IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 836/CHD/2017
Assessment year: 2009-10

The DCIT, Yamuna Nagar Circle, Yamuna Nagar.	Vs.	Jamna Auto Industries Ltd., Jai Spring Road, Industrial Area, Yamuna Nagar. PAN No. : AAACJ3929N

&

ITA No. 856/CHD/2017
Assessment year: 2009-10

Jamna Auto Industries Ltd., Jai Spring Road, Industrial Area, Yamuna Nagar. PAN No. : AAACJ3929N	Vs	The ITO, Ward – 4, Yamuna Nagar,
(Appellant)		(Respondent)

Department by	:	Shri Ashish Gupta, CIT-DR
Assessee by	:	Shri Sandeep Sapra & Shri Kamal Khanna
Date of hearing	:	03.04.2018
Date of Pronouncement	:	19/06/2018

ORDER

PER DIVA SINGH

By these cross appeals, both the Revenue and the assessee assail the correctness of the order dated 06.03.2017 of ld. CIT(Appeals) Karnal pertaining to 2009-10 assessment year on the following grounds respectively :

Ground of Revenue (ITA 836/CHD/2017)
Whether on the facts and circumstances of the case the Ld, C1T(A), Karnal has erred in law deleting the addition made by the AO on account of Manufacturing and sale of finished goods outside the books of account of Rs. 25,60,84,653/-.

Grounds of Assessee (ITA 856/CHD/2017)

1. *That the Ld. CIT(A) has erred on facts and under the law in sustaining the following disallowances:*

a)	*Rs. 6,87,000/- =*	*Ad-hoc 10% out of repair and maintenance expenses of lacs as against 20% made by the AO.*
b)	*Rs.1, 45,000*	*Ad-hoc 10% out of building repair expenses of Rs. 14.47 against 20% made by the AO.*
c)	*Rs. 30,000*	*Ad-hoc 10% out of general expenses of Rs.3.05 Lacs as against 20% made by the AO.*
	Rs.8,62,000	***Total***

Without prejudice to above, the disallowances as sustained are very excessive.

2. That the Ld. CIT(A) has erred on facts and under the law in confirming ad-hoc 10% disallowance of Rs.17,33,000/- as made by the AO out of total expenditure of Rs.173.30 lacs under the head 'Discount and Rebates'.

2. We first propose to address the issue raised in Revenue's appeal. The relevant facts of the case are that the assessee who was engaged in the business of manufacturing and marketing of spring and spring leaves returned a loss income. The AO in the course of the assessment proceedings made an addition of Rs. 25,60,84,653/- on account of the following facts and reasons set out in the assessment order :

"5 A chart comparing scrap generated as %age of finished goods produced in the year under assessment with earlier 3 years has been filed during the assessment proceedings and the same is reproduced as under:

Comparative Chart of Scrap % with last three Years

Particulars	*2009*	*2008*	*2007*	*2006*
Finished Goods	*1,228.988*	*628.188*	*254.8006*	*71.514*
Opening Stock				
Add: Sales Return sold as it as	*-*	*436.908*	*139.520*	*416.229*
Add: Production				
Total	*68,011.619*	*89,838.630*	*61,341.919*	*37,776.747*
	69,240.607	*90,903.726*	*61,736.239*	*38,864.490*
Less Sales	*67,843.926*	*89,674.738*	*61,408.051*	*38,609.690*
Closing Stock	*1,396.681*	*1,228.988*	*628.188*	*254.800*
SFG Production				
Total Production.	*3,433.603*	--	—	—
Scrap	*71,445.22*	*89,838.63*	*61,341.92*	*37,776.75*
Opening Stock				
Add Generation	*278.129 1*	*72.845*	*21.568*	*71.5573*
Total	*4,891.305*	*5,294.274*	*4,056.311*	*3,052.084*
	5,169.434	*5,367.119*	*4,077.879*	*3,123.641.*
Less sales	*4,959.806*	*5,088.990*	*4,005.034*	*3,102.1.73*
Closing Stock	*209.628*	*278.129*	*72.845*	*21.568*
Scrap % of Production	*6.8%*	*5.9%*	*6.6%*	*8.0%*

*On examination of the above comparison, it is noticed that in each of the earlier 3 years (i.e. assessment years 2008-09, 2007-08 and 2006-07) the assessee has shown substantial quantities of 'Sales Return sold as it as', but in the year under assessment no such sale has been shown. Instead of it, the assessee has shown 'Sale of semi-finished goods' to its wholly owned subsidiary M/s jai Suspension Limited, the quantity having sold was 3,433.603 MTs. This sale of semi-finished goods, therefore, cannot reasonably and justifiably be considered to have been produced during the year under assessment. The plea of the assessee that for arriving at the scrap generation %age the quantity of semi-finished goods so sold to its subsidiary should be considered to have been produced during the relevant year, cannot consequently be accepted. Accordingly the production for the year under assessment is exclusive of the semi-finished goods sold. The %age of scrap generated during the year under assessment works out to 7.2% and not 6.8% as has been worked out by the assessee, the average scrap generated during the earlier 3 years working out to 6.8%. This means that the assessee has produced 0.4% more scrap during the year underassessment. This excess scrap translates into production of Rs 4000.806 MTs of finished goods (i.e. 68011.619*04/6.8). On these facts and*

circumstances, 4000.806 Mts of finished goods is considered to have been produced but not accounted for in the books of account.

Thus the sale prices is taken as average sale price Rs. 64008.26 per M.T. the working of the sale price is Rs. 256084653/- is as detailed below:-

Total sale consideration declared in the printed booklet exclusive of excise duty 45245.30000 less sales to the subsidiary company SFG 171224220

Sale of finished goods	*4353305780*
Quantity of finished goods	*68011.619*
Average sale prize	*64008.26 per M.T*

Since the finished good have been produced out of the books. The sale thereof also to be considered out of the books & the expenses relating thereto considered already debited to the Trading, P& L account. Whole of the sale value of Rs. 256084653/- is deemed the income.

3. The assessee carried the issues in appeal before the CIT(A) who considering the submissions deleted the addition vide para 4.4 of his order holding as under :

4.4 Findings ;-

After going through the facts and submissions as well as various judicial pronouncements on this issue, this Ground is being finalized after making the following observations :-

a) On the basis of the facts available, it appears that the AO has come to the conclusion that the "sales of finished goods" made by the appellant during the year to its subsidiary company M/s Jai Suspension Ltd. to the extent of 3433.603 metric tones was not correct. The AO has argued that these semi-finished goods could not have been produced during the year under consideration Accordingly the AO concluded that no scrap was related to production of these semi-finished goods. However the AO has not out on the basis of any evidence as to how the production of semi finished goods was not related to any manufacturing activity carried out during the year. The AR of the appellant has emphasized that the appellant was a reputed listed company with all statutory books of account and supporting documents. The AO has not pointed out any discrepancies in any of the books of accounts or registers relating to manufacturing, stock registers, scrap registers or bills and vouchers. The AO has also not rejected the books of accounts. Therefore the conclusion of the AO regarding non-production of semi-finished goods during the year is not based upon any factual evidence.

b) The AO has made an observation that if the sale of semi-finished goods was not manufactured during the year, the percentage of scrap generation comes to 7.2%, which is higher than the average of 6.8% in the last three years. In this regard, the AR has strongly argued that there are bound to be variation in scrap generation from year to year and in A.Y. 2006-07, the scrap generation was 8% and the same had been accepted by the Department. In this regard, it is pertinent to note that the scrap percentage in manufacturing is amenable to variations from year to year for various reasons and various judicial pronouncements have upheld such contentions. Further, it appears that in earlier years the scrap percentage has been higher than 7.2% and this account, adverse view has been taken on all the computation of scrap percentage at 7.2% by the AO is not based upon any concrete evidence regarding unaccounted scraps and secondly marginal variations in scrap generation cannot be rejected unless there is specific and concrete evidence to do so .In the present case, no concrete evidence has been pointed out by the AO even in the Remand Report.

c) It is important to observe that the AO has assumed that there was unexplained scrap available with the appellant and has worked back the corresponding quantity of goods manufactured, though there is no evidence of actual production of corresponding finished goods. The AO has further concluded that all these unaccounted manufactured goods have also been sold in an unaccounted fashion by the appellant. These observations of the AO are not based on any material evidence

indicating manufacturing of such additional quantity of finished goods and more importantly there is no evidence to show that there was unaccounted sale of these finished goods made by the appellant during the relevant A.Y.

d) The AR of the appellant has very strongly argued that the appellant was a reputed listed company with al statutory books of accounts, supporting bills and vouchers and the AO has neither rejected the books of accounts nor brought any evidences on record before concluding that there was unaccounted manufacturing and sale of finished goods. The arguments have been carefully considered and it is clear that there is no evidence available with the AO to conclude that there was any unaccounted manufacturing of finished .goods and the AO also did not any evidence to establish that there was unaccounted sale of finished goods The books of accounts of the appellant has also not been rejected by the AO and therefore the addition based upon the assumption that there was excess scrap generated during the year, which the basis of unaccounted finished goods as well as unaccounted sales by the appellant, does not appear to have any justification. The AR has elaborately explained that the sale of semi-finished goods made during the year was well-documented and there was no excess scrap at all. Further, there is no basis for making addition merely on the apprehension that unaccounted manufacturing and sales have been made by the appellant during the year.

In view of the above observations and facts available, I do not find any reason to uphold the addition made by the AO The arguments and contentions of the AR of the appellant are therefore accepted and the AO is directed to delete this addition. This Ground is treated as allowed .

4. Aggrieved by this, the Revenue is in appeal before the ITAT.

5. The ld. CIT-DR inviting attention to the specific reasoning of the AO and referring to the chart at page 6 of the assessment order which has been extracted in the impugned order submitted that in the year under consideration, the assessee has not shown any direct sales as had been shown in 2006-2007, 2007-08 and 2008-09 assessment years. In the last three years, it was submitted, the assessee has shown substantial sales. The assessee instead has shown a sale of semi finished goods to its subsidiary M/s Jai Suspension Limited. The quantity claimed to be sold, it was submitted, could not have been produced in the year under consideration. The argument of the assessee that for arriving at the scrap generation percentage, the quantity of semi finished goods, sold to its subsidiary should also be considered to have been produced in the year has been rejected by the AO. It was his submission that the conclusion of the AO that the production for the year under consideration was exclusive of the semi-finished goods sold, was heavily relied upon. It was submitted that the AO noticed that percentage of scrap generated during the year was 7.2% and not 6.8% as has been submitted by the assessee. It was submitted that the AO noticed that the average scrap generated during the earlier 3 years was 6.8%. On the basis of which it was concluded that the assessee had produced 0.4% more scrap during the year under consideration. On account of this the addition on account of excess scrap, has been made.

6. The ld. AR heavily relying upon the impugned order and the written submissions filed before ITAT and also extracted in the impugned order submitted that there is no justification whatsoever to make this adhoc addition. Similarly, there is no valid reason given why the semi finished goods should not be included. It was his submission that the CIT(A) has passed a reasoned speaking order which on facts has not been assailed by the Revenue. Accordingly, it was his submission that the impugned order may be upheld.

7. We have heard the rival submissions and perused the material on record. On going through the peculiar facts and circumstances as have been set out in the earlier part of this order, we find that no justification whatsoever has been given by the AO as to why the value of semi finished goods sold to its sister concern should not be considered in the total production of the yr for the purpose of determining the percentage of scrap generated. There is no material on record on the basis of which the suspicion of the AO can be supported that over and above the semi finished goods, the assessee produced finished goods, we note that the CIT(A) has given a categoric finding that the AO has neither rejected books of account nor brought out any evidences to support the suspicion that there was unaccounted manufacturing and sale of finished goods nor has AO made out any case that there were unaccounted sales. Accordingly, the addition having been made on suspicion in peculiar facts, we find, has correctly been deleted by the CIT(A). In the absence of any infirmity, the departmental ground is dismissed.

8. In the result, ITA 836/CHD/2017 of the Revenue is dismissed.

9. Addressing the ground raised by the assessee in the present appeal, attention was invited to the reasons which prevailed with the AO to make the addition which was sustained in appeal before the CIT(A).

9.1 Addressing ground No. 1 it was submitted adhoc disallowance @ 10% has been sustained by the CIT(A) qua the maintenance expenses and building repair and general expenses have been considered by the ITAT. Copy of the order dated 19.02.2018 in ITA 855/CHD/2017 pertaining to 2008-09 assessment year was filed. Attention was invited to para 8 of the same where considering the submissions that there was not a single instance cited to show that the expenses were not supported by bills and vouchers and in the facts where genuineness of the expenditure has not been doubted, the ITAT

had restored the issue back to the AO to verify the bills. Attention was invited to paras 6 to 8 of the said order.

10. The ld. CIT-DR though placed reliance upon the orders of the authorities below, however, in the face of the categoric finding of the ITAT on facts and circumstances which remained identical, did not oppose the prayer for remand.

11. We have heard the rival submissions and perused the material on record. In the light of the submissions of the parties before the Bench, following the precedent in assessee's own case on similar set of facts and circumstances, the impugned order on these issues is set aside back to the file of the AO with direction to pass a speaking order in accordance with law. The assessee is directed to ensure that all bills and vouchers are produced before the AO for his verification.

12. Addressing the next issue agitated by the assessee in the present proceedings which is addressed vide ground No. 2, the ld. AR apart from relying upon the precedent available in its own case submitted that herein also an adhoc identical disallowance was made by the AO on suspicions. The reasoning and circumstances, it was stated, was identical to what has been done in the immediately preceding assessment year. For ready reference, the relevant extract from the impugned order is reproduced hereunder :

> *4 (i)……..*
>
> *ii) During the consideration, while verifying the details of Expenses debited under the head "Discount and Rebates" the Assessee has debited amount Rs 173.30 Lacs under the head "Discounts" given to various parties. The assessee's gross turnover during the year decreased to Rs.51378.17 Lacs from Rs. 54119.34 Lacs shown in the immediate preceding year. Considering the decrease in gross turnover, the corresponding increase in discount and rebate is not-comparable. The assessee could not explain satisfactorily such heavy increase in this expenditure. In order to cover any leakage on account of inadmissible expenses. 10% of the Discounts are disallowed i.e. a sum of Rs. 17.33 lacs is disallowed and added to the assessees income.*

12.1 Heavily relying upon the written submissions and the precedent cited, it was his submission that the addition may be deleted. Inviting attention to the impugned order, it was submitted that ignoring the written submissions of the assessee, the CIT(A) confirmed the same in a mechanical manner at page 20 of his order. Reading from the written submissions filed in the Court, which also contained copies of decisions of different Courts and the view taken by the ITAT in assessee's own case in the immediately preceding assessment year, it was submitted, that identical reasoning prevailed with AO

in 2008-09 assessment year. Copy available at Paper Book page 35 was relied upon. For ready reference, the same is extracted hereunder :

> *"4. Disallowance of Expenses*
> *i) .....*
> *ii) During the under consideration, the assessee has debited amount of Rs.370.68 Lacs under the head "Discount and Rebates" as against total expenditure debited at Rs.l 12.07 lacs in the immediate preceding year. The assessee's gross turnover during the year increased to Rs.54119.34 lacs from 32371.82 lacs shown in the immediate preceding year. Considering the pace of increase in the gross turnover, the corresponding increase in the discounts and rebates is not comparable. The assessee could not explain satisfactorily such a hefty increase in this expenditure. In order to cover any leakage on account of inadmissible expenditure under the head discount and rebate, 1/10th of these expenses i.e. a sum of Rs.37.06 lacs is disallowed and added to the assessee's income.*

12.2 Inviting attention again to the copy of the order dated 19.02.2018 in ITA 855/CHD/2017 it was submitted that addition made on identical reasoning had been deleted by the ITAT. Heavy reliance was placed thereon. The said submissions, it was submitted, have not been rebutted by the Revenue. For ready reference, relevant discussion in paras 11 to 14 from the order of the Co-ordinate Bench is extracted hereunder :

> *"11. Before us Ld. AR argued that in applying the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of business, reasonableness of the expenditure has to be judged from the point of view of the businessman and not of the Revenue. It is not for the Revenue Authorities to dictate to the Assessee as to how he should conduct his business and it is not for them to tell the Assessee as to what expenditure the assessee can incur.*
> *He relied on the following judgments:*
> - *345 ITR 241, CIT Vs. EKL Appliances Ltd. (Delhi High Court), copy attached as Annexure-I which relied on the following judgments (kindly refer to pages 20-25 of such judgment):*
> - *20 ITR 1, Eastern Investment Ltd. Vs. CIT (Supreme Court)*
> - *65 ITR 381, CIT Vs. Walchand & Co. etc. (Supreme Court)*
> - *115 ITR 519, CIT Vs. Rajendra Prasad Moody (Supreme Court)*
>
> *12. The Ld. DR argued that while the turnover is increased by 67% the rebates and discounts have increased by 330% hence the disallowance which is in excess to the turnover needs to be disallowed.*
> *13. We have gone through the record placed before us and submissions of both the representatives.*
> *14. There were no findings by the Assessing Officer as to the discrepancy in books of accounts or any other material showing that these expenses debited or not genuine or not verifiable. From the submissions it could be found that the increase in the rebates was due to restructuring of the business of the assessee and the department cannot determine as to what should be the percentage of rebates and discount to be allowed in the absence of any material, investigation, evidence or proof about the non admissibility of the expenses hence the ad-hoc disallowance of 10%made by the Assessing Officer is hereby directed to be deleted."*

12.3. It is further submitted by the ld. AR that in the year under consideration, the rebate to sales (in the Replacement Market Division) on which discount has been offered, has reduced to 4.95% as opposed to 5.07% in the immediately preceding assessment year. For the said purposes, attention was invited to Paper Book page 155. Accordingly, it was his

submission that apart from the proposition of law that how the business is to run and for deciding the commercial expediency for determining whether expenditure was wholly and exclusively incurred for business purposes, the law is well settled that it is the reasonableness of expenditure which has to be judged from the point of view of the businessman and not of the AO.

13. The ld. CIT-DR relies on the order of the authorities below.

14. We have heard the rival submissions, considered the record, facts, circumstances, position of law and the precedent available in assessee's own case wherein we note that similarity of facts and circumstances has not been disputed by the Revenue. On a careful consideration of the same, we find that admittedly the disallowances have been made and been sustained by the AO and the CIT(A) respectively without any cogent reason. The books of account have been produced. The evidences supporting the claim are available on record. In the absence of any rebuttal on the same, the AO or for that matter, the tax authorities are not justified to enter into the terrain for determining the reasonableness of the expenditure. The legal position on the said aspect is well settled. Respectfully following the precedent, ground No. 2 of the assessee is allowed.

15. In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 19th June 2018.

Sd/- Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

(DIVA SINGH)
JUDICIAL MEMBER

'Poonam'
Copy to:
1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR

Asstt. Registrar
ITAT,Chandigarh.