

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 276/JP/2014
निर्धारण वर्ष/Assessment Year : 2010-11

M/s Supersonic Turners Pvt. Ltd., F-393A, Road No.9 F2, VKI Area, Jaipur.	बनाम Vs.	The A.C.I.T., Circle-4, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCS 5144 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Satish Gupta (C.A.)
राजस्व की ओर से/ Revenue by : Shri Prithivi Raj Meena (Add. CIT)

सुनवाई की तारीख/ Date of Hearing : 21/02/2017
उदघोषणा की तारीख/ Date of Pronouncement : 23/02/2017

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. CIT(A) dated 21.02.2014 for A.Y. 2010-11. The grounds of appeal taken by the assessee are as under:-

- 1. On the facts & circumstance of the case & in law, Ld. Lower authorities grossly erred in confirming the addition of Rs.25 lacs on a/c of disallowance of job work exp. on lumpsum basis. The observation of Ld. CIT(A) that since the disallowance is less than 3% of the total job work charges paid the same in not exorbitant*

or disproportionate. Ld. A.O. or CIT(A) even could not find a single instance of any unvouched exp., unsigned voucher or voucher without description. Therefore the observation of Ld. CIT(A) that the defect noticed by A.O. were found by him also is wrong fact as he also has not mentioned any specific defect.

2 On the facts & circumstances of the case & in law also Ld. Lower authorities grossly erred in confirming the disallowance of Rs.5,11,060/- on a/c of disallowance of interest paid.

2. In respect of ground no. 1, the brief facts of the case are that during the assessment proceedings, it was observed by the AO that the assessee company has claimed job work expenses of Rs.8,77,81,594/- as per the profit and loss account. The assessee was specifically requested to furnish bills in respect of these claimed expenses. However, the bills so produced were found to be without any description of the work done. While some of the bills were found to be unsigned, in some of the bills signatures were found to be in the same handwriting. These discrepancies were also pointed out to the assessee. In response, it was submitted by the assessee that majority payments were made through banking channels and the TDS was duly deducted and paid on all these payments. The submission of the assessee was considered by AO and it was stated by the AO that the reply of the assessee falls short of justification in respect of discrepancies as enumerated in the bills above,

because without any detailed description of the work done and appropriate endorsement, the veracity of the expenses claimed under job work stands disputed, unverified and unproved. Total job work charges debited in the P/L account are Rs.8,77,81,594/-. The AO noted that disallowance @ 10% of these expenses comes out to Rs.87,78,159/- and @ 5% comes out to Rs.43,89,80/-. Keeping in view the reply of the assessee and looking to all possibilities invoked, a lump sum disallowance of Rs.25,00,000/- was thereafter made by the AO and added to the total income of the assessee.

3. Being aggrieved, the assessee preferred an appeal before the Id. CIT(A), who has confirmed the order of the AO by observing in para 2.3 of his order as under:

"2.3: I have considered the facts of the case; assessment order and appellant's written submission. Assessing Officer disallowed Rs.25 lakhs out of job work charges on account of defects in the bills such as certain bills not bearing signature, description of factual work done not there etc. The disallowance made by the assessing officer is less than 3% of the total job work charges paid and therefore it can be seen that disallowance made by the Assessing Officer is not exorbitant or disproportionate. During appeal proceedings this issue was again examined and it is found that apart from the defects noticed by the Assessing Officer, appellant made cash payment on account of job work

charges to associated concerns. Payment of job work charges to the extent of more than Rs.20 lakhs were made by cash to M/s Pawansut. In the tax audit report, payment for job work and others to related parties was reported to be more than Rs.1 crore therefore the genuineness and business purpose of these expenses are not beyond doubt. Considering the defects in vouchers and substantial cash payment to related parties, part disallowance of job work charges is justified. Since assessing Officer disallowed less than 3% expense which is quite reasonable and even less than cash payments made for job work charges, disallowance deserves to be confirmed. The appellant's arguments that no such disallowance was made in earlier years is of no consequence since Assessing Officer found defect in the expense claimed and therefore disallowance can be made in the year of verification. Accordingly, disallowance made by the Assessing Officer is confirmed".

4. The Id. Counsel for the assessee drawn our attention to Para 3.1 at page 2 of the assessment order where the Assessing Officer made the disallowance by mentioning "The reply of the assessee has been carefully considered, which falls short of justification in respect of discrepancies as enumerated in the bills above, because without any detailed description of the work done and appropriate endorsement, the veracity of the expenses claimed under job work stands disputed, unverified and unproved. Total job work charges debited in the P/L account are Rs.8,77,81,594/-. Disallowance @ 10% of these expenses

comes out to Rs.87,78,159/- and @ 5% comes out to Rs.43,89,80/-.

Keeping in view, the reply of the assessee and looking to all possibilities invoked, a lump sum disallowance of Rs.25,00,000/- is made out of the job work expenses claimed and added to the total income of the assessee.”

4.1 It was submitted that from the perusal of the above para of the AO's order that it is clear that the disallowance has been made on lump sum basis without specifying any voucher or bill which is without any description of work done, which is found unsigned and bills where signatures were found to be in the same handwriting. No consideration was given to the reply that majority payments were made through banking channels and TDS has been deducted and paid on all eligible payments.

4.2 The Id AR further reiterated the submissions made before the Id CIT(A). It was submitted before the Id CIT(A) that the AO has disallowed a sum of Rs.25,00,000/- on a/c of job work expenses claimed by the Assessee. This disallowance has been made on lump sum basis without having any specific adverse material. The assessee is a company doing the business of manufacturing and job work of bearing rings since last so many years. The assessee do manufacturing and job work at his

own plant and also get the job work done from others small job works. The assessee filed return of income declaring an income of Rs.1,79,38,482/-. During the year, the assessee claimed job work expenses of Rs.8,77,81,594/-in the P&L A/C. It has been mentioned by the AO at Para 3 of page 1 of the assessment order that the Assessee company was asked to furnish bills of job work. It has also been admitted by the AO that the assessee produced all the bills. As per the AO, some of the bills were unsigned and in some of the bills signature were found to be in same handwriting and in some cases description was not there. However, the AO did not mention any such specific instance in the assessment order. In this respect, we further submit that the entire expenditure was vouched. Almost all the payments have been made through A/C payee cheque/banking channel. In all eligible cases, TDS has been deducted and deposited on job work payments. TDS returns have also been filed. The same was also verified. All such parties are income tax assesses and LD AO could have made enquires directly for verification of payment/work, if there was any doubt on account of any unsigned bill or same handwriting. It is not understandable that how signatures can be in different handwriting on the bills. The necessary description was there on the bills. If some of the bills were not upto the mark of LD AO the enquiry should have been

made from the job worker before making lump sum disallowance. The Assessee is an old Assessee and in past assessments have also been made under scrutiny. For example, assessment of preceding year i.e. A.Y. 2009-10 was also made under scrutiny but no such disallowance was made. We may submit all the bills of job work for your kind perusal and verification if your honour kindly permit. Some of the bills of job work are hereby submitted for your kind perusal and verification.

4.3 It was further submitted that the Id CIT (Appeals) confirmed the disallowances by bringing one more allegation in the order that in some cases cash payment on account of job work charges has also been made to the related parties.

4.4 It was further submitted that the expenses are 100% vouched and no specific instance of any unvouched expenses has been given by Ld lower authorities. That on all the bills the description has been mentioned in the bills in short form, the language adopted by the trade. For example for the job work BORE/OD/FACE the words in shortcut BOF has been mentioned. Likewise, IR represents Inner Ring and OR represents Outer Ring. Likewise DP represents Drilling and Parting. Therefore it is not correct observation of Ld lower authorities that description of work done was not mentioned. Regarding another alleged

defects that bills were found to be unsigned and some of the bills signatories were found in same handwriting are irrelevant observations because no specific instance was given even no enquiry whatsoever was made from such job workers. Therefore the disallowance has been made on irrelevant and unconfirmed facts.

4.5 It was further submitted that no such addition was made in the past and this fact was not considered by Ld. CIT (Appeals). The observation of Ld. CIT (Appeals) that the payments have been made in cash and to the related parties is not lawful because Ld. CIT (Appeals) himself in the appeal order has mentioned that assessee has declared such payments to relatives in the tax audit reports and there is no allegation that payments to relatives have been made over and above the market price and there is no such allegation that cash payment have been made in violation of Section 40A(3) of the Income Tax Act, 1961. Therefore, the disallowance is simply based on assumptions and presumptions and no evidence against the assessee has been brought on the record, hence the disallowance is unlawful.

4.6 It was further submitted that the disallowance made with the remark that it is only less than 3% of the expenses should not be

allowed to be made and the assessment should be made on the basis of books of accounts, vouchers and bills.

4.7 It was submitted that the assessee claimed deduction u/s 37(1) of the Income Tax Act, 1961 and as per the provision of the said section, disallowance can be made only in the circumstances where the alleged expenditure is capital expenditure, personal expenses of the assessee or was not incurred wholly and exclusively for the purpose of business or which is unlawful. In this case before making disallowance, none of the above defect has been brought on the record therefore the disallowance is bad in law. It is also submitted that the expenditure was supported by proper supporting and bills. The expenditure was incurred wholly and exclusively for the business purposes.

4.8 It was submitted that all the payments are subject to TDS and cash payment was also made to the person who is assessed to income tax and the payment was within the permissible limits of Section 40A(3) of the Act. The expenses are reasonable and are resulting into receipts because these expenses are directly related to the manufacturing part. The lower authorities have not pointed out any specific payment which is not verifiable. It is not the case of the Ld A.O. that expenses are inflated or fake. It is humbly submitted that all the expenses are

verifiable and no disallowance should have been made. The receipt of the assessee during the year under consideration was of Rs.51.20 crore. Some of the vouchers which are also submitted before Ld CIT (Appeals) are part of paper book for the perusal and verification of the Hon'ble Bench.

5. The Id DR is heard who has relied upon the order of the lower authorities and also submitted that the sample size of sample bills produced is not commensurate with the quantum of job work expenses claimed in the profit/loss account.

6. We have heard the rival contentions and pursued the material available on record. The Assessing Officer has disallowed a lump sum amount of Rs.25 lacs out of Rs. 8,77,81,594/- job work expenses claimed by the assessee in its profit & loss account. As per the Assessing Officer, the bills submitted by the assessee for verification donot contain any detailed description of the work and some of bills were found to be unsigned and some of the bills were signed in the same handwriting. The matter was again examined by the Ld. CIT(A). Considering the defects in vouchers and substantial cash payment of more than Rs.20 lacs paid to related party, M/s Pawansut and given that the expenses disallowed by the Assessing Officer is less than 3% of the

total expenses claimed, the disallowance made by the Assessing Officer was found reasonable and disallowance was confirmed by Id CIT(A). The Ld. A.R. has submitted that 100% of the job work expenses are vouched and no specific instance of any unvouched expenses has been given by the lower authorities. All the bills contains the description of work done, though in short form, as per the trade practice and custom of the assessee trade. So far as the payment in cash is concerned, the same was made within the permissible limits of Section 40A(3) of the Act. We have given a careful consideration to the matter and we are of the view that the assessee's contention deserves to be accepted. Firstly, the addition has been made on purely an adhoc basis without highlighting any specific instance where the payment is not verifiable or the expenses claimed by the assessee are bogus or have not been incurred for the purpose of business. Further, no specific instance of cash payment has been highlighted which has violated the provisions of Section 40A(3) of the Act. In light of above, we hereby delete the disallowance of Rs.25 lacs made by the Assessing Officer. In the result, ground No.1 of the assessee is allowed.

7. In respect of ground no. 2, the brief facts of the case are that the assessee has paid interest of Rs 17,88,712 to M/s Poddar Consultancy

Organization @ 16.8%. Since M/s Poddar Consultancy Organization is a shareholder in Supersonic Turners (P) Ltd., the excess claim of interest paid to this concern was disallowed and restricted to 12%, being the normal rate of interest at which interest was paid to other concerns. Hence, the excess interest paid of Rs.5,11,060/- was disallowed and added back to the total income of the assessee.

6. Being aggrieved, the assessee preferred appeal before the Id. CIT(A), who has confirmed the order of the AO by observing in para 3.3 of his order as under:

"I have considered the facts of the case; assessment order and appellant's written submission. Assessing Officer restricted the interest paid to related party at the rate of 12% of the ground that the rate of interest with bank and institution is 12%. Appellant submitted that the recipient has offered the same as income. However if excess interest is paid such excess is disallowable under Section 40A(2)(b) irrespective of disclosure of such income by the recipient. Therefore appellant's argument is not justified. When appellant was borrowing from banks at 12%, how interest of 16.8% paid to related party can be reasonable. The interest payment in earlier years will not be relevant to decide the issue of disallowance of interest this year. Considering all these facts, it is held that disallowance of interest made by the Assessing Officer is justified and accordingly the same is confirmed".

7. The Id. Counsel for the assessee submitted that the A.O treated this recipient as related party having the belief that the recipient is shareholder of the company and it was mentioned before Ld CIT(Appeals) that the recipient is not the shareholder of the company. Surprising, Ld CIT (Appeals) did not consider this facts and even did not mention this fact in his order under the head written submission of the assessee.

7.1 The assessee in the financial statement has given all the details of related parties and M/S Poddar Consultancy Organization is not the related party, therefore the disallowance has been made on wrong facts. As per the clause (ii) of Section 40A(2)(b), for a company assessee, the related party is only director of the company or any relative of such director of the company, therefore even the section is not applicable on the payments to shareholders of a company.

7.2 The Id CIT (Appeals) held that even if the recipient has declared the income in his/her return of income, the excess amount is disallowable u/s 40A(2)(b) of the Income Tax Act. In this respect, it is humbly submitted that when the recipient has declared the income in the return of income then there is no loss to revenue and the disallowance is unlawful. Moreover it is also submitted the payment is

genuine and not excessive because the finance from banks and finance from private parties cannot be on the same rates because the loan from private parties is without security whereas loan from bank is secured and therefore rate of interest @ 16.8% to a private lender is quite reasonable and justified. We rely on Hon'ble ITAT Ahmedabad in the case of Omkarmal Gaurishanker v/s ITO 92 TTJ (Ahd.) 223, in the case of Y. Mehta v/s ACIT ITA No.869/Ahd/2010 and in the case of ACIT v/s M/s Raj Steel Industries ITA No.2245/AHD./2010.

8. The Id DR is heard who has relied upon the order of lower authorities.

9. We have heard the rival contentions and pursued the material available on record. The assessee has paid interest @ 16.8% to M/s Poddar Consultancy Organization. The Assessing Officer has restricted the allowance of interest @ 12% on the ground that firstly M/s Poddar Consultancy Organization is a shareholder in the assessee company and being a related party, the payment would be subject to Section 40A(2)(b) of the Act and secondly, the rate of interest paid to banks was 12% and amount over and above that is disallowable under Section 40A(2)(b) of the Act. The appellant has contended that firstly M/s Poddar Consultancy Organization is not a shareholder of the assessee

company and secondly, the payment of interest is quite reasonable and genuine because the finance from banks and finance from private parties cannot be compared as loan from private parties is without security whereas loan from a bank is secured and therefore, there is a variance in the rate offered by the private parties and charge by the banks. In our view, the rate of interest on borrowing need to be benchmarked with the third party transaction in the similar facts & circumstances of the case. In the instant case, what is being compared is a rate of interest on an unsecured borrowing vis-à-vis a secured borrowing. In absence of a comparable case being highlighted by the Assessing Officer, we are unable to accept the stand of the revenue that the interest paid is on a higher side. In light of above, the ground No.2 of the assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 23/02/2017.

Sd/-
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 23/02/2017.
Sanjeev.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/S supersonic Turners, Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT, Circle-4, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 276/JP/2014}.

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar