of the Act. The AO observed in this regard that

as per Schedule 13 (Sales & Administration) to the P&L account, a sum of Rs.4,31,38,834/- was claimed on account of legal and professional expenses. The AO asked the assessee to furnish details and justification for the same and the assessee submitted its submissions vide letter dated 09.11.2009. Ld. AO observed that the assessee had paid a sum of Rs.3 crores to M/s. Escorts Limited as per agreement with them in respect of managerial guidance made available to the assessee company on various matters and in support of its claim, the assessee company had also furnished copy of the agreement between the two companies. The AO observed that the assessee company had entered into an agreement with the Escorts Ltd. for the managerial and technical assistance provided by them to the assessee company and the assessee company in turn paid Rs.25 lakhs per month to M/s Escorts Limited. The AO, after going through the provisions of section 35AB of the Act, observed that the payment made by the assessee company is nothing but payment made on account of technical know-how and the agreement for the same had been named as 'Managerial Guidance Agreement' and in view of the provisions of section 35AB, held the expenditure of Rs.3 crores incurred on managerial and technical assistance as allowable only in six equal instalments and hence, 1/6th of the expenditure i.e. Rs.50 lakhs was allowed in the year under consideration and held that the balance of Rs.2.50 crores as allowable in succeeding five years in five equal instalments.

19. The CIT (A) allowed this ground of the assessee as under :-

> "8.2 After considering the detailed submissions advanced by the counsel for the appellant as also perusing the material on record, more so the agreement between the parties, I am of the view that there is nothing to suggest that the arrangement between the appellant and M/s Escorts Limited is for providing a technical know-how by the latter. Thus, there is no justification on part of the Assessing Officer to treat the expenditure as covered by Explanation to Sec 35AB of the Act. The parent company, namely M/s Escorts Limited has huge resources both on financial as also in terms of manpower. The holding company has agreed to provide Management Guidance to the appellant of its so that it can function efficiently in it's respective fields. It is well-known that-in a group of companies, the holding company incurs certain items of expenditure and which in turn are allocated on a fair, reasonable and incidental basis to its subsidiary group companies since the latter are not in a position to incur such expenditure independently on their own. As per the agreement which has been placed on record, the nature of services which are being rendered are in the field of knowledge & Expensive (both technical & managerial) of the corporate heads of Escorts Limited in the areas of Finance, Legal & IR. The genuineness of the expenditure is not in doubt since the AO himself has allowed 1/6th of the expenditure with the further findings that the balance will be allowed in subsequent assessment years.
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> On the aforesaid facts, I am of the view that the expenditure of Rs.3.00 crores incurred by the appellant is not in the nature of acquiring technical know-how and therefore, does not attract the provisions of section 35AB of the Act and is allowable in full in assessment year"

20. Ld. DR relied on the order of the Assessing Officer and emphasized that the case of the assessee is squarely covered with the Explanation to Section 35AB of the Act and pleaded that the ld CIT (A)'s order be set aside and the order of the AO be restored.

21. On the other hand, ld. AR for the assessee submitted that out of the total legal & professional expenses claimed in the Profit & Loss account at Rs.4,31,38,834/-, a sum of Rs.3 crores pertained to managerial guidance (including technical guidance) on research & development matters paid to Escorts Limited. He submitted that the said amount had been paid in terms

of an agreement with the said company i.e. M/s Escorts Limited which was the 100% holding company of the assessee. Ld. AR submitted that the said company had a vast pool of talented manpower, which also catered to the needs of its various subsidiaries/group companies. He further submitted that the assessee company was still in the stage of consolidating its operations and therefore was not in a position to retain highly talented manpower on standalone basis due to high costs involved, therefore, it was decided by the assessee company to obtain the managerial guidance, which includes technical guidance and guidance on R&D matters at a monthly expenditure of Rs.25 lakhs. He submitted that in support of its claim, the assessee had also furnished copy of agreement between the two companies, i.e. M/s. Escorts Ltd. and the assessee company. He submitted that the AO wrongly interpreted this entire expenditure as 'expenditure on know how' and dealt with the same as per the provisions of Section 35AB of the Act. Ld. AR submitted that the AO had misread the terms of the agreement which did not provide for the provision for any technical know-how by M/s Escorts Limited to the assessee company and the agreement was only for the purpose of providing managerial guidance by making available continuous knowledge and expertise in technical and managerial fields which had been provided by the promoters and senior professionals of M/s Escorts Limited from time to time to the assessee company. Therefore, he pleaded that the ld. CIT (A) has rightly held that no

disallowance is called for in respect of this expenditure by treating the same as covered u/s 35AB of the Act. So, he does not want us to interfere in the order of the ld. CIT (A).

22. We have heard both the sides and perused the material on record. We find that the AO, after going through the provisions of section 35AB of the Act and also after going through the agreement, held that the payment made by the assessee company is on account of technical know-how and the agreement for the same had been named as 'Managerial Guidance Agreement'. For the sake of clarity, we reproduce the relevant part of the agreement, as reproduced by the AO in his order, as under :-

> "This refers to the detailed discussions we had with you with regard to the Management Guidance to b3 provided to Escorts Construction Equipment Limited (ECEL).
>
> You had appreciated that since ECEL, IS on the growth path is on a turn around phase, the involvement of the Corporate Heads of Escorts Limited (EL) in the areas of Finance, legal and IR would provide the requisite impetus to the growth of ECEL. You had also appreciated that the said Corporate Heads including the Promoters have spent lot of time/in reviewing the progress and advising ECEL on sorting out the various issues that have come in the way of growth of ECEL. This involves lot of managerial time and for which the Corporate Office of Escorts Limited need to be compensated.
>
> It has, therefore, unanimously been decided that ECEL shall be made available continuous knowledge and expense (both technical and managerial) of EL. For the time and efforts to be dedicate and the timely guidance to be provided to ECEL by the Corporate Heads of EL, an amount of Rs.25 lakhs per month shall have to be provided by ECEL to EL."

A perusal of the agreement reveals that there is nothing in it to suggest that the arrangement between the assessee and M/s Escorts Limited (100% holding company) is for providing a technical know-how and thus, we

agree with the CIT (A) that there is no justification on the part of the AO to treat the expenditure as covered by Explanation to Sec 35AB of the Act. We further find that the genuineness of the expenditure is not in doubt since the AO himself has allowed 1/6th of the expenditure and the balance to be allowed in subsequent assessment years. The assumption of the AO that assessee had incurred expenditure for acquiring *technical know-how* is at best can be termed as guess-work and is not on the basis of any evidence to contradict the claim of the assessee or borne out of the agreement. We, therefore, hold that as the genuineness of the arrangement with the holding company is not in doubt and since no *know-how* has been acquired by the assessee, section 35AB is not attracted. Accordingly, we find no infirmity in the order of the CIT (A) on this issue and the same is upheld. This ground is rejected.

23. Apropos Ground 5, the AO observed that the assessee had incurred an amount of Rs.1,22,50,722/- on account of interest and the assessee was asked to furnish the detailed break-up of the same. The assessee submitted the break-up of the same vide letter 22.10.2009 as under :-

(i)	Interest on delayed payment of tax	1,07,550/-
(ii)	Interest paid for clearing charges	15,124/-
(iii)	Interest on working capital demand loan	75,27,432/-
(iv)	Interest on cash credit	46,00,616/-
	TOTAL	1,22,50,722/-

Thereafter, the AO asked the assessee to show cause as to why the penalty interest of Rs.1,07,550/- may not be disallowed. In reply, the assessee submitted that out of the sum of Rs.1,07,550/-, major amount of Rs.90,562/- was in respect of interest on service tax and these amounts are not penalty in nature but were merely compensatory because the assessee company had utilized the funds in its business operations during the period in which these dues were delayed; and no portion of this amount was on account of penalty levied for infringement of any laws. After taking note the said reply, the AO observed that payment made on account of interest on delayed payment of tax was nothing but the interest paid for the late deposit of TDS deducted on account of interest on FBT and interest on Service Tax, therefore, the interest is penal in nature and was not allowable under any provisions of the Act. Accordingly, the AO disallowed the same and added it to the income of the assessee.

24. The ld. CIT (A) took note of the fact from a perusal of assessment order itself that the AO himself had stated that the payment made was on account of interest on delayed payment of tax for Rs 1,07,550/- was nothing but interest paid for late deposit of TDS, interest on FBT and interest on service tax, however, the AO concluded that the interest paid was penal in nature and was not allowable under any provision of the Act . In this view of the matter and on perusal of the submissions made by the assessee, the ld. CIT (A) held that the interest paid on the delayed

payments of various taxes was compensatory in nature and was not penal in character and, therefore, held the same as an allowable expenditure within the meaning of section 37 (1) of the Act and directed to delete the addition of Rs.1,07,550/-.

25. We have heard both the sides and perused the material on record. We find that the payment was made on account of interest on delayed payment of tax. In other words, the AO disallowed the interest paid for the late deposit of TDS deducted, on account of interest on FBT and interest on Service Tax, We take note of the fact that the payment was actually made by the assessee on account of late deposit of service tax etc. and this factual position has not been controverted by the assessee before the CIT (A) and before us. Therefore, we find that the AO has rightly made the disallowance of Rs.1,07,550/-. Accordingly, we set aside the order of the CIT (A) on this issue and uphold the disallowance made by the AO on this issue. This ground of the Revenue is allowed.

26. Apropos Ground 6, the AO observed that the assessee had claimed sundry creditors of Rs.89,10,79,529/-. The AO asked the assessee to furnish the confirmation of sundry creditors along with detail regarding their identity, creditworthiness and genuineness. The assessee vide their letter dated 24.11.2009 submitted that they are trying to obtain confirmations from the sundry creditors and the case was adjourned to 10.12.2009. The AO observed that on 10.12.2009, however, the AR of the

assessee appeared but no details with regard to sundry creditors were furnished. The AO, in the absence of any details of documentary evidence in support of the assessee's contention, made a disallowance of Rs.10 lakhs as unclaimed liability u/s 41 of the Act and accordingly, treated the same as income of the assessee and added to the total income of the assessee.

27. The ld. CIT (A) deleted the addition by observing as under :-

> "After considering the submissions of the counsel I find myself in agreement with their submissions. As rightly contended the onus is on the Assessing Officer not only to pinpoint the liability in respect of which a benefit has been obtained by an assessee, he has also to give a finding that the liability so remitted has been claimed as an expenditure in an earlier assessment year. The mere continuation of a credit balance from year to year does not legally empower the Assessing Officer to invoke Section 41(1) and that there has to be actual evidence on record to be brought by the A.O. about a remission or cessation of liability taking place. No such evidence has been brought on record by the Assessing Officer. In this view of the matter the addition of Rs.10 lakhs made on estimated basis stands deleted."

28. Ld. DR submitted that the assessee has not furnished any documentary evidence before the AO as well as before the CIT (A) to prove the identity/creditworthiness/genuineness of the sundry creditors. Therefore, in the interest of justice and to be fair to assessee also, let this issue be restored back to the file of the AO, for de-nova adjudication and let the assessee be given opportunity to file the evidences to prove the identity of the sundry creditors.

29. Ld. AR for the assessee reiterated the submissions made before the CIT (A) that for making the addition u/s 41 (1) of the Act, the onus of

proving that the assessee had received some benefit in respect of a trading liability by way of remission or cessation thereof was squarely on the AO. He submitted that no such exercise had been undertaken by the AO and the addition of Rs.10 lakhs on an estimate basis was not at all justified in law or in accordance with the specific mandate of the statutory provisions. He, therefore, pleaded that the order of the CIT (A) to delete the ad-hoc addition be upheld.

30. We have heard both the sides on the issue and perused the material on record. We find that the assessee has not furnished any documentary evidence to prove the identity/creditworthiness and genuineness of the sundry creditors before the AO or before the CIT (A). Therefore, we concede to the request of the Ld DR and remand this issue back to the file of the AO for adjudicating this issue de-nova and the assessee may produce necessary evidences before the AO to prove the identity/creditworthiness and genuine of the sundry creditors. It is ordered accordingly. This ground is allowed for statistical purposes.

31. Apropos Ground 7, the AO observed from the annexure to Annual Report, in para (b) that out of the total sales tax liability of Rs.54,17,505/- for AYs 2002-03, 2003-04 & 2004-05 payable to Andhra Pradesh State, the assessee had deposited an amount of Rs.37,73,577/- under protest which was shown under "Loans & Advances". He find that thus, the assessee had unpaid liability on account of sales tax of Rs.16,43,928/-.

This amount was shown under the head "Contingent Liabilities". The AO asked the assessee to furnish the details but the assessee had not produced any documentary evidence in support of its contention. So the AO disallowed the same being unpaid sales Tex due in the previous years and added it to the total income of the assessee.

32. The ld. CIT (A) deleted the addition by observing as under :-

> "12.2 I have considered the submissions of the counsel and perused the material on record. I am inclined to agree with the submissions of the counsel that the disclosure of the impugned amount represents only contingent liability not provided for in the books and as such it has no impact on the Profit & Loss A/c for the assessment year under appeal and therefore no disallowance of such amount can be made while computing the income. The addition is therefore deleted."

33. The ld. DR relied on the order of the Assessing Officer.

34. Ld. AR for the assessee submitted that no such unpaid sales tax liability had been accounted for in the books and the disclosure itself indicated that it was a contingent liability (not provided for). Ld. AR further submitted that for a disallowance to be made, it was to be first ascertained whether the assessee had claimed any deduction on that account and then only the disallowance could be considered. The disallowance u/s 43B came into operation only if the assessee claimed any statutory dues as deduction in computing its income under the head "Business". He, therefore, pleaded to uphold the order of the CIT (A).

35. We have heard both the sides and perused the material on record. We find that this amount represents unpaid sales tax liability and the same

was disclosed itself by the assessee as a contingent liability. We find that there is no impact in the Profit & Loss account since the assessee had not claimed any deduction on that score. Therefore, we find that AO could not have made any disallowance on this issue. Accordingly, we find that there is no infirmity in the order of the CIT (A) on this issue and the same is upheld. This ground is rejected.

36. Ground No.8 is general in nature and does not require any adjudication.

37. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in open court on this 16th day of October, 2015.

Sd/-	**sd/-**
(N.K. SAINI)	**(A.T. VARKEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 16th day of October, 2015
TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A)-XIII, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.