

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

BEFORE SHRI N.S. SAINI, ACCOUNTANT MEMBER  
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 3599/Del/2015

AY: 2010-11

Assomac Machines Ltd. C/o M/s RRA TaxIndia D 28, South Extension Part I New Delhi 110 049  PAN: AABCA4266G	vs.	ACIT, Range 1 Ghaziabad
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(Appellant)

(Respondent)

Assessee by : Sh. Rakesh Gupta, Adv.  
Sh. Somil Agarwal, Adv. &  
Sh. Shubham Sabti, Adv.

Department by : Smt. Aastha Lakshmi, Sr.DR

Date of Hearing : 05/03/2019  
Date of Pronouncement: 03/06/ 2019

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 03/03/2015 of Ld.CIT(A), Muzaffarnagar for Assessment Year 2010-11 on 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 facts in confirming the action of*

*Ld. AO in making disallowance of Rs.3,76,578/- u/s 40A(3) of the Income Tax Act, 1961 and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing.*

*2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.3,76,578/- u/s 40A(3) of the Income Tax Act, 1961 is bad in law and against the facts and circumstances of the case.*

*3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.4,34,956/- on account of bad debts by invoking the provisions of section 36(1)(vii) of the Act and that too by recording incorrect facts and findings and without giving adequate opportunity of hearing.*

*4. That in any case and in any view of the matter, action of Ld.CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.4,34,956/- on account of bad debts by invoking the provisions of section 36(1)(vii) of the Act is bad in law and against the facts and circumstances of the case.*

*5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the disallowance of Rs.7,00,000/- fully as made by Ld. AO under the head depreciation and maintenance of car and further erred in sustaining the disallowance to the extent of Rs.2,80,738/- and that too wither any basis, material and evidences available on record.*

*6. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the action of Ld. AO in not deleting the*

*disallowance of Rs.7,00,000/- fully as made by Ld. AO under the head depreciation and maintenance of car and further erred in sustaining the disallowance to the extent of Rs.2,80,738/- which is bad in law and against the facts and circumstances of the case.*

*7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the disallowance of Rs.6,44,148/- fully made by Ld. AO on account of foreign tours and further erred in sustaining the disallowance to the extent of Rs.2,38,148/- and that too without any basis, material and evidences available on record.*

*8. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the action of Ld. AO in not deleting the disallowance of Rs.6,44,148/- fully made by Ld. AO on account of foreign tours and further erred in sustaining the disallowance to the extent of Rs.2,38,148/- which is bad in law and against the facts and circumstances of the case.*

*9. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs. 10.95.800 – u/s 41(1) of the Income Tax Act, 1961 and that too by recording incorrect facts and findings and without considering the submissions/evidences of the assessee.*

*10. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.10,95,800/- u/s 41(1) of the Income Tax Act, 1961 which is bad in law and against the facts and circumstances of the case.*

*11. That having regard to the facts and circumstances of the case, Ld.CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance Rs.28,50,000/- u/s 40A(2)(b) of the Income Tax Act, 1961 and that too by recording incorrect facts and findings and without considering the submissions/evidences of the assessee.*

*12. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.28,50,000/- u/s 40A(2)(b) of the Income Tax Act, 1961 which is bad in law and against the facts and circumstances of the case.*

*13. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.64,02,705/- on account of alleged undisclosed closing stock and that too by recording incorrect facts and findings and without considering the submissions/evidences of the assessee.*

*14. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.64,02,705/- on account of alleged undisclosed closing stock which is bad in law and against the facts and circumstances of the case.*

*15. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the additions/disallowance and passing the impugned assessment order being contrary to law and facts and without providing adequate opportunity of hearing and without*

*considering the principles of natural justice and the same is not sustainable on various legal and factual grounds.*

*16. That having regards to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of the Ld. AO in charging interest u/s 234B of the Income Tax Act, 1961.*

*17. That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

**2. Facts of the case in brief are as under.**

Assessee filed its return of income on 29/09/10 at Rs.2,25,35,030/-. Case was selected for scrutiny and subsequently notice under section 143 (2) and 142 (1) of the Income Tax Act, 1961 along with questionnaire was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld. AO and filed requisite details.

**2.1.** Ld.AO observed that assessee is primarily engaged in manufacturing, supply, commissioning of wire drawing plant and machinery of various metals and their alloys. It was observed that company is manufacturing capital goods of different types and proportions.

**2.2.** After going through details and replies filed by assessee in response to questionnaires, Ld. AO made following additions and completed assessment:

Sl. No.	Particulars of additions made	Amount – Rs.
i.	Disallowance of Rs 3,76,578 u/s 40A(3) as discussed	3,76,578
ii.	Disallowance of Rs.4,34,956/- u/s 36(1)(vii) as discussed	4,34,956
iii.	Disallowance of Rs7,00,000/- u/s 32 as discussed	7,00,000
iv.	Disallowance of Rs.6,44,148/- u/s 37 as discussed	6,44,148
v.	Disallowance of Rs.4,04,538/- u/s 37 as discussed	4,04,538
vi.	Disallowance of Rs.28,50,000/- u/s 37 as discussed	28,50,000
vii.	Disallowance of Rs.10,95,800/- u/s 41(1) as discussed	10,95,800
viii.	Addition of Rs.64,02,705 being undisclosed closing stock	64,02,705
	Total:	Rs. 3,54,43,755/-

**3.** Aggrieved by additions made by Ld.AO assessee preferred appeal before Ld. CIT (A) who partly allowed appeal filed by assessee.

**3.1.** Aggrieved by order passed by Ld. CIT (A) assessee is in appeal before us now.

**4. Ground No. 1-2** raised by assessee is in respect of disallowance of Rs. 3,76,578/-under section 40 A (3) of the Act.

**4.1.** Ld.Counsel submitted that list of payments made by assessee in cash exceeding Rs. 20,000/- has been tabulated by Ld.AO being payments made for job works, repairs to plant and machinery. He submitted that nature of such payments has not been disputed by Ld.AO. He submitted that assessee produced bills and vouchers and relevant evidences in respect of same.

**4.2.** On the contrary Ld. DR submitted that criteria for allowability of expenditure under section 40 A (3) is not to explain genuineness of transaction. Ld.DR submitted that the moment assessee makes cash payments exceeding Rs. 20,000/- a day to a person, disallowance deserves to be made under the said section. On perusal of order passed by Ld. CIT (A) assessee took a plea that payment has been made to assessee's agent, and therefore, it falls within exception of Rule 6 DD (k). He submitted that Ld. CIT (A) dismissed this argument by recording that persons to whom cash payment has been made are not agents of assessee.

**5.** We have perused submissions advanced by both sides in light of records placed before us.

**5.1.** From list of payments made in cash by assessee, it is observed that none of the payments have been made to any particular person exceeding Rs. 20,000/- in a day. Payment has been made by assessee on various dates to various people, except payment made to Lalji Chauha, in the month of March for a sum of Rs. 40,000/- and Rs. 38,714/-, that too, made on different dates.

**5.2.** On perusal of various bills and vouchers placed at page 5-53 of paper book, it is observed that plea taken by assessee to consider payments under Rule 6 DD (k) cannot be sustained, as these payments are not made by assessee to its agents, but to job workers.

**5.3.** When there is a failure on part of assessee to adhere to requirements of provision of section 44 (A) (3) of the Act. This provision is a preventive measure and check on tax evasion and

flow of unaccounted money, or to check transactions, which are not genuine and may be put as camouflage to evade tax by showing false transactions.

**5.4.** However, in the type of business carried out by assessee, cash payments, cannot be eliminated totally. Admittedly revenue is not casting any doubt on genuineness of payments in respect of bills and vouchers placed in paper book.

**5.5.** It is also observed that assessee did not file any details regarding work carried on by these people and urgency that arose to make payments in cash.

**5.6.** We are therefore inclined to set aside this issue back to Ld.CIT(A) for proper verification. Assessee is directed to file all details/evidences regarding work carried out by these people required to establish actual cash payment and urgency to make payment in cash. Ld. CIT(A) is directed to verify details vis-a-vis cash in hands of assessee for year under consideration in order to ascertain correctness as per law. In the event assessee files requisite details/evidences to establish job work done, and the need to make payment in cash, the same may be allowed.

**5.7. Accordingly these grounds raised by assessee stands allowed for statistical purposes.**

**6. Ground No. 3-4** is in respect of disallowance of Rs.4,34,956/-, by invoking provisions of section 36 (1) (vii) of the Act.

**6.1.** Ld.Counsel submitted that Ld.CIT(A) dismissed assessee's plea merely on the basis recorded by Ld.AO that assessee had not taken any action to recover the debts. He submitted that assessee

issued various communications and sent reminders to debtors for recovery. Placing reliance upon decision of *Hon'ble Supreme Court* in case of *TRS Ltd vs CIT reported in (2010) 323 ITR 397*, Ld.Counsel submitted that Ledger account of debtors placed at page 63 of paper book, gives details of debtors and outstanding payments due to assessee and further details along with invoices and reminders sent by assessee to these debtors has been placed at page 64-80 of paper book.

**6.2.** On the contrary Ld. DR placed reliance upon observations of Ld. CIT (A).

**7.** We have perused submissions advanced by both sides in light of records placed before us.

**7.1.** It is observed that most of these payments pertain to preceding financial years and assessee issued various reminders to these debtors. However from the list placed at page 63 and upon verification of pages 64-88 it is observed that evidences has been filed by assessee in respect of Mirra And Mirra Industries, Sandeep Industries and Bindal Industries establish the debt due to assessee. In respect of other debtors being Sandvik Asia Industries Ltd, IPM Industries, no details has been furnished in paper book filed before us.

**7.2.** Further, we are unable to understand how amount lying credited in 'imprest account' would be bad debt, as assessee has not explained any details in respect of the same.

**7.3.** After amendment to section 36 (1) (vii) of the Act, though assessee is only to write off the debts as irrecoverable in its account

in order to claim deduction of bad debts, however, evidences of claim to be existing like invoices must be filed. Thus in view of evidences filed by assessee, we allow debts written off by assessee in respect of Mirra and Mirra Industries, Sandeep Industries and Bindal Industries respectfully following decision of *Hon'ble Supreme Court* in case of *TRS Ltd vs CIT (supra)* and debts in respect of other parties stand confirmed.

**7.4. Accordingly these grounds raised by assessee stands partly allowed.**

**8. Ground No. 5-6** is in respect of disallowance of sum of Rs.2,80,738/-, for using car of company by directors.

**8.1.** Ld.Counsel submitted that cars were used by assessee for its business purposes and expenses incurred thereon cannot be disallowed on account of depreciation and maintenance thereon.

**8.2.** On the contrary Ld. DR submitted that Ld. CIT (A) has made a proportionate disallowance of only 20% which is a reasonable attribution for usage of cars by the directors personally.

**8.3.** We have perused submissions advanced by both sides in light of records placed before us.

**8.4.** It is observed that assessee had claimed a sum of Rs.25.30 lakhs towards maintenance expenses and a sum of Rs.9,67,297/- towards depreciation on 12 cars and Ld. AO disallowed 1/5<sup>th</sup> of these expenses. On appeal before Ld.CIT(A), Ld.CIT(A) restricted disallowance to 20%, based upon submissions advanced by assessee. Ld.CIT(A) observed that claim of depreciation was only Rs.10,67,828/-and disallowance on maintenance of cars should

be restricted to cars actually used by directors, sum of Rs.4,19,262/-and restrict the disallowance at 20% on depreciation claimed and expenses claimed by assessee on cars which were used by directors. Admittedly assessee is not maintaining any log book to prove non-usage of cars by Directors. We, therefore, do not find any infirmity in view taken by Ld.CIT(A).

**Accordingly these grounds raised by assessee stands dismissed.**

**9. Ground No. 7-8** is in respect of disallowance of Rs.2,38,148/- on account of foreign tours.

**9.1.** Ld.Counsel submitted that said expenditure was incurred by assessee for purposes of business. And details of travel were submitted before the authorities below. Ld.Counsel placing reliance upon page 120-121 of paper book submitted that Sh. Tyagi for attending Interwire Trade Exposition, which was held on April 25-30, 2009 at U.S. He submitted that details relating to trade fair and bills regarding stay of Sh. Tyagi has been placed at pages 118-287 of paper book.

**9.2.** Ld.DR placed reliance upon the view taken by Ld. CIT (A).

**9.3.** We have perused submissions advanced by both sides in light of records placed before us.

**9.4.** It is observed that details filed by assessee before authorities below has not been doubted and no further verification has been carried out by authorities below in order to establish any falsity of submissions made by assessee. The details placed in paper book reveals that Sh. Tyagi, director of assessee had admittedly travelled to U.S. during Interwire Trade Exposition. Further since assessee is

engaged in manufacturing, supply, commissioning of wire drawing plant and machinery of various metals and their alloys, it cannot be negated that such exhibitions would not be of any use to assessee.

**9.5.** As authorities below has on mere surmises made addition, without there being any cogent evidence to establish anything contrary to what has been submitted by assessee, we are inclined to allow the claim of assessee.

**9.6. Accordingly these grounds raised by assessee stands allowed.**

**10. Ground No. 9-10** has been raised by assessee against disallowance of sum of Rs. 10, 95, 800/-by invoking provisions of section 41 (1) of the Act.

**10.1.** Ld.Counsel submitted that sum of Rs.10,95,800/- was outstanding to be payable to M/s. Piyush Steels Ltd., out of total payment of Rs.41,87,800/- for purchase of old machinery. He submitted that purchase of machinery has not fructified, advance paid by Piyush Steels was refunded back. He submitted that details of payment refunded has been placed at page 139-143 of paper book. Further placing reliance upon page 241 of paper book, Ld. Counsel submitted that confirmation issued by Piyush Steels dated 22/02/2014, shows outstanding balance payable by assessee as on 01/04/09.

**10.2.** He submitted that section 41 (1) cannot be applied to the facts of present case as there is no situation of liability in the hands of assessee.

**10.3.** Ld.DR submitted that Ld.Counsel in his written submissions has submitted that all the amount was refunded back and therefore there is no question of limitation of liability and closing balance as on year ended on March, 2010 was also repaid in next year through banking channels. He submitted that Ld.CIT (A) rightly observed that assessee has not filed any details regarding transaction between assessee and Piyush Steels to be genuine.

**10.4.** Ld.DR placed reliance upon observations of Ld.CIT (A).

**11.** We have perused submissions advanced by both sides in light of records placed before us.

**11.1.** It is the contention of assessee that advance from Piyush Steel Limited was an old advance for purchase of machinery and same was repaid over years since purchase deal did not fructify. It has also been submitted by assessee in written submission dated 12/03/13 filed before Ld. AO, placed at page 217 of paper book that whole of the amount has been repaid by financial year 2010-11.

**11.2.** Assessee placed reliance upon confirmation letter issued by Piyush Steels Ltd dated 22/02/14 placed at page 241 of paper book which reveals outstanding balance as on 01/04/09 to be Rs.10,95,800/-, and as per ledger account placed at page 143 closing balance as on 31/03/10 was Rs. 7,75,800/-. As per Ledger account at page 144 of paper book said sum of Rs.7,75,800/- was paid by assessee during financial year 2010-11. We are therefore in agreement with argument advanced by Ld.Counsel that as the entire amount has been refunded back there is no question of any situation of liability during year under consideration.

**11.3.** We do not find any reason to doubt the explanation offered by assessee which is substantiated by account statements placed in paper book unless authorities below produce any evidence to establish that the purchase was bogus. We are therefore not in concurrence with the views of Ld.CIT (A) which is based upon mere surmises and conjunctures.

**11.4. Accordingly these grounds raised by assessee stands allowed**

**12. Ground No. 11-12** has been raised by assessee against disallowance of Rs.28,50 000/- under section 40 A (2) (b) of the Act. It has been submitted by Ld.Counsel that these payments relate to job work charges paid to related party being M/s Associated Machinery Manufacturers Pvt. Ltd. He submitted that related party has been working for assessee in previous years and subsequent years also and assessee has got work done according to its specifications as it did not have necessary expertise as well as machines for the same. Ld.Counsel submitted that the authorities below confirmed addition on the basis that job work charges paid was excessive and that assessee has not filed any evidences regarding work carried out by related party. He submitted that assessee has filed entire details which is placed at page 153-183 and 253-to 62 of paper book.

**12.1.** Ld. DR on the contrary placed reliance upon observations of Ld. CIT (A).

**13.** We have perused submissions advanced by both sides in light of records placed before us.

**13.1.** Disallowance under section 40 A (2) has to be charged on reasonableness of expenditure having regard to fair market value of goods/services or facilities for which payment is made. It is also observed by various Courts that reasonableness of expenditure must be seen from the viewpoint of a businessman and not from the viewpoint of tax authorities and onus lies upon Assessing Officer to show that payment was excessive or unreasonable. In the facts of present case, authorities below has not cited any instances based upon which it can be ascertained that payment made by assessee was excessive and/or unreasonable. Ld.AO has not placed on record any instances of a job work carried out in respect of similar product as that of assessee to be a yardstick to form belief that payment made by assessee was excessive and/or unreasonable. Under such circumstances and after going through detailed evidences filed by assessee in the paper book, we are not in agreement with observations of authorities below and addition made deserves to be deleted .

**13.2. Accordingly this ground raised by assessee stands allowed.**

**14. Ground No. 13-14** is in respect of addition of sum of Rs.64,02,705/-, on account of alleged undisclosed closing stock of finished goods.

**14.1.** Ld.Counsel submitted that assessee was not having any closing stock of finished goods during year but it was having closing stock of semi-finished goods to a tune of Rs. 2,77,68,632/- out of which some of goods were completed up to stage of 90%

which is verifiable from sale for prior period from stock of work in progress. He placed reliance upon the chart placed at page 184 of paper book and invoices generated for goods sold from 01/04/10 onwards. He also placed reliance upon excise record giving value of the stage of completion of stock which is placed at page 184-186 of paper book. It has been submitted by Ld.Counsel that sale of finished goods is as per excise record and what remained was semi-finished goods as on 31/03/10.

**14.2.** On the contrary Ld.DR placed reliance upon orders of Ld. CIT (A).

**14.3.** We have perused submissions advanced by both sides in light of records placed before us.

**14.4.** It is observed that Ld. CIT (A) proceeded on the footing that goods sold were from part of semi-finished goods and that assessee could not file details of goods sold. From documents placed in paper book, we are of considered opinion that goods sold are verifiable from excise records and semi-finished goods are verifiable from work in progress which was shown at closing of preceding year. We are of opinion that authorities below without verifying all these details merely on some surmises has made the addition. There is no iota of dispute in respect of documents filed by assessee by authorities below. This is a case where Ld. AO has failed to verify details as per records filed by assessee. We are therefore not inclined to uphold view of Ld. CIT (A) and the addition stands deleted.

**14.5. Accordingly these grounds raised by assessee stands allowed.**

**15. Ground No. 15-17** is general in nature and therefore do not require any adjudication.

**16. Ground No. 16** is consequential.

**17. In the result appeal filed by assessee stands partly allowed.**

Order pronounced in open court on .../06/2019.

**Sd/-**

**Sd/-**

**(N.S. SAINI)  
ACCOUNTANT MEMBER**

**(BEENA A PILLAI)  
JUDICIAL MEMBER**

Dt. 03<sup>rd</sup> June, 2019

- gmv
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Copy forwarded to: -

Appellant  
Respondent  
CIT  
CIT(A)  
DR, ITAT

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By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

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