

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

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 5301/Del/2015**

**AY: 2012-13**

ITO, Ward 13(2) C.R. Building New Delhi	<b>Vs.</b>	Jai Jawan Coal Carriers (P) Ltd. G 201, Preet Vihar Delhi 110 092  PAN: AAACJ0202A
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**(Appellant)**

**(Respondent)**

**Department by :** Sh. Surender Pal, Sr. D.R.

**Assessee by :** None

**Date of Hearing :** 08/11/2018

**Date of Pronouncement:** 28/11/2018

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by revenue against order dated 05/06/15 passed by Ld.CIT(A)-5, New Delhi for Assessment Year 2012-13 on following grounds of appeal:

1. *That on the facts & in the circumstances of the case & in law, the Ld. CIT (A) is erred in deleting the addition of Rs.1,38,54,151/- made by the AO on account of punitive charges paid to railway as over-loading charges.*
2. *That on the fact & in circumstances of the case & in law, the Ld.CIT(A) is erred in restricting the addition from Rs.2,55,000/- to Rs. 1,27,500/- made by AO on account of water supply expenses.*

3. *That on facts & circumstance of the case & in law, the Ld. CIT (A) is erred in deleting the addition of Rs. 16,07,900/- made by AO on account of hiring charges and rack loading charges paid to parties covered u/s 40A(2)(b) of the Income Tax Act, 1961.*
4. *That the order of the Ld. CIT (A) is erroneous and is not tenable on facts and in law.*
5. *The grounds of appeal are without prejudice to each other.*
6. *That the appellant craves leave to add, alter amend or forego any ground(s) of the appeal raised above at the time of the hearing.*

**2. Brief facts of the case are as under:**

Assessee filed its return of income on 26/09/12 declaring 'nil' income which was processed under section 143 (1) of Income Tax Act, 1961 (the Act). Case was selected for scrutiny and notice under section 143(2), 142(1) along with questionnaire was issued. In response to statutory notices, representative of assessee attended proceedings from time to time and filed details as called for.

**3.** Ld.AO observed that assessee entered into agreement with Orissa Mining Corporation Ltd., for transport of iron ore from OHP (Balliparbat) to Daitari railway siding, including machine loading/unloading and loading of Railway wagons by manual and mechanical ways, as per terms and conditions laid down in the agreement, at Daitari railway station.

The Ld. AO noticed following expenses debited under the head 'other expenses':

(i) Business Promotion expenses	-	Rs. 7,56,015/-
(ii) Demurrage charges	-	Rs. 2,94,300/-
(iii) Punitive charges	-	Rs. 1,38,54,151/-
(iv) Under-load freight charges	-	Rs. 1,83,94,503/-
(v) Water charges	-	Rs. 5,10,000/-

**3.1.** Ld.AO called for explanation as to why, punitive expenses and demurrage claimed should be allowed being penal in nature. Assessee filed reply in response to queries raised. Ld.AO on considering the same, was of opinion that, expenses incurred by assessee under the head 'punitive charges' not an allowable expenditure being penal in nature, and are also not incidental to business activities being carried on by assessee. He accordingly disallowed claim amounting to Rs.1,38,54,151/-.

**3.2.** Ld.AO made addition in respect of water expenses incurred amounting to Rs.2,55,000/-, and amount paid to certain parties on account of hiring charges and rack loading charges to be covered under section 40A(2)(b) amounting to Rs.16,07,900/-.

**4.** Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT (A) who deleted entire addition.

**5.** Aggrieved by order of Ld.CIT (A) revenue is in appeal before us now.

**6.** We find that Rakesh Kumar Singh & Co. Chartered Accountant has entered their appearance on the previous date being 04<sup>th</sup> September,2018 and has filed their power of attorney which is placed on record. It is observed that none had appeared on behalf of assessee today.

**7.** Considering smallness of case, we do not find it necessary to adjourn appeal, and keep it pending. We therefore are inclined to hear present appeal ex parte assessee.

**8. Ground No. 1** raised by revenue is in respect of addition of Rs.1,38,54,151/- being deleted by Ld.CIT (A).

**9.** Ld.Sr.DR submitted that disallowance of expenses under section 37 (1) of the Act, pertains to punitive charges paid to Railways, for overloading from consignor or consignee as the case may be. He submitted that these expenses are not directly incurred by assessee for purposes of its business. Ld. Sr.DR submitted that punitive charges means penalty, and, therefore, these expenses cannot be allowed to assessee.

**10.** We have perused records placed before us and observations of Ld.CIT(A).

**11.** Before Ld.CIT(A) it has been submitted by assessee that these punitive charges are pure business expenses, commercial in nature and does not have any character of penalty. It has been observed by Ld.CIT(A) that due to transportation of iron ores from mines to steel factory, there is always chance of overloading by transporter, to earn more profit, in same duration of time, and that Indian Railway charged overloading expenses on Odisha Mining Corporation Ltd., which were recovered from assessee. Ld.CIT(A) further observed that Clause 51 of agreement with Odisha Mining Corporation Ltd. says that overloading charges levied by Railway on account of wagon loading charges will be borne by assessee. Further assessee had also placed reliance upon following decisions:

1. *Hon'ble Supreme Court in case of CIT vs. Ahmedabad Cotton Manufacturing Co.Ltd. (1993) 71 Taxman 56.*
2. *Western Coal Fields Ltd. vs. ACIT, 2009 (124 TTJ 659) ITAT Bench.*
3. *Tuarian Iron & Steel Co. Pvt. Ltd. vs. ACIT in ITA no.847/Mum/2010, ITAT, Mumbai.*

**11.1.** It is observed that Ld.CIT(A) allowed claim of assessee by observing ratios laid down in afore stated decisions, wherein it has been held that punitive charges by Railways cannot be considered to be penal in nature, and it is actually in nature of compensation paid by assessee for carrying out extra load, which may cause wear and tear to tracks of Railway Department.

**11.2.** We do not find any infirmity in view of Ld. CIT(A), and uphold the same.

**11.3. Accordingly, Ground No. 1 raised by revenue stands dismissed.**

**12. Ground No. 2** has been raised by revenue against restricting claim amounting to Rs. 1,27,500/- on account of water supply expenses.

**13.** Ld.Sr.DR submitted that Ld.AO has rightly disallowed 50% of claim, as there was no agreement or evidence with regards to same.

**14.** We have perused observations of authorities below.

**15.** It is observed that Ld.CIT(A) restricted disallowance at Rs.1,27,500/-, by considering the fact that supply of drinking water to employees/labourers at mining site with tanker is a must, to maintain workforce strong for extra loading and

unloading of iron ore. Further, Ld.AO has not brought on record any contradictory facts which would lead to conclusion that expenditure has not been incurred for any other purposes. As there is no other contrary observations by Ld.AO which is based upon any material evidence, we do not find any reason to uphold addition. We therefore do not find any infirmity in the same and uphold view of Ld. CIT (A) in respect of this issue.

**15.2. Accordingly, Ground No. 2 raised by revenue stands dismissed.**

**16. Ground No. 3** has been raised by revenue against addition being deleted by Ld.CIT(A) on account of hiring charges and rack loading charges paid to parties amounting to Rs. 16, 07, 900/-.

**16.1.** Ld.Sr.DR submitted that assessee paid monies to third parties in violation of section 40 A (2) (b) of the Act. He placed reliance upon order passed by Ld.AO.

**17.** We have perused observations of authorities below.

**17.1** It is observed that Ld.CIT(A) deleted addition by observing as under:

*“The appellant had paid Rs. 1,60,79,000/- to one of its relatives who had supplied 4 Hyava trucks or dumpers. The company incurred expenditure of Rs. 2,16,98,250/- as hiring charges and rake loading charges. The expenditure was incurred for hiring of machinery like excavators, dumpers and trucks. Although various machineries and transport vehicles are owned by the appellant company, but due to nature and urgency of work, it has to hire the machineries from third parties also. The assessee company during the year under appeal, paid Rs. 1,60,79,000/- to Faridabad Gurgaon Minerals (herein after called the ‘firm’), a proprietorship*

concern of Mr. Aman Sethi, who is one of directors in the company and therefore a related party transaction u/s 40A(2)(b) of the Income Tax Act, 1961. Faridabad Gurgaon Minerals was operating mining lease in Distt. Faridabad, Haryana up to March 2009 and has expertise in mining for **more than ten years**. After expiry of mining lease, the lease period of the firm could not be extended due to ban by Hon'ble Supreme Court on mining activities in Haryana. The total turnover of the firm was more than Rs. 200.00 crores at the time of expiry of mining lease. Due to closure of mines, a vast number of machineries of the firm got idle. Since the appellant company needed the machinery to execute the contract with OMCL, Odisha, therefore the machineries were hired from the firm. As mentioned earlier that the firm had vast experience in execution, transportation of loading and unloading the mining material, therefore the services of the firm were hired for rack loading.

The execution of work made through hiring of machinery taken from Faridabad Gurgaon Minerals and also rake loading charges done by Faridabad Gurgaon Minerals, a party covered u/s 40A(2)(b) and its justification was never disputed by the AO. Nor the payment made to the said party is in dispute. The only point of contention raised by the AO is the reasonableness of the expenses paid to related parties vis a vis the prevailing rates applicable for similar nature of work. It is worth mentioning here that all expenditure was subject to TDS and TDS was deducted by the appellant company.

The appellant company had made TDS on the payment related to Faridabad Gurgaon Minerals, a proprietorship of Mr. Aman Sethi who is one of the Directors of the appellant company. The payment

made of outside parties was Rs.96 per ton whereas payments related to is Rs.95 per ton. The appellant company took 4 trucks and one excavator on hire from the above said farm. Considering this competitive figures and date in the following table, I agree that the payments made are genuine, favourable and in accordance with law.

COMPARISON CHART OF HIRING CHARGES OF MACHINERY BETWEEN RELATED PARTY/ NON RELATED PARTY						
S. No.	MACHINERY	PARTY NAME	MONTHLY BILLING AMOUNT OF HIRE CHARGES	NO. OF MACHINERY USED	RATE OF MACHINERY HIRE CHAREGES	RELATED PARTY/NON RELATED PARTY
1	EXCAVATOR	FARIDABAD GURGAON MINERALS	453500	1	453500	RELATED PARTY
2.	HYVA DUMPERS	FARIDABAD GURGARON MINERALS	500000	4	125000	RELATED PARTY
3.	HYVA DUMPERS	M/S GAGAN BIHAR! MOHANTY	125000	1	125000	NON RELATED PARTY (AS PER QN)
4.	HYVA DUMPERS	SIVA SAKTI ROAD CARRRIER	135000	1	135000	NOW RELATED PARTY (AS PER QN)

**17.2.** It is observed from above reproductions that assessee deducted TDS. Merely because, according to Ld. A.O., payments were not reasonable, cannot be basis for disallowance. We are therefore inclined to uphold the view of Ld. CIT (A).

**17.3. Accordingly this ground raised by revenue stands dismissed.**

**18. In the result appeal filed by revenue stands dismissed.**

**Order pronounced in the open court on 28<sup>th</sup> November,2018.**

Sd/

**( PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dt. 28<sup>th</sup> November, 2018

• Gmv

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

	Date
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Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	