

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'A', KOLKATA
(Before Shri P. M. Jagtap, A.M. & Shri S.S.Viswanethra Ravi, J.M.)**

ITA No. 961/Kol/2011 : Asstt. Year : 2006-2007

DCIT, Circle-8 Kolkata (APPELLANT)	Vs	M/s. Premier Road Carriers Ltd. (PAN: AACCP 8468Q) (RESPONDENT)
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**Appellant by : Shri Uday Kumar Sardar, Addl.CIT, Sr.DR
Respondent by : Shri Subash Agarwal, Advocate**

Date of Hearing : 18.01.2016	Date of Pronouncement : 15-04-2016
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ORDER

Per Shri S.S.Viswanethra Ravi, J.M.

This is an appeal filed by the Revenue against the order dated 22.03.2011 passed by the CIT(Appeals)-VIII, Kolkata for the assessment year 2006-07 framed under section 144/143(3) of the I.T.Act.

2. The Revenue being appellant raised following grounds in support of their appeal:-

“(1) That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s 40A(3) to RS.14,04,748/-, instead of Rs.3,14,36,086/-, without affording proper opportunity to the Assessing Officer to conduct a detailed inquiry in terms of provisions of section 250(4) of the Income- tax Act, 1961 read with rule 46A of the Income-tax Rule, 1962.

(2) That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.24,63,583/- on account of hamali charges and administrative expenses, without affording proper opportunity to the Assessing Officer to conduct a detailed inquiry in terms of provisions of section 250(4) of the

Income-tax Act, 1961 read with rule 46A of the Income-tax Rule, 1962.

(3) That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.9,62,722/- on account of unexplained liabilities, without affording proper opportunity to the Assessing Officer to conduct a detailed inquiry in terms of provisions of section 250(4) of the Income- tax Act, 1961 read with rule 46A of the Income-tax Rule, 1962.

(4) That the appellant craves leave to add, modify, alter and/or rescind any of the grounds of appeal at the time of hearing of the case.”

3. Brief facts of the case are that the assessee is a public limited company carrying on the business of transportation and filed its return declaring a total income of Rs.39,37,067/-. The assessee has its Corporate Office at Mumbai and registered office at Kolkata.

4. Ground no.1 relates to restricting the disallowance under section 40A(3) to Rs.14,04,748/- against Rs.3,14,36,086/-. During course of assessment proceedings the assessee claimed expenditure of Rs.39,29,51,199/- on lorry hire charges. For non-production of break-up of such expenditure, the AO assumed that lorry hire charges are paid in cash in excess of Rs.20,000/- and taken 40% of Rs.39,29,51,199/- charges as violation of section 40A(3) of the Act. The AO added 20% of such violation of Rs.3,14,36,086/- [40% of Rs.39,29,51,199/-] to the income of the assessee.

5. The Id. CIT(A) in first appeal, sought remand report and during such proceedings the AO found Rs.14,04,748/- was made in cash in excess of Rs.20,000/-. Therefore, the CIT(A) restricted the disallowance upto Rs.14,04,748/-.

6. Before us, the Id. DR contended that the assessee filed the concerned ledger copies before CIT(A), but without any opportunity being heard to the AO restricted the disallowance to Rs.14,04,748/- against Rs.3,14,36,086/- and relied on the order of the AO. The Id. AR submitted that the AO did not give the assessee proper opportunity for submission of details of expenditure which were maintained by the Corporate Office in Mumbai and there was delay of getting the details from the Corporate Office in spite of their efforts, which resulted into assessment ex parte under section 144 of the Act. Further submitted that in first appeal, the Id. CIT(A) restricted the disallowance basing on remand report submitted by the AO.

7. Heard rival submissions and perused the materials available on record. The main contention of the Revenue is that the CIT(A) did not offer an opportunity to the AO, whereas in his order, it is observed that an opportunity was offered to AO and on his remand report the disallowance was restricted to Rs.14,04,748/- the relevant portion of which is extracted below:

Ground No.4

In this ground, the appellant has objected to the action of the Assessing Officer in disallowing Rs.3,14,36,086/- on estimate basis on account of lorry hire charges u/s.40A(3) of the Income Tax Act, 1961.

In the Remand Report of the Assessing Officer he stated that after going through the ledger copies in respect of the impugned expenditure, produced during the appellate proceedings and which were sent to him for remand, the cash payment in excess of Rs. 20,000/- were found to the tune Rs.14,04,748/- only, details of which are given in annexure A of the remand report. Hence, this amount is disallowable u/s. 40A(3) of the Income Tax Act, 1961. In view of the above finding given by the A.O. in the remand report, after perusal and examination of the details and documents furnished by the assessee, the disallowance on account of Lorry Hire

charges is restricted to Rs. 14,04,748/-. The appellant gets relief of Rs.3,00,31,338/-. Ground No. 4 is, thus, partly allowed.”

7.1 We find that the proper opportunity was accorded to the AO for his comments and in turn, the AO examined the details and break-up of lorry hire charges and found that the assessee has paid Rs.14,04,748/- in excess of Rs.20,000/-. On such remand report the CIT(A) restricted the disallowance to Rs.14,04,748/- and therefore, we do not find any merit in the ground raised by the Revenue for violation of Rule 46A of the Rules. The assessee did not offer any explanation to the disallowance of Rs.14,04,748/- and thus, we confirm and justify the order of CIT(A) on ground no.1. Accordingly, the ground no.1 fails and it is dismissed.

8. Ground nos.2 and 3 raised by the Revenue relating to deletion of disallowance of Rs.24,63,583/- on account of Hamali charges and administrative expenses and deletion of disallowance of Rs.9,62,722/- on account of unexplained liabilities without affording proper opportunity to the AO. The reasons recorded by the AO that the expenses of Hamali charges and administrative expenses remained unverified. Thereby the AO added Rs.24,63,583/- being 10% of Rs.2,46,35,827/-. On account of liability shown by the assessee and for non-production of details, the AO estimated the liability at 10% of total liability of Rs.96,27,221/- and added Rs.9,62,722/- to the total income of the assessee. The CIT(A) basing on remand report deleted both the impugned additions.

9. The ld. DR relied on the order of the AO and ld. AR relied on the order of CIT(A).

10. Heard rival submissions and perused the relevant materials available on record. As rightly pointed out by the ld. AR that the CIT(A) has given an opportunity to AO for examination of details of Hamali charges, administrative expenses and liabilities. We find that the AO submitted remand report and offered no adverse remarks against the assessee, the relevant portion of which is reproduced herein below:

“Ground No. 5, 6 & 7

In these grounds, the appellant has objected to the action of the Assessing Officer in (i) disallowing a sum of Rs.24,63,583/- on a count of Hamali charges and Administrative expenses on estimate basis, (ii) disallowing of a sum of Rs.9,62,722/- on account of liabilities on estimate basis and (iii) disallowing a sum of Rs.50,00,000/- on account of Lorry Hire charges on estimate basis u/s. 40(a)(ia) of the Income Tax Act, 1961.

I have considered the submission of the appellant and perused the Remand Report of the Assessing Officer on the disallowances as per above grounds.

As per the remand report, after going through the evidences and Ledger accounts produced by the assessee during the appellate proceedings, all the details in respect of these expenses has been verified by the A.O. and no adverse inference was drawn by him. In light of the above remand report of the A.O., the disallowance contested by the assessee in grounds No. 5, 6 and 7 are deleted and these grounds are allowed. The appellant gets relief of Rs. 84,26,305/- (i.e. Rs.24,63,583/- on account of Hamali charges and Administrative expenses, Rs. 9,62,122/- on account of Liabilities and Rs. 50,00,000/- on account of Lorry Hire charges U/S, 40(a)(ia) of the Income Tax Act, 1961).”

11. We find that the proper opportunity was accorded to the AO for his comments and in turn, the AO examined the details and all the details in respect of Hamali charges and Administrative expenses and

these expenses has been verified by the A.O. and the AO also examined liabilities and no adverse inference was drawn by him on all these grounds of appeal. On such remand report the CIT(A) deleted the disallowances on Hamali charges and Administrative expenses and unexplained liabilities and therefore, we do not find any merit in the grounds 2 and 3 raised by the Revenue for violation of Rule 46A of the Rules. Thus, we confirm the order of CIT(A) on ground no's.2 and 3. Accordingly, the ground nos. 2 and 3 fails and they are dismissed.

12. In the result, the appeal filed by the Revenue is dismissed.

Order Pronounced in the Open Court on 15th April, 2016.

Sd/-
(P.M.Jagtap)
ACCOUNTANT MEMBER

Sd/-
(S.S.Viswanethra Ravi)
JUDICIAL MEMBER

Dated: 15/04/2016

Talukdar/Sr.PS

Copy of order forwarded to:

- 1 M/s. Premier Road Carriers Ltd., 32, J.L. Nehru Road, Kolkata – 700 071
- 2 DCIT, Circle-8, Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata