

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **138/Chny/2022**

निर्धारण वर्ष / Assessment Year: 2012-13

M/s. Miracle Cars India Pvt  
Ltd.,  
No.1, Krishna Nagar, Near  
Sowripalayam ESI,  
Coimbatore – 641 028.

**[PAN: AAICA-4848-F]**

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख/Date of Pronouncement

Deputy Commissioner of  
v. Income Tax,  
Corporate Circle -1,  
Coimbatore.

(प्रत्यर्थी/Respondent)

: Shri. R. Anish Kumar, Advocate  
: Shri. D. Hema Bhupal, JCIT

: 29.11.2022

: 07.12.2022

**आदेश /ORDER**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 03.01.2022 and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:

**"I. Rent Paid to DRS Industries Ltd.**

1. *The CIT (Appeals) erred in sustaining the rent paid to M/s. DRS Industries contrary to the facts, law and circumstances of the case.*

2. *The CIT (Appeals) erred in sustaining the rent paid to M/s. DRS Industries by the Appellant contrary to the acceptance of the Agreement dated 30.06.2010.*

3. *The CIT (Appeals) failed to note that as per clause 7 of Agreement Dt. 30.06.2010 the Appellant has to pay the rent and the same was paid accordingly.*

4. *The CIT (Appeals) failed to consider Form 16A for TDS.*

5. *The Appellant has brought the said rent amount of Rs.32,40,000/under the heading OTHER EXPENSES which reflects in NOTE No. 19 of the Income Tax Return.*

6. *The CIT (Appeals) failed to note that once payment accepted and processed the same cannot be questioned on later period. There is no dispute with the genuine transactions. On the other hand the department has accepted the payment made to M/s.DRS Industries Ltd. as rent and in turn they have returned the income.*

7. *The CIT (Appeals) failed to note that the Appellant's ledger ha properly accounted the transactions and the same not in dispute. Hence, Rs.32,40,000/- cannot be disallowed.*

8. *The CIT (Appeals) failed to appreciate the relevant facts which completely ignored on reaching irrelevant conclusion.*

**II. Advertisement Expenses paid to DRS Industries:-**

9. *The present grounds of appeal on this part is only to the extent of disallowance of Rs.13,62,695/-.*

10. *The CIT (Appeals) has erred in partly disallowance to the extent of Rs. 13,62,695/-.*

11. The CIT (Appeals) failed to note that since, the Appellant was running the business of M/ s.Millenium Motors which was taken over from the M/ s. DRS Industries, the Appellant has incurred all the advertisement expenses directly. For some expenses, the SKODA INDIA may make reimbursement of expenses to the M/s. DRS Industries because as per the record M/s. DRS Industries is the dealer of SKODA INDIA and in turn M/s. DRS Industries will return such reimbursement amount to the Appellant. Such expenses is Rs.35,79,359/- [Please Refer NOTE No.19 of the Income Tax Return] and such reimbursement is Rs.22,16,664/- [Please Refer NOTE No.15 of the Income Tax Return] which has been separately shown under "OTHER INCOME" in the income returned. Thus, the CIT (Appeals) erred in sustaining the balance amount of Rs.13,62,695/- [35,79,359-22,16,664].

12. The CIT (Appeals) failed to note that once the reimbursement of Rs.22,16,664/- is accepted under the heading "OTHER INCOME" accordingly, the entire expenses incurred towards advertisement has to be accepted.

13. The CIT (Appeals) cannot accept the Agreement dated 30.06.2010 in piecemeal and the same has to be accepted entirely.

14. The CIT (Appeals) failed to note that the Agreement is accepted as valid by the same Assessing Officer in the case of M/ s.DRS Industries and same cannot be negated in the case of the Appellant.

15. The Appellant craves leave to file additional grounds/ arguments at the time of hearing."

3. The brief facts of the case are that, the assessee company is engaged in the business of car spares sales & services, filed its return of income for the assessment year 2012-13 on 27.09.2012, declaring total income of Rs. 50,70,660/- under

normal provisions and book profit of Rs. 51,02,519/- u/s. 115JB of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The case was selected for scrutiny and the assessment has been completed u/s. 143(3) of the Act on 30.03.2015, and determined total income of Rs. 5,37,13,270/- by making various additions including additions towards disallowance of unexplained expenditure being rent paid to M/s. DRS Industries Ltd., and disallowance of advertisement expenses paid to M/s. DRS Industries Ltd. The assessee carried the matter in appeal before the first appellant authority and the Ld. CIT(A), for reasons stated in their appellant order dated 03.01.2022, sustained additions made towards disallowance of rent paid to M/s. DRS Industries Ltd., however allowed partial relief in respect to advertisement expenses paid to M/s. DRS Industries Ltd and out of disallowance of Rs. 35,79,359/-, the CIT(A) has allowed relief to the extent of Rs. 22,16,664/- and balance amount of Rs. 13,62,695/- has been confirmed. Aggrieved by the Ld. CIT(A), the assessee is in appeal before us.

4. The first issue that came up for our consideration from ground no. 1 to 8 of assessee's appeal is disallowance of rent paid to M/s. DRS Industries Ltd. The fact with regard to the impugned dispute are that, the assessee claims to have entered into an agreement with M/s. DRS Industries Ltd for purchase of Skoda cars dealership. As per said agreement between the assessee and M/s. DRS Industries Ltd., from the date of agreement i.e., 30.06.2010, within three months the dealership should be transferred to Miracle Cars India Pvt Ltd., i.e, appellant. Since, the assessee had entered into an agreement for purchase of dealership, it has carried out business of spares sales and services of cars and has paid rent to land owner amounting to Rs. 32,40,000/-. The AO has disallowed rent paid to M/s. DRS Industries Ltd., on the ground that the agreement is between land owner and M/s. DRS Industries Ltd., and further the dealership was also in the name of M/s. DRS Industries Ltd., and thus, the question of assessee making payment to land owner towards rent does not arise and thus, disallowed total rent paid by the assessee.

5. The Ld. Counsel for the assessee, referring to agreement between the assessee and the M/s. DRS Industries Ltd., dated 30.06.2010 submitted that the assessee is at bonafied belief that as per agreement dealership would change into the name of the assessee and thus, it has carried out the business and incurred necessary expenditure including rent payment to land owner. But, due to some unavoidable reasons the arrangements could not go through and thus, the assessee is not able to get dealership in their name. However, in the mean time it has incurred various expenditures including rent payment to land owners. Although, the assessee has furnished various details including TDS certificate etc, the AO had disallowed rent payment only on the ground that the agreement is not in the name of the assessee.

6. The Ld. DR, on the other hand supporting the order of the Ld. CIT(A) submitted that, the assessee could not explain how it has come under the obligation to pay rent to M/s. DRS Industries Ltd., when it is not running Skoda Cars dealership and also agreement is not in the name of the assessee. The Ld. CIT(A) after considering relevant facts has rightly

confirmed additions made by the AO and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The undisputed facts are that the agreement between the assessee and M/s. DRS Industries Ltd., dated 30.06.2010 did not materialize and consequently, the dealership of Skoda cars sales & services has not been transferred to the assessee. Further, the rent agreement in respect of premises where the business was carried out by M/s. DRS Industries Ltd., was also in the name of M/s. DRS Industries Ltd., and the land lord. Therefore, the question of assessee making rent payment directly to land owner does not arise. It is not case of the assessee that it has paid rent to M/s. DRS Industries Ltd., in pursuance of an agreement and in turn M/s. DRS Industries Ltd., has paid rent to land lord. In absence of any agreement between the appellant and land lord, the AO has rightly disallowed rent expenses debited into the profit and loss account. The Ld. CIT(A), after considering relevant facts has rightly sustained additions made by the AO and thus, we are

inclined to uphold the findings of the Id. CIT(A) and reject grounds taken by the assessee.

8. The next issue that came up for our consideration from ground no. 9 to 14 of assessee's appeal is disallowance of advertisement expenses paid to M/s. DRS Industries Ltd. The facts with regard to the impugned dispute are that in terms of agreement between the appellant and M/s. DRS Industries Ltd., the appellant is supposed to take over Skoda cars sales and services dealership from M/s. DRS Industries Ltd., within three months from the date of an agreement. The agreement between the appellant and M/s. DRS Industries Ltd., did not materialize for various reasons. In the meantime, the appellant claims to have carried out the business of sales & services and incurred advertisement expenses of Rs. 35,79,359/-. Out of total advertisement expenses of Rs. 35,79,359/-, the appellant had got reimbursement of Rs. 22,16,664/- from M/s. DRS Industries Ltd., and the same has been credited under the head 'other income'. The net expenditure incurred for advertisement expenses is about Rs. 13,62,695/-. The AO has disallowed advertisement expenses



incurred by the assessee, on the ground that there is no valid agreement between the assessee and M/s. DRS Industries Ltd., for incurring advertisement expenses. The Id. CIT(A) on appeal, allowed relief to the extent of reimbursement got from M/s. DRS Industries Ltd., and balance amount has been sustained.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Ld. Counsel for the assessee rested his arguments on the basis of agreement between the appellant and M/s. DRS Industries Ltd., and argued that the assessee has incurred advertisement expenses, because it was supposed to takeover dealership business from M/s. DRS Industries Ltd. We find that there is no valid agreement between the appellant and M/s. DRS Industries Ltd., and further the so called agreement is not acted upon, and as claimed by the assessee for various reasons, the dealership of Skoda cars sales & services has not been transferred in the name of the assessee. Therefore, the assessee is running a dealership business and incurring of advertisement expenses does not

arise. Therefore, the Ld.CIT(A) after considering relevant facts has rightly sustained net advertisement expenditure debited into the profit and loss account amounting to Rs. 13,62,695/- and thus, we are inclined to uphold the findings of the Ld. CIT(A) and reject the grounds taken by the assessee.

10. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the court on 07<sup>th</sup> December, 2022 at Chennai.

**Sd/-**  
(वी दुर्गा राव)  
**(V. DURGA RAO)**  
न्यायिकसदस्य/**Judicial Member**

**Sd/-**  
(जी. मंजुनाथ)  
**(G. MANJUNATHA)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 07<sup>th</sup> December, 2022

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |