

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.01/Ind/2016 & ITA No.89/Ind/2016

Assessment Year: 2005-06

M/s Ritspin Synthetics Ltd, Plot No.2, Kheda, Industrial Growth Centre, Pithampur (Dist), Dhar (Appellant)	Vs.	ACIT, Circle 1(2), Indore  (Respondent )
PAN No.AAACR8303E		

Revenue by	Smt. Ashima Gupta, Ld.CIT
Assessee by	Shri P.D. Nagar,CA
Date of Hearing	04.09.2018
Date of Pronouncement	19.09.2018

**ORDER**

**PER MANISH BORAD, AM.**

These Cross appeals at the instance of the assessee and revenue pertaining to A.Y. 2005-06 are directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT(A)'), vide appeal No. IT-547/14-15/73 order dated 16.10.2015 which is arising out of the order u/s 143(3) of the Income Tax Act

1961(hereinafter called as the 'Act') framed on 17.12.2007 by ACIT-1(2), Indore.

2. Brief facts of the case as culled out from the records are that the assessee is a private limited company engaged in manufacturing of synthetic yarn. Loss of Rs.3,93,27,630/- was declared in the return of income filed on 25.10.2005. The case was selected for scrutiny and notice u/s 143(2) of the Act was served. Written submissions were filed and books of accounts were produced which were examined on test basis. Assessment was completed on 7.12.2007 after making various disallowances at Rs.3,28,27,844/- thereby assessing loss at Rs.64,99,786/- computed in following manner;

Income as per return		Rs.(-)3,93,27,630/-
Add:Addition on account of		
1. Repair & Maintenance	Rs.64,18,438	
2. Hire charges for machinery	Rs.1,32,15,000	
3. Commission on sales	Rs. 64,63,146	
4. Travelling & conveyance Expenses	Rs.52,82,990	
5. Miscellaneous expenses	Rs.10,00,000	
6. Vehicle expenses	Rs. 4,48,270	3,28,27,844/-
Net Total Income		(-)64,99,786/-

Less: Set-Off from Net Loss c/f	
As per provision of I.T. Act	<u>64,99,786/-</u>
Net Balance income liable to Tax	Nil
	=====

3. Aggrieved assessee preferred appeal before Ld. CIT(A) and partly succeeded.

4. Now both the assessee and revenue are in appeal before the Tribunal raising following grounds of appeal;

**Grounds raised by the assessee:**

Ground No.1: Repairs and maintenance Rs. 85,57,917/-

That the learned Commissioner of Income tax (A) erred in law in confirming the disallowance of Rs. 30,00,000/-- out of total repairs & maintenance exp of Rs. 85,57,917/- on the ground that expenditure on repairs to wartsila DG set at Rs. 40,97,741/- may be partially capital in nature hence to such extent it was to be treated as capital expenditure ignoring the fact that during material time, there was actuate shortage and interrupted power supply in Pithampur. Treatment of such repairs expenditure as capital expenditure is very excessive, wholly unjustified, improper, bad in law and deserves to be set aside.

Ground No.2: Machine hire charges of Rs.1,32,15,000/-

That the learned Commissioner of Income tax (A) erred in law in continuing the disallowance to the extent of Rs. 39,64,500/- i.e. equal to 30% out of total machine hire charges paid at Rs. 1,32,15,000/-- without appreciating the fact that neither in the earlier year nor in the subsequent years such expenditure was disallowed. The machine hire charges were paid to inter corporate bodies & on such payment, tax was deducted at source @ 15%. Machines were taken on monthly hire basis and utilization of such machinery was not doubted upon, even if the machines could not be utilized continuously or wholly, hire charges could not be avoided. Disallowance of hire charges on ad-hoc basis to the extent of 30% is unjustified & bad- in law deserves to be set aside:

Ground No.3: Commission of sales of Rs.64,63,146/-

That the learned Commissioner of Income tax (A) erred in law in confirming the disallowance of amount equal to 15% of commission paid on sales at Rs. 38,77,888/- out of total commission paid at Rs. 2,58,52,585/- without appreciating the fact that commission on domestic sales was normally given @ 1.25% to 1.5% whereas on export such commission was paid at higher rates on which tax was deducted at Rs.24,69,452/- and at Rs.42,72,213/- respectively. Disallowance of such expenditure ignoring the submission of complete details is wholly unjustified, improper, bad in law and

deserves to be set aside.

Ground No.4: Travelling & Conveyance Expenses Rs.52,82,990/-

That the learned Commissioner of Income tax (A) erred in law in confirming the disallowance an amount equal to 35% of travelling & conveyance expenses at Rs. 36,98,093/- out of total expenses incurred at Rs. 1,05,65,979/- without appreciating that such expenditure were incurred exclusively for business purposes for attending seminars, sales conferences and day-to-day routine matters both at plant and corporate office. Foreign tours by directors or executives were for the purpose of export of finished products which is evident from the fact that the export turnover was increased during the year from Rs. 65.05 crores to Rs. 84.10 crores. Disallowance of such expenditure & confirmation thereof is therefore, unjustified, improper, bad in law and deserves to be set aside.

Ground No.5: Vehicle Expenses Rs.4,48,270/-

That the learned Commissioner of Income tax (A) erred in law in confirming the disallowance of amount equal to 10% of vehicle expenses at Rs. 4,48,270/-- out of total expenses of Rs. 44,82,710/-- on the ground of personal use of vehicles by the directors and their relatives ignoring the break up of such expenditure incurred which includes expenditure on running of Bus for workers from Indore to

Pithampur, Trax for workers, Staff Bus from Indore to Pithampur, Car Taxi for Guests, HOD, Auditors and Car running & maint. Expenses of own cars. Disallowance so made equal to 10% of entire expenses & confirmation thereof is very excessive, improper, bad in law and deserves to be set aside.

**Grounds raised by the Revenue:**

1. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was justified in law in treating the capital expenditure of Rs.85,57,917/- as revenue expenditure and restricting the addition Rs.30,00,000/- only.
2. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was justified in restricting the disallowance of machine hire charges at 30% as against 75% disallowed by the A.O.
3. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was justified in restricting the disallowance of commission expenses at 15% as against 25% disallowed by A.O.
4. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was justified in restricting the disallowance of travelling expenses at 35% as against 50% disallowed by the AO.
5. Whether on the facts and in the circumstances of the case the Ld. CIT(A) was justified in restricting the disallowance of

miscellaneous expenses at 10% as against 10,00,000/- disallowed by the AO.

5. The first issue relates to repair and maintenance expenses:

Brief facts relating to this common issue is that the assessee claimed expenditure of Rs.85,57,917/- under the head Repairs & Maintenance. The Ld.A.O considered them to be a capital in nature and merely allowed depreciation on the impugned amount thereby making addition of Rs.64,18,438/-. Ld. CIT(A) while dealing with the issue observed that most of the expenditure are of revenue in nature except the one incurred towards repair of DG sets and therefore sustained the disallowance at Rs.30,00,000/-.

6. Now the issue is before the Tribunal.

7. The Ld. Counsel for the assessee submitted that the company incurred expenses towards repairs and maintenance of plant and machinery, computers, DG Set, furniture & fixtures, office equipments, factory building, road etc. which were revenue in nature and are incurred in normal course of business towards normal wear and tear of capital assets. Incurring of expenditure was not doubted upon but entire expenditure was considered as substantial improvement in plant and machinery hence treated as capital expenditure by allowing deprecation thereon. The learned CIT(A) considered that Rs.30 lacs as capital expenditure out of

Rs.40,97,7411- incurred towards repairs of DG set with the direction to allow depreciation there on. He did not appreciate that such expenditure were incurred in piece meal during the whole year and individual payments in excess of Rs. One lac were at three instance only (copies of three invoices annexed). Description of spare parts etc. purchased proved beyond doubt and nature of expenditure was that of revenue and not capital. (Paper book - I page no. 1 to 12 and page no.73 to 77 of paper book - II).

8. The Ld. Departmental Representative supported the findings of Ld. Authorized representative as well as the favourable findings of Ld. CIT(A).

9. We have heard the rival contentions and records placed before us. The issue before us relates to the expenditure of repair and maintenance of Rs.85,57,917/-. Ld. Counsel for the assessee is pleading that the impugned amount is purely of revenue in nature and the Ld. A.O has wrongly treated it as capital expenditure whereas the Ld.CIT(A) has wrongly sustained the disallowance to Rs.30,00,000/- out of total disallowance of Rs.85,57,917/- observing as follows;

“Ground No.1

3. This ground of appeal is raised against an addition of Rs. 85,57,917/- on account of repairs and maintenance. I have gone through the relevant facts brought out by the AO in the assessment order and also the submissions filed by the appellant. The details of expenditure incurred have been filed

from which it is evident that such expenditure cannot be treated as capital expenditure. From the assessment order, it is evident that the Asstt. Commissioner of Income tax disallowed entire repairs and maintenance expenses of Rs. 85,57,917/- without considering and examining the details of such expenditure from which it is evident that such expenditure exceeding Rs. One lac were apparently revenue in nature as under :-

- a) Machinery and other repairs Rs.6,54,091/- in aggregate
- b) Repairs to road inside factory Rs.14, 13,064/ \_
- c) Repairs to wartsila DG Set Rs. 40,97,741/- In aggregate towards spare parts.

3.1 Further, the books of accounts are found to be audited and on the other hand, the appellant company suffered huge losses year after year hence there could not be any motive to debit capital expenditure in profit and loss account. Such repairs also included road construction work after a gap of ten years through contractor including material and labour. The repairs of the road inside the factory after a period of ten years cannot be treated as capital expenditure in any manner. Similarly, machinery repairs expenses do not indicate any major repair which can be said to be capital in nature. However, considering the amount of expenditure incurred towards repairs to DG set at Rs.40,97,741/- may be partially capital in nature hence in *the* interest of justice a sum of Rs.30 lacs may be treated as capital expenditure. The AO allowed depreciation @ 25% i.e. Rs.21,39,479/- while treating entire expenses as capital in nature which itself is incorrect because depreciation on road constructed side the factory is eligible @ 10% only. Accordingly, the disallowance is restricted to Rs.30 lacs only and appellant will get relief of Rs.55,57,917/-. The AO is

directed to recalculate the depreciation accordingly this ground of appeal is partly allowed”.

10. From going to the findings of Ld.CIT(A) as well as perusal of records, we find that the major expenditure for repair are towards repair of DG sets at Rs.40,97,741/-. This repair expenditure was incurred by the assessee towards repair of wartsila DG sets and details are available at page-7 of the paper book. On perusal of this ledger account of repair we observe that there are regular minor expenditure for repair from May 2004 till close of the year but at fag end of the year i.e. 31.03.2005 a sum of Rs.40,97,741/- has been incurred. Ld. Counsel for the assessee has been unable to prove that this particular expenditure will not give benefit to the company for a long period.

11. In these circumstances we are of the considered view that the amount of Rs.40,97,741/- cannot be categorized as a revenue expenditure under the head repair and maintenance and the same needs to be capitalized and certainly the assessee will be eligible to claim the depreciation as provided under the provisions of law on this capital expenditure of Rs.40,97,741/-. We accordingly dismiss the assessee's Ground No.1 and partly allow the revenue's Ground No.1 thereby treating the sum of Rs.40,91,741/- as capital expenditure out of the total repair and maintenance expenses of Rs.85,57,917/- claimed by the assessee. The Ld. A.O is directed to allow the depreciation and calculate the disallowance accordingly.

Ground No.1 raised by the assessee is dismissed and Ground No.1 raised by the revenue is partly allowed.

12. Next common issue raised in Ground No.2 by both the assessee and revenue relates to machine hire charges of Rs.1,32,15,000/-.

13. Brief facts relating to this issue are that the assessee company being a sick unit registered under BIFR could not avail term loan facility from any financial institution/bank therefore unable to acquire new assets. In order to manufacture twisted yarn it took textile machines on hire from various leasing and finance companies and paid Rs.1,76,20,000/- as machine hire charges during the year. Assessee was unable to place necessary material on record before the Ld.A.O to justify the hire charges and genuineness of the expenditure. In absence of the concrete evidence the Ld.A.O only allowed 25% of the hire charges at Rs.44,05,000/- and balance amount of Rs.1,32,15,000/- was added to the income. When the matter came up before the Ld.CIT(A) he give part relief to the assessee sustaining the disallowance @30%. Now the assessee is in appeal before the Tribunal.

14. The Ld. Counsel for the assessee submitted that the appellant company did not own machineries to manufacture

twisted yarn and being a sick unit registered under BIFR, term loan facility could not be availed from any financial institution/bank to acquire new assets. Therefore, to cater demand of twisted yarn, there was no alternative except to take the machines on hire. Therefore, various textile machineries were taken on hire for which machine hire charges of Rs.1,76,20,000/- were paid to five leasing and finance companies. (Paper book-I page no. 13 to 16). Such hire charges were paid in subsequent years also but no disallowances were made. The AO disallowed 75% of such charges on two grounds:- (a) that "since the installed capacity of machineries have not been utilized fully then it is very difficult to accept the need of machineries on hire" and (b) Proof of transportation of machinery was not furnished. The CIT(A) vide para 4 of the order observed that "Such disallowance has also been made on the ground that proof of transportation of machinery was not furnished". However, he further observed that "the AO has neither doubted the agreements executed for hiring of machine nor existence of machines or their use. The AO has also not pointed out any specific defect or non-business purpose of use of machinery. But the fact remain that appellant had failed to file proof of having incurred transportation charges as brought out by the AO in the assessment order. When the requirement of hiring machinery has not been proved and no proper bills and vouchers were produced during assessment proceedings the AO has been found justified in making appropriate disallowances". He considered disallowance as excessive and restricted the same to 30%. It is submitted that the machineries

were taken on hire which were installed by the lessor at their own cost hence transportation charges were borne by the lessors as per para 3 of each agreement. (Page 78 to 108 of IInd paper book). None of the directors of the appellant company was interested in lessor companies who had given machines on hire. Bills were not issued for because such payment was made as per the agreements. On such payments, tax was deducted at source by the appellant. It is settled law that in order to determine the question of reasonableness of the expenditure, the test of commercial expediency would have to be adjudged from the point of view of the businessman and not of the IT Department. Reliance is placed of following judgments:-

- i. S.A. Builders Ltd Vs. CIT(A) (2007) 288 ITR 1 (SC)
- ii. C.I.T. vs Travancore Sugar & Chemicals Ltd. 881TR1 (SC)
- iii. C.I.T. vs Panipat Woollen & General Mills Co. Ltd. 103 ITR 66 (SC)

15. On the other hand the Ld. Departmental Representative vehemently argued and supported the findings of CIT(A).

16. We have heard the rival contentions and records placed before us. Assessee claimed machine hire charges at Rs.1,76,20,000/-. Ld.A.O only allowed this expenditure to the extent of 25% and this disallowance was maintained to 30% by Ld.CIT(A) at Rs.62,86,000/- observing as follows:

“Ground No.2: 4. This ground of appeal is raised against an addition of Rs.1,32,15,000/- on account of Machine hire charges. The AO has discussed the issue in brief at para 2 of

assessment order wherein the AO has brought out that during the course of assessment proceedings, the appellant had failed to produce the proof of incurring such expenditure. Further, it has been observed by the AO that since the plant & machinery was not fully utilized, there was no need of hiring the machinery. The AO proceeded to make a disallowance of Rs. 1.32 crores out of total expenditure of Rs. 1.76 crores which works out to 75% of total expenditure. The appellant has filed the detailed written submissions which have been reproduced above. It is evident that the AO has disallowed 75% of machine hire charges paid by the appellant on the ground that "the claim of the company is not tenable since the installed capacity of the machineries have not been utilized fully then it is very difficult to accept the need of machineries on hire". Such disallowance has also been made on the ground that proof of transportation of the machinery was not furnished. The AO has neither doubted the agreements executed for hiring of machines, nor existence of machines or their use. The AO has also not pointed out any specific defect or non business purpose of use of machinery. But the facts remain that the appellant had failed to file proof of having incurred hire charges as brought out by the AO in the assessment order. When the requirement of hiring machinery has not been proved and no proper bills and vouchers were produced during the assessment proceedings, the AO has been found justified to making appropriate disallowances but certainly making disallowances of 75% of expenditure was not justifiable. Therefore, the same has been found highly excessive. In my opinion, in the interest of justice disallowance of 30% of expenditure on this account shall be sufficient to cover the infirmities pointed by the AO. Therefore, AO is directed to rework the disallowance and allow 70% of the

said expenditure. This ground of appeal is partly allowed.

17. We find that the assessee took machines on hire for manufacturing twisted yarn at the premises and this is also a fact that the company is a sick unit and no term loan facility was provided by the bankers. For this very reason it took machines on hire and paid sum of Rs.1,76,20,000/- to the following five concerns out of which except M/s. Wearit Global Ltd, Indore which charged Rs.1,25,000/- of the machine hire charges and the remaining amount of Rs.1,74,95,000/- has been given to four private limited companies based at Kolkata;

S.No.	Party Name	Total hire period	Amount	Address
1	Bhagwat Kripa Trading P. Ltd	02 years	41,25,000	70/F, Anandpalit Road, Kolkatta-700014
2	GMB Finvest Pvt.Ltd	02 years	29,70,000	70/F, Anandpalit Road, Kolkatta-700014
3	Kothsons Finance & Counsultancy P.Ltd	02 years	52,00,000	5,Clive Row, 1 <sup>st</sup> floor, Room No.4, Kolkatta-700001
4	Aarkey Tie-up Pvt. Ltd	02 years Revokable on two month	52,00,000	5,Clive Row, 1 <sup>st</sup> floor, Room No.4, Kolkatta-700001
5	Wearit Global Ltd	Notice	1,25,000	21/03, Old Palasia, Indore

18. During the course of assessment proceedings the Ld.A.O asked for agreement of payment of hire charges, details of machines taken on hire with the installed capacity as well as the proof of transportation of the machines. All these details were going to the root of the alleged expenditure and the genuineness of the expenditure should have been proved with all these details. It is nowhere coming from the records about the type of machines taken on hire from the companies located at Kolkata i.e. Bhagwat

Kripa Trading P. Ltd, GMB Finvest Pvt.Ltd located at the same address at 70/F, Anandpalit Road, Kolkata and the remaining two companies Kothsons Finance & Consultancy P.Ltd and Aarkey tie-up Pvt.Ltd at 5, Clive Row, 1<sup>st</sup> floor, Room No.24, Kolkata . It has been claimed that the period of hire charges are for two years but these are not supported by written agreement. No proof of transportation of the machines to the assessee's factory premises has been shown. Merely by making the payments by account payee cheque and deduction of tax at source on the impugned payment cannot prove the genuineness of the machine hire charges for the company which is running in huge loss.

19. In our considered view necessary investigation ought to have been conducted by the Ld.Assessing Officer and he was refrained from doing so by non co-operation by the assessee by not filing necessary details. We also cannot support the findings of Ld.CIT(A) which are without going into the basic facts of the issue. We therefore are of the considered view that this issue of genuineness of the expenditure of hire charges for machine needs to be set aside to the file of Ld. CIT(A). If necessary he can call for a detailed remand report from the Ld.AO after carrying out necessary investigation of the alleged finance and leasing companies on the basis of details and information to be provided by the assessee as and when required without taking any unnecessary adjournment.

20. Accordingly Ground No.2 of the assessee as well as Revenue's appeal relating to machine hire charges is allowed for statistical purposes.

21. Next common issue raised by the assessee and Revenue in Ground No.3 relates to commission expenses.

22. Brief facts of the case are that the assessee claimed commission expenses of Rs.2,58,52,585/-. It was claimed by the assessee that the commission is being paid to procure orders for export business as well as domestic sales. No agreements were entered with the commission agents which prompted the Ld.A.O to conclude that the commission paid was as an extra commercial consideration and further due to lack of proof of correspondences between the assessee and the agents, the truth of actual rendering of services was not brought on record. Ld.A.O therefore disallowed 25% of the commission expense claimed by the assessee and disallowed Rs.64,63,146/-. When the matter came up before the Ld.CIT(A) the disallowance was scaled down to 15% thereby giving part relief to the assessee.

23. Now both the parties are in appeal before the Tribunal.

24. Ld. Counsel for the assessee submitted the details of commission paid during the year by the appellant as compared to preceding year as under :-

Assessment Year	Turnover	Commission on sales
2004-05	Rs.88.77 crores	Rs.175.36 lacs
2005-06	Rs.104.83 crores	Rs.258.52 lacs
Increased by	18%	47%

Reasons for increase were (a) increase in export turnover by Rs.19.05 crores. (b) payment of commission in exceptional circumstances was paid @ 10 and 12 but on domestic sales it was given @ 1.25 to 1.5 and on export sales such commission was paid between 2 to 5 and in maximum cases it was 3 only. (Page 18 to 20 of paper book).

Commission payable is mentioned in the export documents viz. SDP from without which the bank does not remit any commission to any overseas agent. TDS was deducted on commission payment on domestic sales at Rs.24,69,452/- and on export sales at Rs.42,72,213/- as per details annexed and submitted before lower authorities. Such payments were made to regular agents to procure orders from international as well as domestic market. Rendering of services by the agents have not been doubted upon and none of the agents was relative of any of the directors of the company. The AO observed that payment of commission was for extra commercial consideration and this was done to facilitate making certain payments to the friends. Therefore, in the absence of written agreements with the agents he disallowed 25% of the payments on ad-hoc basis. The CIT(A) observed that execution of agreement was not necessary when payments were made to regular agents year

after year and AO did not point out specific defect in incurring such expenditure. However, in absence of supporting evidences and justification for making such huge commission he reduced the disallowance @ 15% as against 25%.

25. On the other hand the Ld. Departmental Representative vehemently argued and supported the findings of Ld. CIT(A).

26. We have heard the rival contentions and records placed before us. The issue raised before us through this common ground by both parties relates to commission expenses. The assessee is aggrieved with the disallowance of 15% of commission expenses whereas the revenue is aggrieved with the part relief given by the Ld.CIT(A) against the disallowance of 25% made by Ld.A.O to 15% observing as follows;

“Ground No.3 :5. This ground of appeal has been raised against the disallowance of commission on sale amounting to Rs.64,63,146/-, being 25% of such expenditure. The AO has discussed the issue briefly at para 3 of the assessment order wherein it has been brought out that the appellant had failed to prove the requirement and exigencies to incur such expenditure and has failed to explain the nature of services rendered by the commission agents. Therefore, the AO had concluded that the impugned expenditure was incurred for extra commercial consideration. The appellant has filed the detailed written submission which is reproduced above. It is evident from the assessment order that, the AO, without doubting the extent of services rendered by the agents or its genuineness, has

disallowed 25% of payments to commission agents on adhoc basis by observing that "payment of commission was for extra commercial consideration and this was done to facilitate making certain payments to the friends it would be worthwhile to mention here that the assessee has not produced any written agreement entered into between itself and the agents and there is no correspondence to suggest that these persons did in fact rendered any services to the assessee". It is contended that the AO did not raise any doubt regarding rate of commission on sales, sales effected through the agents and TDS on payment of commission, etc . He partially accepted that services were rendered even though agreements were not executed with the commission agents. The claim of the appellant that such payments were made to regular agents year after year, hence execution of agreement was not considered necessary, cannot be brushed aside. It has also been contended that the AO has not brought on record anything to prove that such commission was paid for extra commercial consideration and it was for non-business purpose. However, after considering the totality of the facts and circumstances and the fact that the appellant had failed to file the required details and produce relevant documents, the AO has rightly concluded that the appellant had failed to produce supporting evidences to justify the claim under this head. No formal agreement and basis for payment of such commission were placed on record by the appellant during the course of assessment proceedings. No details of services rendered by the commission agents were filed by the appellant. During the course of appeal proceedings also, despite opportunities the appellant has failed to produce complete details and supporting evidences and justification for making

such huge commission particularly when the company was running loss. Therefore, the AO has been found justified in making such disallowances. However, disallowance of commission @25% has been found unreasonably high particularly when the AO had not pointed out any specific defect in incurring such expenditure. Therefore, in the interest of natural justice it shall be reasonable to disallow the commission @15% as against 25% which shall be sufficient to cover the discrepancy noticed by the AO. This ground of appeal is partly allowed”.

27. We find that it is an undisputed fact relating to the alleged expenses of commission that no formal agreements have been prepared between the assessee and the agents which can prove the basis for payment of such expenses. It is also not disputed that the details of services rendered by each commission agent was also not filed. In some cases the commission paid are around 12 to 15% whereas in most of the cases the alleged commission is ranging between 2 to 4%. It is also worth noting that in comparison to preceding financial year the turnover has increased by only 18% whereas the commission expenses has increased by 47%. In these circumstances when expenses has increased abnormally in comparison to past year and necessary details to prove the genuineness of the expenses are not to the mark as they are required to be, we find no inconsistency in the findings of Ld.CIT(A) sustaining disallowance at 15% of the total commission expenses incurred by the assessee during the year. In the result the grounds raised by the assessee and revenue is dismissed.

28. Now we take up Ground No.4 of respective appeals of the assessee and the revenue which relates to disallowance of travelling expenses.

29. Brief facts relating to this issue are that sum of Rs.1,05,65,979/- was debited in the profit and loss account under the head "travelling and conveyance expenses". On perusal of the list of expenditure the Ld.A.O noticed that it also included frequent travelling of the Directors across the country and the nexus of the travelling for the business purposes was not well established before the Ld.A.O. He took the view that the personal element in the expenditure could not be set aside and accordingly disallowed 50% of the expenditure and added Rs.52,82,990/- to the income. When the matter came up before the Ld.CIT(A), he after going through the submissions made by the assessee sustained the disallowance of Rs.37,00,000/- thereby giving relief at Rs.15,82,990/- to the assessee.

30. Now both the assessee and revenue are in appeal before the Tribunal.

31. The Ld. Counsel for the assessee submitted that details of comparative travelling expenses incurred by the appellant are as under:-

Assessment year	Turnover	Travelling expenses	Disallowance as per CIT(A)
2004-05	Rs.88.77 crores	Rs.1,16,00,203/-	Rs.NIL
2005-06	Rs.104.83 crores	Rs.1,05,65,979/- 50% disallowed by AO	Rs.37,00,000/- (35%)

32. These expenses were incurred by Directors & Employees of the company exclusively for business purpose including for attending seminars, sales conferences and day-to-day routine matters both at plant and corporate office at Kolkata. The plant is situated at Pithampur (near Indore) whereas, the Corporate and Marketing Office is situated at Kolkata therefore, it becomes necessary for the executives as well as the directors of the company to have official meetings quite often.(Details at page no. 21 to 41 of Paper book-I). Foreign tours by directors or executives were for the purpose of export of finished products which is evident from the fact that the export turnover was increased during the year from Rs. 65,05 crores to Rs. 84.10 crores. (Details at page no. 42 to 47 of Paper book-I). The AO observed that there was no justification for employees and directors of the company to travel all around the Country since the business of the company is manufacturing and exporting the goods. According to AO, travelling is not wholly for business purposes and there was no positive advantage to the company, he therefore, disallowed such expenditure to the extent of 50%. The CIT (A) considered the disallowances as excessive and restrict the same to 35% of the total expenditure.

33. The Ld. Departmental Representative vehemently argued and supported the findings of Ld. Assessing Officer.

34. We have heard the rival contentions and records placed before us. The issue raised in this ground by both the parties relates to disallowance of travelling and conveyance expenses wherein Ld. CIT(A) sustained the disallowance at Rs.37,00,000/- as against the disallowance of Rs.52,82,990/- made by the Ld.A.O @ 50% of the total expenditure of Rs.1,05,65,979/- . The Ld.CIT(A) gave part relief to the assessee observing as ;

“Ground No.4

“6. This ground of appeal has been raised against the disallowance of Rs.52,82,990/ - @50% of total expenditure of Rs.1,05,65,979/- under the relevant head of expenditure. The AO has discussed the issue at para 4 of the assessment order wherein the AO has observed that "there was no justification for employees and directors of the company to travel all around the Country since the business of the company is manufacturing and exporting the goods. On one hand the company incurring expense tours and travels and on the other hands generating huge losses. According to him it was crystal clear that travelling was not wholly especially for business purpose and there was no positive advantage for the company". Therefore, with these observation, the AO had proceeded to make disallowance of 50% of such expenditure on adhoc basis.

6.1 The appellant has filed the written submissions which are reproduced above. I have gone through the assessment order,

written submissions and facts and circumstances of the case. It is observed from the details of traveling expenses submitted that considering the increase in the turnover by 18%, travelling expenses incurred at Rs.105.66 lacs during the year appears to be excessive. Moreover, the appellant had failed to file required details, supporting evidences and justification for incurring such huge expenditure during the course of assessment proceedings as well as appeal proceedings despite due opportunities. Therefore, the AO has been found justified in making such disallowances. However, the disallowance has been found excessive. Therefore, in the interest of natural justice, the same is required to be restricted to 35% of total expenditure. Therefore addition of Rs.37 lacs is confirmed under this head. Appellant gets relief of Rs.15,82,990/-. This ground of appeal is partly allowed”.

35. The basis for disallowance made by the Ld.A.O was mainly on the premise that the impugned expenditure was not completely for business purposes and there was no positive advantage to the company and also the personal element being part of such expenditure cannot be ruled out. Ld.CIT(A) give part relief even when the appellant failed to submit the required details with supporting evidences and justification for incurring impugned expenditure. From perusal of the paper book Page-21 to 47 providing all the details of travelling expenses, we find that the complete details of each expenditure along with purposes of tour by respective employees has been mentioned. Directors as well as staff officials of the company also travelled extensively across/

outside the country. There have been frequent travels to European countries also. However, assessee failed to bring on record the connection of the foreign travels for the business purposes in the firm in the form of details of the parties which have been visited, communications with those parties with regard to export/import and whether any orders were procured. In these given facts and circumstances of the case and fair play, we are of the view that disallowance of 20% of the total expenditure will cover the deficiency in the records of the assessee. We accordingly hold so and sustain the disallowance to Rs.21,13,196/-. Assessee's Ground No.4 is partly allowed and that of revenue's stands dismissed.

36. Now we take up Ground No.5 raised by assessee relating to disallowance of vehicle expenses.

37. Brief facts of the case are that the assessee incurred Rs.44,82,710/- as vehicle expenses during the year. Due to lack of log books maintained by the company, Ld.A.O disallowed 10% of the expenditure at Rs.4,48,270/- and same was confirmed by Ld.CIT(A).

38. Now the assessee is in appeal before the Tribunal.

39. Ld. Counsel for the assessee submitted that during the year, the company incurred vehicle expenses at Indore and Kolkata at Rs.44,82,710/- as against last years expenditure of Rs. 44,99,549/- (Paper book page no.48 to 72). Break up of such expenditure incurred during the year is as under :-

Bus for ladies workers from Indore to Pithampur	Rs. 6,60,228/-
Trax for workers	Rs.10,48,937/-
Staff Bus from Indore to Pithampur,	Rs. 6,68,283/-
Car Taxi for Guests, HOD, Auditors	<u>Rs. 4,51,744/-</u>
	Rs.28,29,192/-
Less: Recovery against taxi charges	<u>Rs. 40,111/-</u>
	Rs.27,89,081/-
Add : Car running & Maint. Expenses (own cars)	<u>Rs.16,93,629/-</u>
	<u>Rs.44,82,710/-</u>

The company deducted tax at source on payments of Rs.28,29,192/-.The appellant being separate legal entity, there cannot be any personal use of vehicles. Considering the nature and volume of business, disallowance equal to 10% of entire expenses incurred on staff bus, tracks etc. was not justified at all. The same could have been made out of car running and maintenance expenses incurred at Rs.16.93 lacs at any reasonable percentage. Disallowances under aforesaid heads of expenses were made by AO as well by learned CIT(A) on adhoc basis which is not permissible. Reliance is placed on following judgments :-

(i)RajatTradecom India (P) Ltd.vs. DCIT (2009) 120 ITD 48 (Indore Trib.)

(ii)P.D. Agrawal Infrastructure Ltd vs. Addl. CIT (2010) 15 ITJ 764 (Indore)

(iii) ACIT vs. Indira Exports Pvt Ltd (2013) 21 ITJ 132 (Indore Trib.)

(iv)ACIT vs. Ganpati Enterprises Ltd (2013) 142 SOT 118 (Del. Trib.)

40. The Ld. Departmental Representative vehemently argued and supported the findings of Ld. Assessing Officer.

41. We have heard the rival contentions and records placed before us. Issue raised by the assessee relates to disallowance of vehicle expenses at Rs.4,48,270/- . In the submissions made by the Ld. Counsel bifurcation of expenditure has been given out of which Rs.16,93,629/- specifically relates to car running and maintenance of the cars owned by the company. Rest of other expenses relates to the vehicle expenses for the staff and auditors. In these circumstances wherein complete details have been provided by the assessee towards the car running and maintenance expenses, we are of the considered view that disallowance of 10% at Rs.16,93,629/- is justified to cover the personal expenses of

Directors/Promoters. We accordingly do so and sustain the disallowance to Rs.1,69,336/- as against Rs.4,48,270/- confirmed by the Ld.CIT(A). Ground No.5 of the assessee is partly allowed.

42. Now we are left with Ground No.5 of revenue's appeal wherein the revenue has challenged the findings of Ld.CIT(A) sustaining the disallowance of miscellaneous expenses to 10% of the total expenditure of Rs.67,02,718/- as against ad-hoc disallowance of Rs.10,00,000/- made by the Ld. Assessing Officer.

43. Ld. Departmental Representative vehemently argued and supported the orders of Ld. Assessing Officer.

44. Ld. Counsel for the assessee argued that the impugned expenditure is for the business purposes only.

45. We have heard the rival contentions and records placed before us. The issue relates to disallowance made out of miscellaneous expenses. We find that the miscellaneous expenses are towards electricity charges, garden expenses, internal audit, office

maintenance, printing and stationery, legal expenses etc. Books of accounts are audited. The finding has been given by Ld. Assessing Officer about ad-hoc disallowance made by him. However, Ld.CIT(A) restricted the disallowance to 10% of Rs.67,02,718/- for the lack of relevant bills and vouchers should have been produced by the assessee before the lower authority. We therefore in the given facts and circumstances of the case are of the view that the nature of expenditure incurred under the head “miscellaneous expenses” even though related to business purposes but due to lack of proper details minor disallowance of 5% would meet the end of justice. We accordingly do so and restrict the disallowance to 5% of total expenditure and sustain it to Rs.3,35,136/-. Ground No.5 of revenue is partly allowed.

46. In the result Ground No.1 of the assessee is dismissed and revenue's appeal is partly allowed, Ground No.2 of both the parties allowed for statistical purpose, Ground No.3 of both the parties are dismissed, Ground No.4 of assessee s partly allowed and revenue is dismissed and Ground No.5 of both the parties are partly allowed. Cross appeals are partly allowed for statistical purposes.

The order pronounced in the open Court on 19.9.2018.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 19<sup>th</sup> September, 2018  
/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR,  
ITAT, Indore/Guard file.

By order  
Private Secretary/DDO, Indore