

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No. 736/Hyd/2017
Assessment Year: 2010-11

Autofin Ltd., vs. Income Tax Officer,
Secunderabad. Ward – 1(1), Hyderabad.

PAN – AACCA9402F
Appellant Respondent

Assessee by: Shri K. Sai Prasad
Revenue by: Smt. M. Narmada

Date of hearing: 21/12/2017
Date of pronouncement: 24/01/2018

ORDER

PER S. RIFAUR RAHMAN, AM:

This appeal is filed by the assessee against the order of CIT(A) - I, Hyderabad, dated 27/01/2017 for the AY 2010-11.

2. Briefly the facts of the case are, the assessee filed its return of income on 28/09/2010 declaring loss of Rs. 73,63,645/-. The case was selected for scrutiny under the CASS and notices u/s 143(2) & 142(1) were issued. The assessment was completed u/s 143(3) on 22/03/2013 determining loss at Rs. 50,59,003/-.

2.1 During the course of assessment proceedings, the Assessing Officer noticed that the assessee had paid Rs.18,00,000/- towards rent for the land taken on lease from Sri Gautam Chand Jain (HUF) of around 400 sq. yds. The AO observed that an enquiry was conducted from one M/s. Mourya Timbers in the same area who had also taken land on

lease of around 250 to 300 sq yds. M/s Mourya Timbers in its letter dt.18.03.2013 submitted that the lease rent paid by the firm was Rs.33/- per sq. yd. It also submitted a copy of the P&L a/c showing rent debited and its PAN number. The outcome of the above enquiry was put forth to the assessee and was asked to show cause as to why the rent @ Rs.33/- per sq.yd should not be adopted. The assessee contended that the land given on rent was in fact 800 sq. yds and not 400 sq. yds. However, The assessee had not produced any evidence to justify its claim of the rent. Therefore, the Assessing Officer considered the rent @ Rs.33/- per sq.yd. which worked out to Rs.1,58,400/- (Rs.13,200/- per month) and the balance rent of Rs.16,41,600/ (18,00,000 -1,58,400) was disallowed and added to the income of the assessee as per the provisions of sec. 40A(2)(b). Aggrieved with the above order, the assessee preferred an appeal before the CIT(A).

3. Before the CIT(A), the assessee submitted that the total area of rent is 833 sq.yd. and in the previous year, the Assessing officer had taken lease rent as Rs. 100/- per sq.yd. He submitted that the value taken by the Assessing Officer has not been confirmed by the assessee after the ITAT has set aside the order.

4. After considering the submissions of the assessee, the CIT(A) observed that the assessee had not given any supporting document of lease rent and moreover the AO had made an enquiry from M/s Mourya Timbers and came to know that the rent per sq.yd. was only Rs. 33/-. He further observed that the assessee had not given any submissions regarding as to why the rent should be allowed on such a higher amount. In view of the above observation, the CIT(A) upheld the action of the AO.

5. Aggrieved by the order of the CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

1. The order of the learned first Appellate Authority confirming the disallowance made u/s 40A(2)(b) is not correct either in law or on fact and in both.

2. The learned first Appellate Authority failed to appreciate the fact that the provisions of section 40A (2)(b) are not applicable to the facts and circumstances of the case.

3. The learned First Appellate Authority failed to appreciate the fact that the Assessing Officer has taken improper measurements of the property in working out the additions u/s 40A(2)(b).

4. The learned First Appellate Authority failed to appreciate the alternate plea of the appellant that the rent allowed @Rs.33 per Sq.yd is less than the rent of the Rs.100 allowed in the earlier assessments.

5. The learned first Appellate Authority is not justified in confirming the disallowance of Rs.16,41,600/- made by the Assessing Officer u/s 40A(2)(a) of the Act.

6. The appellant craves leave to add, amend or alter any of the above grounds.

6. Before us, the Id. AR of the assessee invited our attention to the pages 11 to 14 of the paper book, which is a copy of lease deed dt. 01/04/2008 between Sri Gautamchand Jain and M/s Autofin Ltd. filed before the AO, to submit that the land given on rent is 833 sq.yds. and not 400 sq.yds. as mentioned by the AO and also the lease rent of Rs. 1,50,000/- per month was paid, as per the lease deed. He relied on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Goa Minerals Pvt. Ltd., [2017] 396 ITR 452 (Bom.)

7. Ld. DR, on the other hand, relied on the orders of revenue authorities.

8. Considered the rival submissions and perused the material on record. On perusal of record, we find that similar issue arose before the coordinate bench of this Tribunal in assessee's own case for AY 2009-10 in ITA No. 57/Hyd/2010 vide order dated 25/03/2015 wherein the coordinate bench remitted the matter back to the file of the AO by observing as under:

6. We have considered the rival contentions and examined the record. There is no dispute with reference to the fact that assessee has taken lease of total 3253 sq. yards as against 2820 sq. yards recorded by the A.O. in arriving at the disallowance. Assessee has filed an affidavit mentioning area leased out and also sale deeds to submit that area of 833 sq. yards given by Mr. Gowtham Chand Jain was wrongly noted as 400 sq. yards before the A.O. which mistake carried being in the order of the Ld. CIT(A). Assessee filed additional evidence which require examination by the A. O.

7. Coming to the issue of adopting the fair rental value it is not clear from the ITI report how he arrived at the rental values. Except his report there is no supporting evidence in the form of lease deeds or area maps so as to examine whether lease rents recorded by him are reasonable or represent fair rent of the area. In fact, the Inspector's report extracted by the Ld. CIT(A) in the order does not even indicate whether there is any similarity or dissimilarity between assessee's property and the property's values he has enquired. Moreover, it is also contention that assessee was not given any opportunity during the assessment proceedings nor there is any opportunity by the Ld. CIT(A). In view of this, we are of the opinion that whole exercise conducted by the A.O. requires re-adjudication. A.O. should examine the extent of land leased and then establish that the rent paid by assessee is fair rent or not. Moreover, A.O. also should give due opportunity to the assessee if any enquires are caused by him in this regard. With these observations, we set aside the order of the A.O. and Ld. CIT(A) and restore the matter to the file of the A.O. to consider the additional evidence filed before us and also to give an opportunity to the assessee to justify the claims made therein."

Since the issue in the AY under consideration is similar to AY 2009-10, following the decision therein, we remit the issue back to the file of the AO to decide the issue following the directions of coordinate bench in AY 2009-10. The AO is directed to adopt the area as well as the rent as determined in the AY 2009-10.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 24th January, 2017

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 24th January, 2017

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Copy forwarded to:

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2. ITO, Ward – 1(1), IT Tower, 7th Floor, Hyderabad
3. CIT(A) -I, Hyderabad
4. Pr. CIT - 1, Hyderabad
5. The DR, ITAT, Hyderabad
6. Guard File