

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.2423/Del/2013
Assessment Year: 2010-11**

Imperial Auto Industries Ltd., 202, Kaushal Bazaar, 22-23, Nehru Place, New Delhi. (PAN: AAACI0645J)	Vs	ACIT, Central Circle 1, New Delhi.
Appellant		Respondent

**ITA No.3118/Del/2013
Assessment Year: 2010-11**

DCIT, Central Circle-1, Faridabad.	vs	Imperial Auto Industries Ltd., 202, Kaushal Bazaar, 22-23, Nehru Place, New Delhi. (PAN: AAACI0645J)
Appellant		Respondent

**Assessee by : Dr. Rakesh Gupta, Adv.
Mr. Dipesh Garg, AR
Department by: Smt. Meeta Singh C.I.T. DR**

**Date of hearing : 19.06.2018
Date of pronouncement : 14.09.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, JM

ITA No. 2423/Del/2013 is the assessee's appeal against the order dated 7.3.2013 passed by the Ld. CIT (Appeals)(Central), Gurgaon for assessment year 2010-11 and ITA No.

3118/Del/2013 is the department's cross appeal for the same year.

2.0 Brief facts of the case are that the group cases of M/s Imperial Auto Industries Ltd., Faridabad were subject to search and seizure operation on 2.9.2009. Search and seizure operations were also conducted at the business and residential premises in the cases which were closely associated with M/s Imperial Auto Industries Ltd. Search operation u/s 132(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') was also carried out on 2.9.2009 at the business premises of the assessee M/s Imperial Auto Industries Limited, 202, Kaushal Bazaar, 32-33, Nehru Place, New Delhi and also its premises opposite the Railway Goods shed. Certain cash, documents and books were seized and impounded during the course of search operation from the business premises of the assessee company.

2.1 The return of income for the year under consideration was filed on 15.10.2010 declaring an income of Rs. 13,15,50,160/- which included Rs. 5 crore declared by the assessee during the course of search operation. The assessment was completed u/s 143(3) r/w section 153(1)(b) of the Act on 28.12.2011 at an

income of Rs. 14,83,41,420/- after making the following additions/disallowances:-

- i) Unaccounted cash transactions - Rs. 1,05,04,160/-
- ii) Difference in cash balance as per books and cash counted physically on the date of search – Rs. 13,150/-
- iii) 1/5th of conveyance expenses disallowed – Rs. 22,78,951/-
- iv) Short and excess recoveries – Rs. 1,79,257/-
- v) 1/5th of vehicle running and maintenance expenses – Rs. 17,35,564/-
- vi) Liquidated damage charges added back - Rs. 5,05,972/-
- vii) 1/5th of business promotion expenses – Rs. 15,74,205/-

2.2 Aggrieved, the assessee approached the Ld. Commissioner of Income Tax (A) challenging these additions and the Ld. Commissioner of Income Tax (A) partly allowed the assessee's appeal by allowing relief/dismissing the grounds raised by the assessee as under:-

- i) The addition of Rs. 1,05,04,160 on account of undisclosed cash transactions was deleted.

- ii) The difference in physical cash found during the course of search and cash as per the books of account amounting to Rs. 13,150/- was deleted.
- iii) The addition of Rs. 22,78,951/- being 1/5th of total expenditure under the head 'conveyance' was upheld by the Ld. Commissioner of Income Tax (A).
- iv) The disallowance of Rs.1,79,257/- on account of short/excess recoveries was deleted.
- v) The disallowance of 1/5th of vehicle running and maintenance expenses amounting to Rs. 17,35,564/- was partially sustained and restricted to Rs. 10 lakh.
- vi) The disallowance of liquidated damages amounting to Rs. 5,05,972/- was deleted.
- vii) The disallowance of 1/5th of business promotion expenses amounting to Rs.15,74,205/- was upheld.

2.3 Aggrieved, both the assessee and the department have approached the ITAT and have challenged the findings/ adjudication by the Ld. Commissioner of Income Tax (A) by raising the following grounds of appeal:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on fact in

upholding the action of Ld AO in making an ad hoc disallowance of Rs. 22,78,951/- being 1/5th of conveyance expenses that too without any basis and merely on the basis of surmises and conjectures.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on fact in upholding the action of Ld AO in disallowing vehicle running and maintenance expenses and restricting the same to Rs. 10,00,000/- holding the same to have been incurred allegedly for non business purpose.

That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on fact in upholding the action of Ld AO in making a disallowing of Rs.15,74,205/- being 1/5 of business promotion expenses holding the same to have been incurred allegedly for non business purpose.

4. In any view of the matter and in any case, the impugned disallowances under challenge could not have been made u/s 153A as there was no incriminating seized material.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in not allowing the adjustment of cash found and seized during search amounting to Rs.52,00,000/- towards payment of advance tax liability.”

Grounds raised by the department are as under:-

“(i) Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in deleting the addition of Rs. 1,05,04,160/- made by the AO being the difference of undisclosed cash transactions were recorded in seized documents Annexure A- 1 to A-4 at Rs.11,00,44,160/- and the amount disclosed on account of these documents was Rs. 9,54,20,000/-?”

“(ii) Whether on the facts and in the circumstances of the case the Ld. CIT(A) was right in deleting the disallowance of a sum of Rs. 1,79,257 claimed to be debited to profit and loss account under the head “short

and excess recoveries especially when no explanation was offered and no documentary evidences were produced by the assessee?”

“(iii) Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 5,05,972/- made by the AO on account of liquidated damage charges ignoring the fact that the expenses were not incurred in the normal course of business and this is in the nature of penalty on the assessee for violating agreement between parties”.

(iv) That the appellant craves to add, delete or modify any of the grounds of appeal before or at the time of hearing.”

3.0 The Ld. AR submitted that ground nos. 1, 2 and 3 of the assessee's appeal challenge the *ad hoc* disallowance by the Assessing Officer in respect of conveyance expenses, vehicle running and maintenance expenses and business promotion expenses. The Ld. AR submitted that all these three additions/disallowances had been made without pointing out any specific defect in the books of accounts of the assessee. The Ld. AR submitted that the audited books of accounts had been duly produced before the Assessing Officer as has been noted by the Assessing Officer himself on page 2 of the assessment order. It was also submitted that the Ld. Commissioner of Income Tax (A) had erred in upholding/partially sustaining the disallowances which had been made on *ad hoc* basis without assigning any reason for reaching the conclusion of sustaining/partially

sustaining these *ad hoc* disallowances. The Ld. AR further submitted that the department had duly accepted similar expenses in assessment years 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 in assessment orders which were passed u/s 143(3) r/w section 153A of the Act. It was also submitted that the ITAT in assessee's own case for assessment year 2012-13 had deleted a similar *ad hoc* addition in respect of business expenses in ITA No. 4604/Del/2016 vide order dated 15.12.2007.

3.1 The Ld. AR further submitted that ground no. 4 in the assessee's appeal was not being pressed.

3.2 With respect to ground no. 5 which challenged the action of the Ld. Commissioner of Income Tax (A) in not allowing the adjustment of cash found and seized during the search amounting to Rs. 52 lakh towards payment of advance tax liability, it was submitted that the Ld. Commissioner of Income Tax (A) had not adjudicated this issue. It was submitted that this ground corresponded to ground no. 10 of the assessee's appeal before the Ld. Commissioner of Income Tax (A).

4.0 In response, the Ld. CIT DR submitted that the *ad hoc* disallowances being contested by the assessee had been made

because the relevant details had not been submitted before the Assessing Officer and the Assessing Officer had no option but to proceed on the basis of material before him. The Ld. CIT DR vehemently argued that the disallowances/additions being challenged by the assessee were made on a sound basis by the Assessing Officer and were accordingly sustained/partially sustained by the Ld. Commissioner of Income Tax (A) and in view of the findings of both the lower authorities, the same should be upheld.

5.0 Coming to the department's appeal, the Ld. CIT DR submitted that the Ld. Commissioner of Income Tax(A) had deleted the addition pertaining to unexplained cash transactions of Rs. 1,05,04,160/- on the ground that there was a duplication of the diaries in seized documents Annexure A-1 to A-4 and it was submitted that the Ld. Commissioner of Income Tax (A) had merely accepted the assessee's claim that there was a duplication in adding the figures whereas the onus was on the assessee to establish beyond doubt that there was a duplication.

5.1 With respect to the department's ground challenging the deletion of disallowance of Rs. 1,79,257/- on account of short

and excess recoveries, the Ld. C.I.T. DR submitted that this amount had been deleted by the Ld. Commissioner of Income Tax (A) although the assessee had not offered any plausible explanation on this issue.

5.2 With respect to ground no. 3 of the department's appeal challenging the deletion of addition of Rs. 5,05,972/- on account of liquidated damages, it was submitted that the Ld. Commissioner of Income Tax (A) had given relief to the assessee without calling for any details from the assessee in this regard and had accepted the assessee's contention without any examination of the issue.

6.0 In response to the department's appeal, the Ld. AR submitted that with respect to ground nos. 2 and 3 of the department's appeal, reliance was being placed on the impugned order of the Ld. Commissioner of Income Tax (A). The Ld. AR vehemently argued that the Ld. Commissioner of Income Tax (A) had given relief after due consideration of the factual matrix of the case. He also drew our attention to pages 468 and 469 of the Paper Book filed by the assessee wherein the details of short and excess recoveries and liquidated damages were reproduced. It

was submitted that these details were before the lower authorities as well.

6.1 With respect to ground no. 1 of the assessee's appeal, the Ld. AR drew our attention to Paper Book pages 428 to 461 of the Paper Book submitted by the assessee and submitted that these contained the relevant details and explanation of the Annexure A-1 to A-4 of the seized documents and that even as per these details, which were duly before the lower authorities, there was a clear case of duplication of entries while making the impugned addition of Rs. 1,05,04,160/-. It was submitted that the amount was deleted after due consideration of the facts and details on record.

7.0 We have heard the rival submissions and perused the material available on record. As far as ground nos. 1, 2 and 3 of the assessee's appeal which challenge the upholding /partial upholding of *ad hoc* disallowance with respect to conveyance expenses, vehicle running and maintenance expenses and business promotion expenses are concerned, it is evident from the past assessment records that no similar disallowance had been made by the department in assessment years 2005-06,

2006-07, 2007-08, 2008-09 and 2009-10 in respect of conveyance expenses although the assessment was completed u/s 153A r/w section 153(3) of the Act. Similarly, with respect to vehicle running and maintenance expenses and business promotion expenses, no disallowance had been made in assessment years 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 and it is further noted that the basis of disallowance in the impugned year is a mere estimation on the part of Assessing Officer wherein he has disallowed 1/5th of the expenses without assigning any reason for such disallowance. We also note that the Assessing Officer has not pointed out any specific defects in the books of accounts/details produced before him with regard to these expenses. It is also undisputed that the books of accounts of the assessee were duly audited and they were produced before the Assessing Officer. It is settled law that in absence of any corroborative finding, *ad hoc* disallowance cannot be upheld. If the Assessing Officer is not satisfied with the submission of the assessee, then he has to make a disallowance after making specific reference to such documents/vouchers. In the present case before us, no specific identification has been done. Therefore, in view of the facts, it is our considered opinion that

the three estimated disallowances as confirmed by the Ld. Commissioner of Income Tax (A) is unsustainable. Accordingly, we allow ground nos. 1, 2 and 3 of the assessee's appeal and direct the Assessing Officer to delete the addition.

7.1 Coming to ground no. 4, since this ground has not been pressed by the assessee, the same is being dismissed as not pressed.

7.2 With regard to ground no. 5, we agree with the contentions of the Ld. AR that this ground has not been specifically adjudicated by the Ld. Commissioner of Income Tax (A). Therefore, we deem it fit to restore this ground to the file of the Ld. Commissioner of Income Tax (A) for adjudicating the ground by passing a speaking order thereon as per law after giving due opportunity to the assessee to present its case.

7.3 Ground nos. 6 and 7 being general in nature are not being adjudicated.

8. In the result, the appeal of the assessee stands partly allowed.

9.0 Coming to the department's appeal, it is seen that as far ground no. 1 of the department's appeal is concerned which challenges the deletion of addition of Rs. 1,05,04,160/- on account of undisclosed cash transaction, the Ld. Commissioner of Income Tax (A) has assumed that 50% of the seized Annexure A-1 was a duplication. However, the Ld. Commissioner of Income Tax (A) has not specifically recorded a reason as to how he assumed a figure of 50% to be of duplication, therefore, on this count alone, the department succeeds and we deem it expedient in the interest of justice to restore ground no. 1 to the file of the Ld. Commissioner of Income Tax (A) to be adjudicated *de novo* after giving due opportunity to the assessee to present its case. Accordingly, ground no. 1 of the department's appeal stands allowed for statistical purposes.

9.1 Coming to ground no. 2 of the department's appeal which challenges the deletion of addition of Rs. 1,79,257/- claimed as short and excess recoveries by the assessee, it is seen that the Ld. Commissioner of Income Tax (A) has mentioned that the details of this account run into 500 odd pages and that the amount represented the difference after netting off. The Ld. Commissioner of Income Tax (A) has also stated that the turnover

of the assessee was approximately Rs. 52,305 lacs and the total purchases were to the tune of Rs. 32,898/- lacs. In such circumstances, the Ld. Commissioner of Income Tax (A) held the debit of the impugned amount as reasonable. On the facts of the case, we find no reason to interfere with the finding of the Ld. Commissioner of Income Tax (A) on the issue as the Ld. Commissioner of Income Tax (A) has adjudicated the issue after duly considering the quantum of turnover of the assessee as well the details submitted before him. The Ld. CIT DR also could not point out any factual error in the findings of the Ld. Commissioner of Income Tax (A) in this regard. Accordingly, we dismiss ground no. 2 raised by the department.

9.2 Ground no. 3 challenges the action of the Ld. Commissioner of Income Tax (A) in deleting addition of Rs. 5,05,972/- with respect to liquidated damages and it is seen that the Ld. Commissioner of Income Tax (A) has given relief to the assessee after duly considering the fact that these expenses relate to normal course of business and were fully allowable as business expenditure. The Ld. Commissioner of Income Tax (A) has noted that in view of the nature of business being conducted by the assessee on a large scale which entails making supplies to

various agencies including government agencies, such claims were bound to arise. We also note that the Assessing Officer has disallowed the entire amount of expenditure claimed as liquidated damages without pointing out any specific instance where such claim was not allowable. This is not legally tenable and even the Ld. CIT DR was unable to point out any legal or factual inaccuracy in the order of the Ld. Commissioner of Income Tax (A). Accordingly, we refuse to interfere on this issue also and we dismiss ground no. 3 raised by the department.

9.3 Ground no. 4 of the department's appeal is general in nature and the same is not being adjudicated upon.

10. Accordingly, the appeal of the department stands partly allowed for statistical purposes.

11. In the result, the appeal of the assessee stands partly allowed and the department's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 14th September, 2018.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 14th SEPTEMBER, 2018
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

True Copy

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	