IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F', NEW DELHI

BEFORE SH. AMIT SHUKLA, JUDICIAL MEMBER
AND
SH.O.P. KANT, ACCOUNTANT MEMBER

ITA No.5288/Del/2016
Assessment Year: 2011-12

Prabhat Heavy Forge Pvt. Ltd., V. Gupta & Associates, CAs, D-15, Calibre Market, Rajpur Punjab	**Vs.**	Addl.CIT, Karnal Range, Karnal
PAN :AACCP6521A		
(Appellant)		**(Respondent)**

Appellant by	Sh. Sandeep Sapra, Adv.
Respondent by	Sh. Atiq Ahmed, Sr.DR

Date of hearing	23.05.2018
Date of pronouncement	20.06.2018

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 12/07/2016 passed by the Ld. Commissioner of Income-tax (Appeals), Karnal [in short the Ld. 'CIT(A)'] for assessment year 2011-12, raising following grounds:

1. *The Learned Commissioner of Income Tax (Appeals) has erred, without appreciating the facts and circumstances of the case, in sustaining the capitalization of interest amounting to Rs. 1,38,125/- u/s 36 (i) (iii) of Income Tax Act. 1961 on the machinery purchased during the year.*

2. *The Learned Commissioner of Income Tax (Appeals) has wrongly confirmed the addition of Rs. 5,96,472/- treating the building repair and internet marketing as capital expenditure without appreciating the facts and circumstances of the case.*

3. *The Learned Commissioner of Income Tax (Appeals) has erred, without appreciating the facts, supporting evidence and submissions placed on record, in sustaining the disallowance of interest amounting to Rs. 1.68,600/- by applying the provisions of section 40A(2)(b) of Income Tax Act, 1961.*

4. *The Learned Commissioner of Income Tax (Appeals) has erred in sustaining the addition of Rs. 2,88.377/-,being disallowance of watch and ward expenses by applying the provisions of S.40(a)(ia) of the Income Tax Act. 1961. without properly appreciating the facts, supporting evidence and submissions placed on record.*

5. *The Learned Commissioner of Income Tax (Appeals) has, without appreciating the facts, submissions and evidence placed on record, erred in sustaining the addition of Rs. 1,23,995/- being 1/10th of certain expenses treating the same as expenses in personal nature.*

6. *The appellant craves leave to add, alter, amend or delete any of the ground of appeal before the appeal is finally disposed off.*

2. Briefly stated facts of the case as culled out from the order of the lower authorities are that the assessee derived income from running an authorized services station of Cumminm generator sets and sale of spare parts. For the year under consideration, the assessee filed return of income on 29/09/2011 declaring total income of Rs.55,71,370/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short

'the Act') was issued and complied with. The scrutiny assessment under section 143(3) of the Act was completed on 10/03/2014, at total income of Rs.70,04,910/- after making certain additions/disallowances to the returned income. Aggrieved, the assessee filed appeal before the Ld. CIT(A). However, being not successful, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. The ground No. 1 of the appeal relates to disallowances of Rs.1,38,125/- under section 36(1)(iii) of the Act.

3.1 The Assessing Officer observed that the money was borrowed by way of term loan for acquisition of the asset, however, the asset was not put to use till 07/10/2010, and therefore, the corresponding interest paid on the money borrowed for acquisition of the asset, till it is put to use, was held to be capital expenditure and not allowed as revenue expenditure. The Ld. CIT(A) upheld the finding of the Ld. Assessing Officer.

3.2 Before us, the Ld. counsel filed a paperbook containing pages 1 to 98 and submitted that a term loan was sanctioned to the assessee by the Small Industries Development Bank of India (SIDBI), which was disbursed to the assessee on 19/05/2010 for purchase of machinery. The Ld. counsel submitted that the assessee did not buy the machinery immediately and deposited the term loan disbursed in Cash Credit (CC) account, which resulted in a reduction of CC limit and subsequently on 07/10/2010 the assessee purchased a machinery for Rs.33.15 lakhs. The Ld. counsel contended that during the period from 19/05/2010 to 07/10/2010 the term loan was utilized for

business purposes and therefore no disallowances could be made under section 36(1)(iii) of the Act.

3.3 The Ld. DR, on the other hand, submitted that money was borrowed for the purpose of the acquisition of the asset and the interest corresponding to the said money borrowed till the date of asset is put to use, was to be capitalized by the assessee and cannot be allowed as revenue expenditure in view of section 36(1)(iii) of the Act.

3.4 We have heard the rival submissions and perused the relevant material on record. Before us, the Ld. counsel referred to the copy of letter dated 19/04/ 2010 issued by the SIDBI, which is available on page 56 of the paper book. According to the said letter, a term loan of rupees aggregating to Rs.32.22 lakhs was sanctioned to the assessee under credit link capital subsidy scheme of government of India. The Ld. counsel referred to page 55 of the paper book, which is a copy of submission filed before the Assessing Officer. According to the said letter, the term loan for purchase of machinery was disbursed to the assessee 19/05/2010, but the required machine was not available so the assessee deposited the said amount in the CC limit account. The machinery was purchased by the assessee on 08/10/2010. The copy of the bill of M/s Raja machinery tools indicating purchase of machinery on 8/10/2010 is available on page 58 of the paperbook. The Assessing Officer disallowed the interest corresponding to the period from 19/05/2010 to 08/10/2010 in terms of section 36(1)(iii) of the Act. For ready reference, the relevant section and proviso thereto is reproduced as under:

*"**36.** (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*

(i) ……..

(ii) ……..

(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession :

***Provided** that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalised in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction.*

Explanation.—Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause;"

3.5 From plain reading of the above proviso, it is evident that interest paid on capital borrowed for acquisition of an asset for the period beginning from the date on which capital was borrowed for acquisition of the asset till the date on which asset was first put to use, cannot be allowed as deduction. The purpose of the said proviso is clear that expenditure related to acquisition of the capital asset prior to it is put to use cannot be allowed as revenue expenditure during the year under consideration. It is immaterial whether the said borrowed capital has been utilized for the purpose of business or profession, because, otherwise the interest paid for capital borrowed for the purpose of business of provision is allowable; however, the proviso has restricted allowability interest in respect of the capital borrowed for acquisition of the asset.

3.6 However, we note that in the said proviso interest paid in respect of capital borrowed for acquisition of the asset **for**

extension of existing business or profession was only to be disallowed during the relevant assessment year. The part "for extension of the existing business or profession" has been omitted by Finance Act, 2015, w.e.f. 1/04/2016. In the case of the assessee, the assessment involved is for assessment year 2011-12 and therefore, applicability of the proviso to section 36(1)(iii) has to be seen in the provision available during the relevant period of time. In our opinion, the Assessing Officer has not examined the issue of extension of existing business profession in the case of the assessee, and therefore, we feel it appropriate to restore this issue to the file of the Assessing Officer for deciding afresh in accordance with law. Needless to mention, the assessee shall be afforded adequate opportunity of being heard on the issue in dispute. The ground No. 1 of the appeal is accordingly allowed for statistical purposes.

4. The ground No. 2 of the appeal relates to disallowances Rs.5,62,937/- out of building repair expenses, Rs. 13,000/- on account of website designing and internet expenses and Rs.26,453/- on account of EAPBX repair aggregating to Rs.5,96,472/-.

4.1 Regarding the building repair expenses, amounting to Rs.5,92,937, the Assessing Officer observed that the assessee incurred expenses on plywood, aluminium items for windows repairing and fitting, cement bricks etc.; which were for complete change of the floor, doors, & windows and thus, it was not a repair work but the overall replacement of window, door and shelves etc., the advantage of which will continue for number of years and not in the nature of current repair. Accordingly, he held

the expenses of Rs.5,92,565/- as capital expenditure and allowed depreciation at the rate of 5% on the same and balance amount of Rs.5,62,937/-was disallowed in the year under consideration in terms of section 37(1) of the Act. Further, the Assessing Officer also held Rs.13,000/- on account of Web Designing and the work for the Internet marketing and Rs. 26,453 on account of installation of EAPBX system, as capital expenditure and after allowing depreciation at the rate of 15%, he disallowed the balance amount of Rs.33,535/-. The Ld. CIT(A) rejected the contention of the assessee that expenses were in the nature of repair only.

4.2 Before us, the Ld. counsel referred to pages 60 -61 of the paper book, which are ledger account of building expenses, and submitted that expenses of building items were incurred for repair/renovation only. He summarized the repair work as under:

- *Replacement of old worn out wooden windows and frames with aluminum windows and frames.*
- *Improvement in storage facilities by replacing old shelves by the new reinforced shelves and plastering of dilapidated walls.*
- *Heave repairs of the floor of machine shops.*
- *Repair of old wooden almirahs of the office and stores.*

4.2.1 Regarding addition of Rs.13,000/- the Ld. counsel referred to page 62 to 63 of the paper book, which is a copy of the ledger account of publicity and advertising ledger account and a copy of Bill of Phoenix Creation for Rs.13,000/- and submitted that the

expenditure was incurred for website designing and Internet marketing expenses, which being in the nature of advertisement, it was debited under said head.

4.2.2 Regarding addition of Rs.26,453/-, the Ld. Counsel referred to page 64 of the paper book, which is a ledger account of EAPBX repair and submitted that the EAPBX system was damaged by short-circuiting and therefore main parts along with battery were replaced.

4.2.3 In view of the above, the Ld. counsel submitted that the expenses were mainly in the nature of the repairs and no new asset was created and, thus, the expenses incurred were being revenue in nature, same are allowable under section 37(1) of the Act.

4.3 The Ld. DR, on the other hand, relied on the finding of the lower authorities on the issue in dispute.

4.4 We have heard the rival submissions and perused the relevant material on record. From the facts on record and building repair ledger account available on page 60 of the paper book, we find that the expenses have been incurred mainly for purchase of AC sheets, aluminum items, cement, bars, plywood, channel etc. The claim of the assessee is that the expenses have been incurred on the repair of Windows, shelves, almirahs, flooring, stores etc. of the existing building. According to the Assessing Officer, these new windows or floorings would provide enduring benefit to the assessee and therefore, the expenditure is in the nature of capital expenditure. In our opinion, the expenses would qualify for capital expenditure, if a new asset has been created or efficiency of the existing asset has been enhanced. In

the instant case, by way of repairing the windows or the floor, no new asset has been created. Had the expenditure incurred on creation of a new room or space in the building, it would have increased the efficiency of the building. But before us, no such evidences have been brought on record by the Revenue, which could establish coming into existence of a new asset or increase in efficiency of the existing asset. In the circumstances, we hold the building repair expenses in the nature of revenue expenditure and the disallowance of Rs.5,62,937/- made out of building repair expenses is deleted.

4.4.1 Similarly, in respect of the expenses of Rs.13,000/- on website designing and Internet marketing expenses, the Assessing Officer has not brought on record any evidence to establish that the said expenses would qualify for capital expenditure.

4.4.2 The expenses of Rs.26,453/- have been claimed by the assessee as repair to EAPBX, which was damaged due to short-circuiting. On perusal of copy of EAPBX repair account, which is available on 64 of the Paper Book, it is evident that the expenses have been incurred for battery and other parts of EAPBX against Bills raised by Rasana Telecom. In view of the above, we are of the opinion that by way of replacement of the parts of the existing EAPBX, no new asset has been created, and thus the expenditure incurred is revenue in nature.

In view of aforesaid discussion, the aggregate disallowance of Rs.5,96,472/- towards building repair, website designing and Internet expenses and EAPBX repair is deleted. The Ground No. 2 of the appeal of the assessees accordingly allowed.

5. The ground No. 3 of the appeal relates to disallowance of interest of Rs.1,68,600/-under section 40A(2)(b) of the Act paid to three persons.

5.1 The Assessing Officer observed that interest @ 15% was paid to three persons, namely, Sh. Satya Prakash Gupta, Smt. Priyanka Gupta and Smt. Nisha Gupta, which are persons specified under section 40A(2)(b) of the Act. According to the Assessing Officer, the rate of 12% was reasonable and thus, he disallowed @ 3% interest paid being excessive and unreasonable. He computed the disallowance accordingly to Rs.1,68,600/-. The Ld. CIT(A) confirmed the disallowance.

5.2 Before us, the Ld. counsel referred to pages 39 to 40 of the paperbook and submitted that the Assessing Officer has taken the figure of the interest incorrectly. He also submitted that interest at the rate of 15% was being paid to four party since 2008-09 and to two parties since 2009-10 and no such disallowance has been made in earlier years. Further, he submitted as the interest at the rate of 15% has been allowed to the six parties in earlier years, there was no justification on the part of the Assessing Officer in restricting the interest at the rate of 12% in respect of the three parties out of six parties. According to him, as there is no change in the facts and circumstances, when compared with earlier years, therefore, in view of the rule of consistency, the disallowance deserve to be deleted. In support of the rule of consistency, the Ld. counsel relied on following judicial precedents:

- *385 ITR 295, CIT Vs. Excel Industries Ltd. (Supreme court)*

- *193 ITR 321-323 Radhasoami Satsang Vs. CIT (Supreme Court) also followed by P&H High Court in 278 ITR 262.*
- *264 ITR 276, CIT Vs. ARG Securities Printers (Jurisdictional Delhi High Court).*
- *300 ITR 75 (Delhi), Director of Income Tax (E) Escorts Cardiac Diseases.*

5.3 On the contrary, the Ld. DR submitted that interest paid to the persons specified under section 40A(2)(b) is being excessive as compared to the interest paid on money borrowed by the assessee and therefore, the Assessing Officer is justified in disallowing the excessive interest expenditure.

5.4 We have heard the rival submissions and perused the relevant material on record. There is no dispute as the three persons to whom interest has been paid at the rate of 15% are the persons specified under section 40A(2)(b) of the Act. According to the assessee the correct computation of the disallowance should be amounting to Rs.93,750/-, i.e., 1/5th of Rs.4,68,750/-. The said computation submitted by the assessee is reproduced as under:

Sl. No.	*Name*	*Interest taken by the AO*	*Actual amount of interest paid*
1.	*Smt. Satya Gupta*	*2,25,000*	*1,87,500*
2.	*Smt. Priyanka Gupta*	*3,14,000*	*1,80,000*
3.	*Smt. Nisha Gupta*	*3,04,000*	*1,01,250*
	Total	***8,43,000***	***4,68.750***

5.6 However, the Ld. counsel in his submission has raised the issue of rule of consistency. According to him, the interest has

been paid @ 15% to the three parties in earlier years also and no disallowance has been made by the Assessing Officer. According to the Ld. counsel, there is no change in the facts and circumstances as compared to the earlier years and, therefore, in view of the rule of consistency, no disallowance would have been made. Before us, records of earlier years, for verifying the fact, whether the Assessing Officer allowed interest at the rate of 15% to the three parties, are not available, and therefore, we feel it appropriate to restore this issue to the file of the Assessing Officer for verifying the facts of earliers years and then decide the isuue in dispute in the light of rule of consistency laid down in various decisions of the Hon'ble Supreme Court and other courts cited by the Ld. counsel before us. Accordingly, Ground no. 3 is allowed for statistical purposes.

6. The ground No. 4 of the appeal relates to disallowance of Rs.2,88,377/- under section 40(a)(ia) of the Act, for non-deduction of tax at source on watch and ward expenses.

6.1 The Assessing Officer observed the expenses of Rs.2,88,377/- incurred toward security expenses and no tax was deducted by the assessee under section 194C of the Act. In absence of any evidence, as the tax has already paid by the recipient on the said income in his hand, the Assessing Officer disallowed the expenditure and the Ld. CIT(A) upheld the said disallowance.

6.2 Before us, the Ld. counsel referred to submission made before the Ld. CIT(A) on the issue in dispute, which are available on pages 50-51 of the paper book and submitted that said

expenditure of Rs.2,88,377/- on watch and ward expenses (i.e. security expenses) was paid to following three parties:

- *Paid to Premier Security (P) Ltd.* *Rs.69,441/-*
- *Paid to Arises Integrated Security* *Rs.2,00,076/-*
- *Paid to SP Automation* *Rs.18,860/-*

6.2.1 The Ld. counsel submitted that each transactions made with Premier Security Private Limited and M/s. SP Automation was not more than Rs.30,000/- and the total payment in the financial year was less than Rs. 75,000/-and thus the expenditure in respect of these two parties was not liable for deduction under section 194C of the Act during relevant period.

6.2.2 As regards to the payment of Rs.2,00,076/- made to M/s Aries Integrated Security Solutions, Mohali, the Ld. counsel referred to copy of a certificate issued by the party, which is available on page 75 of the paper book. In the said certificate, it is certified that said amount has been shown as receipt/income during the year and consideration by the said party.

6.2.3 The Ld. counsel submitted that the proviso to section 40(a)(ia) has been inserted by the Finance Act, 2012, w.e.f., 01/04/2013 and proviso to section 201(1) of the Act has been inserted by Finance Act, 2012, w.e.f. 01/07/2012 and the resultant effect of which is that, if the recipient has furnished return of income and taken into account the said sum for computing return of income and has paid taxes due on the income declared, then, no disallowance under section 40(a)(ia) of

the Act in case of person responsible for deducting tax is required.

6.2.4 The Ld. counsel submitted that proviso to section 40(a)(ia) of the Act has been held to be applicable retrospectively by the Hon'ble Delhi High Court in the case of CIT Vs. Ansal Landmark Township P. Ltd., 377 ITR 635 .

6.2.5 In view of the submissions, the Ld. counsel requested that the matter of above disallowance may be restored to the file of the Assessing Officer for verification and may be decided in view of the proviso to section 40(a)(ia) of the Act.

6.2.6 The Ld. DR relied on the order of the lower authorities, however, did not object for restoring the issue to the file of the Ld. Assessing Officer.

6.3 We have heard the rival submissions and perused the relevant material on record. The issue in dispute is regarding non-deduction of tax at source on the expenditure of security expenses to the three parties mentioned above in the submission of the Ld. counsel. The Ld. counsel has submitted each transaction in respect of the two parties, namely, Premier Security Private Limited and SP Automation was below the threshold of Rs.30,000 (each transaction) and total payment of Rs.75,000/- and, therefore, not liable for tax deduction at source. We note from the records available for us that this issue of each transactions being less than threshold amount liable for TDS, has not been examined by the lower authorities.

6.4 Regarding the payment of Rs.2,00,076/- made to M/S Aries Integrated Security, the Ld. counsel has submitted that in view of the proviso to section 40(a)(ia) inserted by the Finance Act, 2012,

w.e.f., 01/04/2013, which has been held to be applicable retrospectively by the Hon'ble Delhi High Court in the case of Ansal Landmark Township Private Limited (supra), no disallowance under section 40(a)(ia) is required. We have observed that the applicability of the proviso to section 40(a)(ia) inserted by the Finance Act, 2012 has not been examined by the lower authorities.

6.6 In view of the aforesaid circumstances, we feel it appropriate to restore this issue to the file of the Assessing Officer for verification of facts and decide the issue in accordance with law after providing adequate opportunity of being heard to the assessee. The Ground No. 4 of the appeal is accordingly allowed for statistical purposes.

7. The ground No. 5 relate to ad-hoc 10% disallowance of Rs.1,23,995/- out of various expenses aggregating to Rs.12 39,949/-.

7.1 The Assessing Officer made disallowance of Rs.1,23,995/- at the rate of 1/10th of the expenses, out of list of expenses like travelling, telephone, festival, car running, car depreciation, welfare and sales promotion expenses aggregating to Rs.12,39,949/-, in view of element of personal expenses, non-maintenance of the logbook of vehicles and telephones, self-made vouchers for the expenses like travelling, festival, welfare etc. The Ld. CIT(A) also upheld the disallowances.

7.2 Before us, the Ld. counsel of the assessee submitted that the assessee company maintained books of accounts like cashbook, Journal, Ledger and sales and purchase Day books and stock registers as prescribed under the Excise Act and same

were produced before the Assessing Officer and examined by him. He submitted that no such ad-hoc disallowances have been made in earlier years. Further, he submitted that during the year under consideration sales have increased by 30.61% as compared to last year, whereas expenditures on the heads in reference, has increased only by 14.35% as compared to corresponding expenses in preceding year. He further submitted that no disallowance of expenditure on account of the alleged personal use could be made in the hands of a company. He also submitted that disallowance made on ad-hoc basis has not been approved by the courts in following judicial pronouncements:

- ***253 ITR 749, Sayaji Iron and Engg. Co. VS. CIT (Gujarat H.C.),*** *in which it was held as under:*

  "In the circumstances, In our opinion, the Tribunal was wrong while disallowing 1/6th of the total car expenditure and depreciation claimed by the assessee on account of the personal use of the cars which were used by the directors. We, therefore, answer the question in the negative, i.e. in favour of the assessee and against the Revenue".

- ***76 ITD 32, DCIT Vs. Haryana Oxygen Ltd. (ITAT Delhi)***

  "Now when the directors and the company are two separate legal entities, the use of the car by the directors of the company could not be characterized as for non business purpose. No disallowance under section 37(1) was justified".

- ***109 ITD 198, Midland International Limited vs. DCIT (Delhi ITAT),*** *in which at page 214, it was held as under:*

"Hence, keeping in mind this principle and following the decision of Gujarat High Court in the case of Syaji Iron Industries (supra) and the decisions (supra) of the Tribunals we hold that the CIT (A) was not justified in upholding the order of Assessing Officer wherein a case of a company he disallowed the expenses claimed by the assessee company with regard to telephone and car/depreciation treating the same to be of personal nature. Accordingly, the order of CIT (A) in this regard is set aside and the disallowances sustained by the CIT (A) in this regard are deleted".

- ***35 TTJ 602, Usha Rectifier Corporation (I) Pvt. Ltd. Vs. Inspecting Assistant Commissioner (ITAT Delhi),*** *in which it was held as under:*

  "Business expenditure - Telephone expenses in respect of residential telephone of Managing Director - Provision of a telephone at the residence of the Managing Director of the assessee company was for business purposes of the Company. If the Managing Director used some of the calls for personal purposes, that would not make the expenditure incurred by the company being not for the purpose of its business. At best, the expenditure referable to the personal use of the telephone by the Managing Director may constitute extra remuneration to the Managing Director. But so far as the assessee company is concerned, the entire amount will be allowable as business expenditure. ITO Vs. Ashoka Betelnut Co. (P) Ltd. (1985), 21 TTJ (Mad) 465 TM (1984) 10 ITD 788 (Mad) (TM) followed".

- ***70 TTJ 338, Metallizing Equipment Co. (P) Ltd. Vs. DCIT*** *(ITAT Jodhpur Bench).*

- ***112 Taxman (Magazine) 195 I & I Electricals (P) Ltd. Vs. ITO*** *(ITAT Jaipur Bench), in which it was held as under:*

  "The claim of the assessee, a private limited company, for deduction of telephone expenses, vehicle maintenance expenses and car depreciation, was

partially disallowed by the Assessing Officer on account of personal use. The disallowance was confirmed by the Commissioner (Appeals).

On second appeal:

Held, Personal disallowance in the case of a company should not be made. Therefore, the disallowance was to be deleted."

Moreover, ad-hoc disallowances have not been approved by the Courts as held in the following case laws:

- ***73 ITR 192, Jhandumal Tarachand Rice Mills vs. CIT*** *(P & H High Court), in which it was held as under:*

  "That even assuming that the proviso was attracted, the income-tax authorities, not having determined any basis or manner of computation of the true income, profit and gains of the assessee-firm, were not justified in arbitrarily adding Rs. 15,000 in round figure to the income of the assessee-firm. "

- ***94 TTJ 736, ACIT vs. Arthur Anderson & Co.*** *(ITAT Mumbai Bench), in which it was held as under:*

  "Even though the AO has given categorical finding that the expenditure was for the purpose of the business and commercially expedient and the same was admissible as deduction, he made a token disallowance of 20 per cent of such expenses on the ground that element of excessiveness in such reimbursement cannot be ruled out - Not justified - AO has accepted that the accounts were duly admitted - Disallowance was inherently based on surmises and conjectures and devoid of a legally sustainable foundation - CIT(A) justified in deleting the disallowance".

7.3 On the contrary, the Ld. DR relied on the order of the lower authorities on the issue in dispute.

7.4 We have heard the rival submissions and perused the relevant material on record. The Assessing Officer has made disallowance at the rate of 1/10th of expenses, out of the following expenses:

Sl. No.	***Particulars***	***amount***
i)	*Travelling expenses*	*1,27,090*
ii)	*Telephone depreciation*	*6,547*
iii)	*Festival & celebration*	*23,200*
iv)	*Car running expenses*	*4,63,126*
v)	*Car depreciation*	*3,52,445*
Vi)	*Welfare*	*1,80,490*
vii)	*Sales promotion*	*87,105*
	Total	***12,39,949***

7.5 We find that the Ld. Assessing Officer has not pointed out any specific defects of non-maintenance of vouchers or non-business purpose of the expenses. The Assessing Officer cannot reject the vouchers simply on the reason that same have been prepared internally. In view of the various decisions cited by the Ld. counsel, it is evident that no disallowance can be made on ad-hoc basis when the Assessing Officer has accepted the books of accounts. Similarly, the expenses on telephone at the residence of the Managing Director of the assessee company has been held to be allowable as business expenditure in the hands of the company. Similarly, the expenditure on use of car by the directors, has also been held to be allowable under section 37(1) of the Act.

7.6 In view of the facts and circumstances of the case and following the various judicial decisions cited by the Ld. Counsel, the ad-hoc disallowance of Rs.1,23,995/- is not justified in the instant case and accordingly, we delete the same. The Ground No. 5 of appeal is accordingly allowed.

8. The Ground No. 6 of the appeal, being general in nature, we are not required to adjudicate upon and dismissed accordingly as infructuous

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

The decision is pronounced in the open court on 20th June, 2018.

Sd/-	Sd/-
(AMIT SHUKLA)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 20th June, 2018.
RK/-(D.T.D.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi