

**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गराव, न्यायिक सदस्य एवं**  
**श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

**आयकर अपील सं./I.T.A.No.375/Vizag/2016**  
(निर्धारण वर्ष / Assessment Year: 2009-10)

ACIT, Circle-3(1),  
Vijayawada

(अपीलार्थी / Appellant)

M/s. Kranti Road Transport  
Pvt. Ltd.  
Vijayawada  
[PAN No.AAACK9322N]  
(प्रत्यार्थी / Respondent)

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

: Shri P.S. Murthy DR  
: Shri G.V.V. Satyanarayana,  
AR

सुनवाई की तारीख / Date of hearing

: 20.02.2018

घोषणा की तारीख / Date of Pronouncement

: 16.03.2018

**आदेश / O R D E R**

**PER D.S. SUNDER SINGH, Accountant Member:**

This appeal filed by the revenue is directed against order of the Commissioner of Income Tax (Appeals) {CIT(A)}, Vijayawada vide ITA No.78/CIT(A)/VJA/2015-16 dated 28.3.2016 for the assessment year 2009-10.

2. The assessee is a Private Limited company carrying on the business in transportation of goods by engaging/hiring vehicles from several persons including the Directors, relatives of Directors and others. The assessee filed its return of income for the A.Y. 2009-10 admitting total income of ₹ 85,57,730/-. Assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') was completed assessing on total income of ₹ 99,64,837/-. By rectification order, the total income was revised at ₹ 1,03,39,880/- after disallowing the excess claim of depreciation of ₹ 3,75,038/-. Subsequently, the case was reopened u/s 147 of the Act for the reason that the assessee had shown the same vehicles in the chart of leased vehicles and own vehicles and claimed lease rent. The A.O. also observed that the payment is covered by section 40A(2)(b) of the Act. The reassessment proceedings were completed by the A.O. u/s 143(3) r.w.s. 147 of the Act after making the disallowance of ₹ 14,16,600/- on account of lease rent paid to the directors and disallowance of ₹ 2,12,64,270/- u/s 40A(2)(b) of the Act.

3. As regards the disallowance made on account of lease rent paid, the A.O. noticed that the assessee had claimed the expense of lease rent to the extent of Rs.14,16,600/- on vehicles owned by the company. In this regard, the assessee submitted during the assessment proceedings that it had sold the own vehicles to its

Directors on 31.12.2008 and taken the same vehicles on lease, hence, they appeared in both lists of own vehicles and the leased vehicles. The assessee further stated that it has paid the lease rent to its directors for 3 months only and for the remaining period they were used as own vehicles and no lease rent was paid hence no double claim. However, the A.O. found from the details furnished by the assessee relating to its Directors that they had not admitted the lease rent of Rs.14,16,600/- in their respective returns of income and the assessee has not furnished the copy of resolution passed in order to take the Directors' vehicles on lease. Hence, the A.O. concluded that on the one hand the assessee stated to have paid the lease rent of Rs.14,16,600/- and on the other hand the Directors of the assessee company had not admitted the lease rent in their returns of income, hence, held that the assessee failed to prove the payment of lease rent of Rs.14,16,600/- and accordingly disallowed the same.

4. With regard to disallowance made u/s.40A(2)(b) of the Act, the A.O. on examination of profit & loss account noticed that the assessee had claimed other lorry charges of Rs. 11,77,95,333/-, which includes lease rent for 44 vehicles said to be taken from the Directors and their spouses and relatives. The assessee paid lease

rent of Rs.2,98,80,869/- on account of these 44 vehicles. The assessee explained before the A.O. that these 44 vehicles are used for the purpose of business and were taken on lease from the Directors, for which 36 vehicles were used for the whole year and remaining vehicles for 3 months. The assessee is making the payments towards the hire charges per km basis @Rs.10/- per km to the Directors as well as outsiders. The Assessing Officer observed that the assessee has not furnished the details relating to gross receipts per vehicle along with trip sheets, terms and conditions entered into with its Directors and Relatives of the Directors and working details to show that there was no excessive or unreasonable lease rent paid. Further, the Assessing Officer on verification of information furnished with regard to lease rent paid to Directors and relatives of Directors noticed that it contains only the journal entries of date truck hire advance and other lorry hire payables etc. Accordingly, the A.O. after considering the information furnished by the assessee held that the claim for expenditure can be allowed to an assessee, only when it produces supporting evidence and establishes that the expenditure has been incurred wholly, exclusively and necessarily for the purposes of its business. In this regard, the A.O. has relied on the decision

rendered by the Hon'ble Supreme Court in the case of M/s. Sutlej Cotton Mills Ltd. 116 ITR 1 (SC) (1979). The A.O. held that the payment of ₹ 2,00,000/- per vehicle per month is reasonable and worked out the disallowance u/s 40A(2)(b) of the Act at ₹ 2,12,64,270/- and accordingly completed the assessment.

5. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) after verification of the details produced by the assessee, he has partly allowed the appeal of the assessee.

6. Aggrieved by the order the CIT(A), the revenue is in appeal before us with the following grounds of appeal:

1. *The Id. CIT(A) erred both in law and on the facts of the case;*
2. *The Id. CIT(A) erred in deleting the addition of Rs.2,12,64,270/- made towards excess hire charges paid to its Directors/Relatives of the Directors u/s.40A(2)(b) without considering the fact that the AO adopted the rate of Rs.2 lakhs per vehicle as fair lease rent based on the assessee's claim of lease rent expenditure of Rs.14,16,600/- in respect of 8 vehicles sold to its Directors;*
3. *The Id. CIT(A) ought to have considered that though the assessee followed the uniform rate, the assessee could not produce any evidence in support of the claim of expenditure i.e. the details relating to gross receipts per each vehicle along with trip sheets, terms and conditions entered with its Directors and Relatives of the Directors and working details to show that there was no excessive or unreasonable lease rent paid to them.*
4. *The Id. CIT(A) erred in deleting the addition accepting the additional evidences without calling for the remand report from the AO under rule 46A of the I.T. Rules;*
5. *The Ld. CIT(A) erred in deleting the addition of Rs.14,16,600/- merely on submission of Certificates of Registration furnished by the assessee ignoring the facts elaborated in page 18 of the*

*assessment order passed u/s.143(3) r.w.s.147 of the I.T.Act.*

6. *Any other ground that may be urged at the time of hearing.*

7. Ground Nos.1 & 6 are general in nature which does not require specific adjudication.

8. Ground Nos.2, 3 & 5 are related to the addition of ₹ 2,12,64,270/- disallowed u/s 40A(2)(b) of the Act in respect of the hire charges paid to the relatives of the Directors and a sum of ₹ 14,16,600/- lease rent paid to the Directors.

9. Disallowance of hire charges u/s 40A(2)(b) of the Act: During the appeal hearing, the Ld. D.R. argued that the A.O. has considered for disallowance of ₹ 2,12,64,270/- for taking 44 lorries on hire from the Directors and relatives. Out of the 44 vehicles, 36 vehicles were plied for 12 months and 8 vehicles were plied for 3 months. The total amount paid to the Directors and their relatives as a hire charges was ₹ 2,98,80,865/- out of which the A.O. allowed the deduction of ₹ 72 lakhs @ 2 lakhs per vehicle for 36 vehicles and disallowed a sum of ₹ 14,16,600/- for 8 vehicles taken on lease from the Directors and the balance amount of ₹ 2,12,64,270/- was disallowed as excess payment u/s 40A(2)(b) of the Act. The reasons assigned by the A.O. was assessee's failure to furnish the

details called for by the A.O. as under:

1. *The gross receipts per vehicle along with trip sheets and after deducting the corresponding expenditure with supporting evidence, the quantum of net profit arrived. Out of which, the quantum of lease rent paid either by way of cash or through cheque to its Directors and relatives of the Directors.*
2. *Material evidence to show i.e. terms and conditions entered with its directors and relatives of the directors i.e. in the form of resolution passed and copies of lease agreement deeds.*
3. *Working details to show that there was no excessive or unreasonable lease rent paid to its Directors and relatives of the Directors.*

10. The Ld. D.R. argued that the Ld. A.O. could not ascertain the reasonableness of the payment made to the Directors in the absence of the information called for and hence the A.O. has made the disallowance correctly. The Ld. D.R. further submitted that during the appeal hearing, the assessee had furnished the above details to the CIT(A), hence the Ld.CIT(A) ought to have given the opportunity to the A.O. as required under Rule 46A of the Income Tax Rules, thus, requested to remit the matter back to the file of the A.O. for fresh adjudication.

11. On the other hand, the Ld. A.R. of the assessee argued that during the assessment proceedings, the assessee has produced the books of accounts, relevant vouchers and the entire information including the trip sheets before the A.O., both at the time of original assessment u/s 143(3) as well as in reassessment u/s 143(3) r.w.s. 147 of the Act. The Ld. A.R. further argued that the assessee has neither furnished any

fresh information nor fresh evidence before the CIT(A), which warrants opportunity under Rule 46A of the I.T. Rules. The information placed before the A.O. was furnished to the Ld. CIT(A) during the appeal proceedings. Since the assessee has furnished entire information before the A.O. and produced the books of accounts along with vouchers and evidences in two rounds i.e. at the original assessment and in the re-assessment proceedings, again remitting the matter back to the file of the A.O. is nothing but undue hardship to the assessee to appear time and again on the same issue in spite of submitting all the details, therefore, argued that there is no case for sending the case back to the A.O. and requested to dispose of the appeal. The Ld. A.R. further submitted that the assessee is making the payment of hire charges @ ₹ 10/- per km. for all the vehicles taken on lease both from the Directors as well as from others. Though the vehicles appear to be old, the assessee had maintained them very well they are in good condition and giving good mileage. The vehicles are also in fit condition, which was approved by the concerned motor vehicle authorities, hence, there is no reason to give less price to the vehicles hired from Directors. The Ld. A.R. further argued that the A.O. made disallowance u/s 40A(2)(b) of the Act without ascertaining market rate of hire charges from others. There is no incidence of comparable cases brought on record to make

the disallowance u/s 40A(2)(b) of the Act. The A.O. required to bring the market rate of comparable cases and fix the market rate to arrive at the excess if any. No such excuse was made by the A.O. The Ld. A.R. argued that the A.O. fixed the yearly rent at ₹ 2 lakhs per vehicle, which worked out approximately to ₹ 17,000/- p.m. for which an auto also cannot be hired. The Ld. A.R. argued that the order passed by the A.O. is highly arbitrary and the Ld.CIT (A) has considered all the facts and allowed the appeal hence no interference is called for in the order of the LD.CIT(A) in this issue.

12. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The A.O. made the disallowance of ₹ 2,12,64,270/- as excess claim towards hiring of vehicles from the Directors and relatives. The assessee has debited a sum of ₹ 11,77,95,333/- towards the lorry charges, out of which the assessee has taken 44 vehicles on lease from the Directors and their relatives. Out of the 44 vehicles, 36 vehicles were operated throughout the year and 8 vehicles were operated for partial period. The A.O. computed the fair rent of 36 vehicles at ₹ 72 lakhs per year which works out to ₹ 2 lakhs per month. While fixing the annual rent of ₹ 2.00 lakhs per month, the A.O. has misguided himself with monthly rent of ₹ 1,55,000/- to ₹ 1,77,000/- paid by the assessee for other

vehicles. On careful verification, the fair rental value fixed by the A.O. works out to ₹ 17,000/- per month for which an auto also cannot be hired let alone the lorry. Considering the expenses involved for plying the truck, the fair rental value determined by the A.O. at ₹ 2 lakhs per year is highly arbitrary and without application of mind. We are also not inclined send the case back to the AO since it is settled issue that the CIT(A) is having co-terminus powers to do further enquiries which the AO failed. From the above information we do not find any reason to hold that the A.O. acted fairly to determine the fair rental value of the vehicles hired from the directors and connected relatives. Merely because of the gross receipts of each vehicle along with trip sheet and the terms and conditions entered with the Directors were not furnished it is unfair on the part of the A.O. to make such huge disallowance u/s 40A(2)(b) of the Act. As per the assessment order, it is gathered that the assessee is making the payment of ₹ 10/- per km for hire for both the vehicles taken from Directors as well as from the outsiders. Ld. A.R. of the assessee has stated that the assessee had produced the books of accounts and all relevant vouchers before the A.O. The information available for determining the fair rental value of the vehicles hired from others and the Directors can be culled out from the books of accounts, the vouchers and other relevant information submitted by the assessee

before the A.O. Having produced the books of accounts in two succeeding proceedings before the AO we are not inclined rely on the Ld. D.R's submission that the assessee has not produced the information called for by the AO. The Ld. CIT(A) has verified the entire information with trip sheets and lease rent paid to Directors and other relatives of Directors, depreciation payments, etc. and allowed the appeal of the assessee. For the sake of clarify and convenience, we extract relevant part of the CIT(A)'s order which reads as under:

*"5.1.3 In view of the above, I hold that re-opening of assessment is in order. Appellant's ground of appeal on this issue fails.*

*5.2 During the course of appellate proceedings, appellant submitted all relevant details for perusal and necessary examination. In respect of 8 vehicles mentioned in page 12 of assessment order, copies of Form 23 (Certificate of Registration) clearly indicated that Transfer of ownership w.e.f. 31.12.2008 i.e. Hypothecation/Hire Purchase/Lease Termination w.e.f. 31.12.2008. Thus, these vehicles appeared in company's own vehicle list for 9 months and leased vehicle chart for 3 months of the relevant asst. year.*

*5.2.1 Thus, lease rental payment of ₹ 14,16,000/- in the hands of appellant company is duly supported by proper evidence. Hence, disallowance of ₹ 14,16,000/- made by Assessing Officer is not in order.*

*5.2.2 The Directors, on the other hand, opted for offering the lorry income u/s 44AE of the Act as they claimed to have satisfied the conditions therein. Consequently, this entire payment of ₹ 14,16,000/- was not offered as lease rental receipts for taxation in the hands of the relevant directors.*

*5.2.3 However, Assessing Officer did not let in any evidence to prove that expenditure of ₹ 14,16,000/- was not incurred by the appellant or it was not genuine. If the proper lease rental receipt was not offered in the hands of respective directors, then Assessing Officer should intimate the jurisdictional Assessing Officer of respective directors for taking necessary action in this regard in the cases of relevant directors. Disallowance in the hands of the appellant company of a genuine expenditure is not*

*warranted. Hence, I direct the Assessing Officer to delete addition of ₹14,16,000/-."*

13. The A.O. while comparing the lorry hire misunderstood the payment of rent of ₹ 1,50,000/-, ₹ 1,64,000/-, ₹ 1,74,000/-, ₹ 1,50,000/-, etc. treating them as a yearly rent. In fact the A.R. submitted that the same was rent for 3 months. Taking into consideration of 3 months at ₹ 1,50,000/- to ₹ 1,74,000/-, the lease rent paid by the assessee appears to be reasonable. Further, the rent payment works out from ₹ 7 lakhs to ₹ 9 lakhs per annum. Depending on the rent per km as observed from the details filed by the assessee before the CIT(A), it is observed that the assessee has paid a rent of ₹ 10/- per km both to the outsiders as well as the directors and there is no dispute. In this case as rightly observed by the CIT(A), the A.O. has not brought any basis for determining the fair rental value of ₹ 2 lakhs per vehicle and the disallowance u/s 40A(2)(b) of the Act is based on complete hypothetical. The A.O. neither proved the excessive nor unreasonable with regard to the hire charges paid to the Directors and relatives, hence, we hold that the CIT(A) has rightly deleted the addition and no interference is warranted. The revenue's appeal on this ground is dismissed.

14. The next issue in this appeal is related to the disallowance of ₹ 14,16,000/- in respect of 8 vehicles sold to Directors. The A.O. found

that the assessee has shown 8 vehicles in the own vehicles as well as the leased vehicles list as follows:

S.No	From whom vehicle said to be taken	Vehicle No	Make & made	Lease amount (in Rs.)
1	S. Rama Rao	AP16X2166	15.05.2000	1,55,620
2	S.Rama Rao	AP16X5844	19.03.2001	1,72,190
3	S.Sujatha	AP16W9322	06.08.1999	1,78,290
4	S.Sujatha	AP16W9622	06.08.1999	2,08,340
5	S.GangaBhavani	AP16W9422	03.08.1999	1,57,300
6	S.Ganga Bhavani	AP16W856	03.08.1996	2,03,210
7	S.Vasavi	AP16X1866	15.05.2000	1,77,060
8	S.Vasavi	AP16X1966	15.05.2000	1,64,590
Total				14,16,600

15. The assessee explained before the A.O. that the company has sold the vehicles to the Directors and the Directors have leased the vehicles to the company. During the period of ownership of vehicles by the company, the company has not claimed any lease rent but subsequent to the sale of vehicles to the Directors, the lease rent was paid to the directors and the same was claimed as deduction. Therefore, argued that the assessee has rightly claimed the expenditure of lease rent. The assessing Officer has verified from the cash flow statement of the respective Directors and observed that the Directors have not admitted the lease rent in their returns of income and also did not admit the receipt in their cash flow statement. Hence, the A.O. doubted the

genuineness of the payment, accordingly disallowed the sum of ₹ 14,16,600/- lease rent paid to the assessee. In First appeal the Id.CIT(A) deleted the addition. Hence the Revenue is in appeal before us.

16. During the appeal hearing, the Ld. D.R. supported the order of the A.O. and the Ld. A.R. supported the orders of the CIT(A). The Ld. CIT(A) observed that 8 vehicles mentioned in the assessment order were owned by the company for 9 months and subsequently sold the same and taken back on lease on sale and lease back transaction, hence, the vehicles appeared both in own vehicles and leased vehicles of the company. The recipients have duly admitted the income in their hands u/s 44AE of the Act. Since the same is admitted in section 44AE of the Act, the payment made by the company does not find place in the cash flow statements. Hence, observed that payment of ₹ 14,16,000/- is supported by the proper evidence and no disallowance is warranted. For the sake of clarity and convenience we extract relevant part of the CIT(A) order in para Nos.5.2.2 & 5.2.3 which reads as under:

*"5.2.2 The Directors, on the other hand, opted for offering the lorry income u/s 44AE of the Act as they claimed to have satisfied the conditions therein. Consequently, this entire payment of ₹ 14,16,000/- was not offered as lease rental receipts for taxation in the hands of the relevant directors.*

*5.2.3 However, Assessing Officer did not let in any evidence to prove that expenditure of ₹ 14,16,000/- was not incurred by the appellant or it was not genuine. If the proper lease rental receipt was not offered in the*

*hands of respective directors, then Assessing Officer should intimate the jurisdictional Assessing Officer of respective directors for taking necessary action in this regard in the cases of relevant directors. Disallowance in the hands of the appellant company of a genuine expenditure is not warranted. Hence, I direct the Assessing Officer to delete addition of ₹14,16,000/-."*

17. We have gone through the Ld. CIT(A)'s order and the assessment order and the submissions of both the parties. The directors have declared their income on operating the trucks u/s 44AE of I.T. Act. When the income is declared u/s 44AE, the net income would be admitted but not the gross receipts. Further if the admission of income is suspicious, the directors cases have to be examined but the addition should not be made in the hands of the assessee. Hence, we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld.

18. In ground No.4 the revenue raised the objection with regard to fresh evidence filed by the assessee before the Ld. CIT(A). We have already addressed this issue in preceding paragraphs of this order and decided the issue against the revenue since the assessee had produced the books of accounts and relevant information before the A.O. at the time of assessment proceedings. Hence, we dismiss the appeal of the revenue on this ground.

19. In the result, the appeal of the revenue is dismissed.

The above order was pronounced in the open court on 16<sup>th</sup> Mar'18.

Sd/- (वी. दुर्गराव) <b>(V. DURGA RAO)</b> न्यायिक सदस्य/JUDICIAL MEMBER	Sd/- (डि.एस. सुन्दर सिंह) <b>(D.S. SUNDER SINGH)</b> लेखा सदस्य/ACCOUNTANT MEMBER
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विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 16.03.2018

VG/SPS

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

1. अपीलार्थी / The Appellant – The ACIT, Circle-3(1), Vijayawada
2. प्रत्यार्थी / The Respondent – M/s. Kranti Road Transport Pvt. Ltd., 5<sup>th</sup> Road, Jawahar Autonagar, Vijayawada-520 007.
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
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Sr. Private Secretary  
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