

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.449 & 450/Lkw/2018
Assessment Year:2012-13 & 2013-14

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| M/s Premier Car Sales Ltd., 9, Shahnajaf Road, Lucknow. PAN:AABCP 5806 H (Appellant) | Vs. | A.C.I.T., Range-5, Lucknow. (Respondent) |
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| Appellant by | Shri Vijay Prakash Agarwal, Advocate |
| Respondent by | Smt. Alka Singh, D.R. |
| Date of hearing | 22/04/2019 |
| Date of pronouncement | 26/04/2019 |

ORDER

PER BENCH:

These two appeals are filed by the assessee against the separate orders of learned CIT(A)-2, Lucknow both dated 19/12/2017. Both the appeals contain similar grounds and these appeals were heard together therefore, for the sake of convenience, a common and consolidated order is being passed.

2. Learned A. R., at the outset, pointed out that the common issue involved in these appeals is disallowance of certain expenses on ad hoc basis without rejection of books of account. Learned A. R. in this respect invited our attention to the assessment orders and submitted that without

rejection of books of account or without pin pointing any error in the books of account, the Assessing Officer has made the addition which the learned CIT(A) has wrongly upheld. Learned A. R. submitted that the authorities below were not justified in making and upholding the disallowance and in this respect reliance was placed on the order of Lucknow Bench of the Tribunal in I.T.A. No.615/Lkw/2014 and 41/Lkw/2017 wherein the Hon'ble Tribunal vide order dated 16/09/2015 and 22/02/2018 had deleted the ad hoc disallowance.

2.1 As regards the other issue in I.T.A. No.450, Learned A. R. submitted that the assessee had made a donation of Rs.2,50,000/- to an organization which was eligible for deduction u/s 35AC of the Act and which was denied by the Assessing Officer by holding that the assessee had not claimed any deduction u/s 80G of the Act. Learned A. R. submitted that the assessee never claimed deduction u/s 80G and rather it was a deduction u/s 35AC of the Act and in this respect invited our attention to the copy of receipt as also copy of Form No. 58A which was filed with the Assessing Officer during the assessment proceedings. Learned A. R. submitted that the assessee had obtained the certified copies from the record of the Assessing Officer which proves that these were indeed filed by the assessee during the assessment proceedings. Learned A. R. also invited our attention to the notification whereby via Notification dated 12/07/2010, the institution to which donation was made, was held to be approved u/s 35AC of the Act. Learned A. R. submitted that it is wrong on the part of learned CIT(A) to hold that the assessee had not enclosed any evidence of such payment along with the return of income. Learned A. R. submitted that Rule 12(2) of the I.T. Rules strictly prohibited that the return shall not be accompanied by any report or receipt under any provision of the Act and that is why the

assessee did not enclose such certificates along with the return of income however, this was submitted during the assessment proceedings.

3. Learned D. R., on the other hand, heavily supported the orders of the authorities below.

4. We have heard the rival parties and have gone through the material placed on record. We find that as regards the disallowance on account of ad hoc addition, the assessment was completed u/s 143(3) of the Act. the Assessing Officer nowhere has rejected the books of account. He simply held that most of the payments were in cash and assessee had submitted self-made vouchers therefore, he disallowed certain amounts out of the total expenditure. The Assessing Officer has not pointed out any vouchers or expenditure on which he had any doubt. The ad hoc disallowance, without pin pointing any error in the books of account, is not justified specifically keeping in view the decision of Lucknow Bench of the Tribunal, as relied on by Learned A. R. Hon'ble Tribunal in I.T.A. No.41 vide order dated 22/02/2018 with regard to ad hoc disallowance of expenses has held as under:

“4.2 As regards the other disallowances, it is noticed that Assessing Officer had made ad hoc disallowance without pointing out any specific defect in the vouchers or pointing out any specific instance. It was submitted that the Assessing Officer has merely acted on presumption. As regards the expenses on vehicle maintenance, Learned A. R. submitted that the entire expenses were incurred for repair and maintenance and were fully vouched and therefore, the disallowance was not warranted. Similarly, in respect of ad hoc addition of Rs.30,000/- out of staff welfare, misc. expenses and travelling expenses, Learned A. R. submitted that the entire expenditure was open to verification and Assessing Officer has merely acted on presumption. In our opinion, the Assessing Officer cannot make ad hoc

disallowance specifically in view of the case laws relied on by Learned A. R. Hon'ble Calcutta High Court in the case of Ashok Surana vs. CIT [2016] 384 ITR 267 (Cal) has held as under:

"The assessee was an individual engaged in the business of producing television serials and had offices at Calcutta, Bangalore, Delhi and Mumbai. For the assessment year 2001-02, the assessee had shown to have incurred expenses on account of telephone. The Assessing Officer disallowed 20 per cent. of the expenditure on the ground that the assessee failed to maintain a call book for monitoring calls and that a part of such calls were for personal and non-business use. The assessee also claimed expenses of the Mumbai office, part of which were supported by internal debit vouchers and claimed general expenses and expenses towards tea and tiffin, supported by debit vouchers. The Assessing Officer, disallowed 20 per cent. of expenses on the ground that they were not verifiable. The Commissioner (Appeals) confirmed this. The Tribunal restricted the disallowance. On appeal:

Held, that it was not the case of the Assessing Officer that the assessee was unable to adduce satisfactory evidence that the expenditure was incurred for the purpose of his business. When appropriate evidence was adduced, it was not in the power of the Assessing Officer to arbitrarily disallow any item of expenditure on the ground that the sums were not verifiable. There was no indication as to what step was taken by the Assessing Officer to have those expenses verified. If the Assessing Officer had not taken pains to have the expenses verified, he could not disallow any portion of the expenditure on the ground that it was not verifiable. The expenses were to be allowed."

Similar findings have been made in other case laws relied on by Learned A. R.

4.3 In view of the above, the disallowances sustained by learned CIT(A) are not in order and therefore, we delete the ad hoc disallowance confirmed by learned CIT(A)."

4.1 In view of the above, the issue of disallowance on ad hoc basis out of expenses is decided in favour of the assessee.

5. Now coming to the issue of deduction u/s 35AC in assessment year 2013-14, we find that the Assessing Officer disallowed the claim of the assessee by holding that the assessee had debited the amount under the head charity and donation and had not claimed any deduction u/s 80G of the Act whereas the fact remains that the assessee had donated the amount of Rs.2,50,000/- to an institution which was eligible for deduction u/s 35AC of the Act. The assessee had filed certified copies of receipt certified by the Assessing Officer. Similarly, the assessee had filed copy of Form-58A certified by the Assessing Officer which is in the prescribed form declaring therein the amount of total donation received including receipt from the assessee. We further find that vide Notification No. S.O. 1649(E), dated 12th July, 2010, the institution to whom donation was made was approved by National Committee for deduction u/s 35AC of the Act. The certification by the Assessing Officer of these documents clearly demonstrates that these documents were filed before the Assessing Officer. As regards the observation of learned CIT(A) that these evidences were not enclosed along with the return of income, we find that Rule 12(2) of I.T. Rules, prohibited the assessee to file any report or receipt under any provision of the Act along with the return of income. Rule 12(2) of the I.T. Rules was substituted with effect from 01/04/2010 and the said rule reads as under:

(2) The return of income required to be furnished in Form SAHAJ (ITR-1) or Form No. ITR-2 or Form No. ITR-3 or Form SUGAM (ITR-4S) or Form No. ITR-4 or Form No. ITR-5 or Form No. ITR-6 [or Form No. ITR-7] shall not be accompanied

by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or any document or copy of any account or form or report of audit required to be attached with the return of income under any of the provisions of the Act:

5.1 In view of above, the second issue in I.T.A. No.450 is also decided in favour of the assessee.

6. In the result, both the appeals of the assessee stand allowed.

(Order pronounced in the open court on 26/04/2019)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:26/04/2019
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow