

**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 Nos.249 & 672/Lkw/2018
Assessment Years:2014-15 & 15-16

A.C.I.T Range-V, Lucknow.	Vs.	M/s Premier Car Sales Ltd., 9, Shahnajaf Road, Lucknow. PAN:AABCP 5806 H
(Appellant)		(Respondent)

C.O.No.10/Lkw/2018
(in ITA No.249/Lkw/2018)
Assessment Year:2014-15

M/s Premier Car Sales Ltd., 9, Shahnajaf Road, Lucknow. PAN:AABCP 5806 H	Vs.	A.C.I.T Range-V, Lucknow.
(Appellant)		(Respondent)

Revenue by	Smt. Alka Singh, D.R.
Assessee by	Shri Rakesh Garg, Advocate
Date of hearing	22/08/2019
Date of pronouncement	06/09/2019

ORDER

PER T. S. KAPOOR, A.M.

These two appeals have been filed by the Revenue against the separate orders of learned CIT(A) dated 24/01/2018 and 28/09/2018 respectively. The assessee has also filed cross objections in I.T.A. No.249/Lkw/2015. These appeals involve similar issues which were heard

together therefore, for the sake of convenience, a common and consolidated order is being passed. The grounds of appeal, taken by the Revenue, in both the appeals are reproduced below:

I.T.A. No.249/Lkw/2018

"1. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition made by Assessing Officer of Rs.62,70,485/- in respect of Toll business ignoring the facts of the case that assessee failed to substantiate the rise in expenses incurred for operating the toll plaza during the assessment proceedings.

2. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition made by Assessing Officer of Rs.1,27,07,644/- being amount payable to NHAI by admitting fresh evidence in the form of copy of contract with NHAI thereby violating the provisions of Rule 46A of the Income Tax Rules 1962.

3. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition made by Assessing Officer of Rs.2,21,02,473/- on account of salary and wages ignoring the facts of the case that assessee failed to prove the genuineness and identity of the employees during the assessment proceedings or at the appellate stage."

I.T.A. No.672/Lkw/2018

"1. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.20,21,983/- made by Assessing Officer on account of disallowance of expenditure in respect of toll plaza business ignoring the fact that assessee failed to substantiate the excessive claim of expenses for operating the toll plaza during the assessment proceedings.

2. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.1,75,96,862/- made by Assessing Officer on account of disallowance of salary and wages without appreciating that the assessee failed to furnish the identity of

employees as well as genuineness of salary payments before the Assessing Officer.

3. The Ld. CIT(A)-2, Lucknow has erred in law and on facts in deleting the addition of Rs.1,75,96,862/- made by Assessing Officer on account of disallowance of salary and wages without giving any opportunity to the Assessing Officer to examine the evidences/submissions in this regard submitted by the assessee before the Ld. CIT(A)."

2. Learned D. R., at the outset, stated that the Assessing Officer had rightly made the disallowances as the assessee had declared substantially high expenses in operating the toll plaza as compared to earlier year. Learned D. R. further submitted that learned CIT(A) has admitted fresh evidence without confronting the same to the Assessing Officer, which is in contravention of Rule 46A of the I.T. Rules. Learned D. R. further submitted that assessee had failed to prove the genuineness and identity of the employees and, therefore, the Assessing Officer had rightly made the disallowance out of salary and wages expenses and which the learned CIT(A) has wrongly allowed.

3. Learned A. R., on the other hand, submitted that the Assessing Officer had made the addition without rejection of books of account and without any basis. It was submitted that the Assessing Officer merely made the disallowances by holding that as compared to earlier year, there was substantial increase in expenses whereas he has not made any finding to the fact that such expenditure was not incurred for the purpose of business.

3.1 As regards the argument of Learned D. R. regarding acceptance of fresh evidence, Learned A. R. submitted that no fresh evidence was filed by the assessee and in this respect our attention was invited to the order of learned CIT(A) wherein he has recorded the detailed findings and nowhere he has mentioned that the assessee had filed any fresh evidence. Our

attention was also invited to paper book pages 16 & 17 where a copy of letter dated 06/12/2016, addressed to Joint Commissioner of Income Tax, was placed and wherein the assessee had explained the facts to the Assessing Officer itself.

4. We have heard the rival parties and have gone through the material placed on record. We first take up appeal in I.T.A. No. 249. We find that I.T.A. No.249 was earlier dismissed for non prosecution vide order of the Tribunal dated 10/08/2018 which was however recalled vide order of the Tribunal dated 20/03/2019 and the appeal was listed for hearing on merits. We find that assessee is a public limited company and is carrying on the business of automobile dealership and during the year under consideration the assessee had also undertaken toll plaza operation business on behalf of National Highway Authority of India. We further find that in this case the assessment was completed on the basis of directions of Addl. CIT, Range-5, Lucknow u/s 144A of the Act. The pointwise findings of Assessing Officer on additions along with directions of Addl. CIT, Range-5, as reproduced by Assessing Officer in his order, are reproduced below:

Addition in respect of toll business

"Assessee is engaged in the business of Automobile and shown income from Automobile and toll collection likewise A.Y.2013-14. For A.Y.2013-14 assessee has shown net profit from Motor trade and toll plaza 1.28% and 4.25% respectively and overall 1.58%. While in A.Y.2014-15 assessee has shown net loss 5.02% from toll collection and filed return of income at 0.50% N.P. rate. After examination of reasons of losses from toll collection business, it is observed that assessee is not a new one in the business of toll collection. Policies of National Highway Authorities remain same in all over state in India. However toll collection has been made more than A.Y.2013-14 but due to the expenses debited it resulted to loss. Assessee had debited operational expenses of Rs.3,80,79,539/- against

toll collection Rs.5,67,11,409/- while in previous year it was Rs.1,85,43,386/- which comes to 5.47% in proportion to toll collection Rs.33,85,66,892/-. During the relevant year operating expenses increased 6.56% in proportion to toll collection without any reasons. However policies & collection process was same. Moreover assessee had not produced any evidential proof in support of that. Therefore operating expenses should be allowed on the basis of A.Y.2013-14 percentage i.e. 5.47% which comes to Rs.3,18,09,054/-(581518366x5.47%) and remaining amount Rs.62,70,485/- (38079539-31808054) is added back to the income of the assessee.

The circumstances and documents leading to this addition are already discussed as above and therefore no further discussion on the issue is needed. The difference of Rs.62,70,485/- (38079539-31808054) is thus added to the total income of assessee company. Penalty proceeding is initiated and notice u/s 271(1)(c) is being issued separately for furnishing of inaccurate of particulars of income."

Addition in respect of toll plaza payments

"Regarding toll plaza payments to National Highway Authority through RTGS, it is observed that as per ledger account toll tax collection Rs.1,27,07,644/- has been shown payable on 31.03.2014, but assessee claimed it without any evidence that it was incurred in F.Y.2013-14 through the actual payment is made in April, 2014, hence the same should be added back to the total income of the assessee."

The circumstances and documents leading to this addition are already discussed as above and therefore no further discussion on the issue is needed. The amount of Rs.1,27,07,644/- is thus added to the total income of assessee company. Penalty proceeding is initiated and notice u/s 271(1)(c) is being issued separately for furnishing of inaccurate of particulars of income."

Addition in respect of disallowance out of salary and wages

'It is observed the assessee has claimed excessive salary payment in his profit and loss account. When asked to submit

the details, he has submitted details of number of employees and the ledger account of a few premises only. The salary sheet provided contains names of 10-20 employees per premises. When asked for the details of EPF and TDS paid the assessee furnished the following chart-

<i>Premier Car Sales Ltd.</i>				
<i>Employee Details for the F.Y.2013-14</i>				
<i>Months</i>	<i>Total no. of Employees</i>	<i>Total no. of Employees covered in PF</i>	<i>Total no. of Employees covered in TDS</i>	<i>Grand Total</i>
<i>April, 2013</i>	<i>810</i>	<i>110</i>	<i>5</i>	<i>925</i>
<i>May, 2013</i>	<i>809</i>	<i>107</i>	<i>5</i>	<i>921</i>
<i>June, 2013</i>	<i>810</i>	<i>225</i>	<i>5</i>	<i>1040</i>
<i>July, 2013</i>	<i>844</i>	<i>208</i>	<i>4</i>	<i>1056</i>
<i>August, 2013</i>	<i>857</i>	<i>204</i>	<i>4</i>	<i>1065</i>
<i>September, 2013</i>	<i>878</i>	<i>198</i>	<i>4</i>	<i>1080</i>
<i>October, 2013</i>	<i>852</i>	<i>195</i>	<i>3</i>	<i>1050</i>
<i>November, 2013</i>	<i>805</i>	<i>191</i>	<i>3</i>	<i>999</i>
<i>December, 2013</i>	<i>786</i>	<i>190</i>	<i>3</i>	<i>979</i>
<i>January, 2014</i>	<i>789</i>	<i>202</i>	<i>3</i>	<i>994</i>
<i>February, 2014</i>	<i>797</i>	<i>199</i>	<i>6</i>	<i>1002</i>
<i>March, 2014</i>	<i>795</i>	<i>200</i>	<i>4</i>	<i>999</i>

It is evident from the chart above only limited no. of employees are covered by TDS and EPF with respect to whom it may be conclusively proved that they are assessee's employees whereas with respect to others the evidences were called from the assessee. But he could not substantiate with evidences and submitted self made salary sheet and ledger accounts where all the entries are in cash and the salary sheet contain names of 10-20 employees, which when taken together will not be more than 300 to 350 employees. Further as per new EPF provisions all the employees who are receiving salary upto Rs.15,000/- should be covered thus it can be concluded that either the assessee is violating the EPF provisions or he has not employed

as many employees as shown in the chart and fabricated the accounts to claim the excessive salary. After giving the assessee leverage on all accounts it would be quite reasonable to disallow 200% of the salary paid (Rs.11,05,12,366/-X20%) i.e. Rs.2,21,02,473/- and add back to the income of the assessee."

The circumstances and documents leading to this addition are already discussed as above and therefore no further discussion on the issue is needed. The amount of Rs.2,21,02.473/- is thus added to the total income of assessee company. Penalty proceedings is initiated and notice u/s 271(1)(c) is being issued separately for furnishing of inaccurate particulars of income."

4.1 The above findings of the Assessing Officer clearly demonstrate that Assessing Officer has made the addition on the basis of directions of Addl. CIT, Range-5, Lucknow and has not examined anything at his own. The Assessing Officer has not brought out anything on record to demonstrate that the expenses were not incurred for the purpose of business neither he has brought on record anything for the proposition that the expenses claimed were not supported with bills and vouchers. The learned CIT(A) has allowed relief to the assessee by recording his elaborate findings. For the sake of completeness, the findings recorded by learned CIT(A), are reproduced below:

Regarding First addition:

"4. I have examined the facts and circumstances of the case. I have considered the findings of the AO in the assessment order and the submissions of the appellant made during the course of appellate proceedings. The AO has noted that assessee is engaged in the business of Automobile and shown income from Automobile and toll collection. In A.Y. 2013-14 appellant had shown NP from Motor trade and toll Plaza at 1.28% and 4.25% respectively and overall 1.58% while for A.Y. 2014-15, appellant has shown Net Loss at 5.02% from toll collection. It was noticed that the toll collection during the year have increased as compared to the preceding year but

'operational expenses' have increased by 6.56% in proportion to toll collection. Therefore operating expenses have been allowed on the basis of A.Y. 2013-14 percentage i.e. 5.47% which comes to Rs. 3,18,09,054/- and the remaining amount of Rs. 62,70,485/- has been disallowed.

5. The appellant has contended that the reasons for increase in operating expenses is on account of the following facts:

(1) Earlier the Toll collection was confined to the State of Uttar Pradesh only, whereas during the year under consideration, the Toll business was confined to Southern State of India as detailed below:

- (i) Paranur, Chengalpattujamil Nadu*
- (ii) Salaipudur, Kovilpatti, Tamil Nadu*
- (iii) Tuticorin, Tirunelveli, Tamil Nadu*

(2)To manage Toll business in the State of Uttar Pradesh was easier as compared to managing of Toll business in the Southern State. Even the experience in managing the business in Southern State was basically language problem and also lack of coordination between the assessee and the Local Bodies and also the State Authorities.

(3)Due to non-experience on the part of the assessee of managing Toll business in southern part of the country, the assessee was confident that the Toll collections would be better but due to constant in regular movement of heavy traffic during peak hours and otherwise, in order to avoid traffic jam at no. of time in a day almost daily, in order to smoothen traffic, the vehicles were allowed to move without Toll. Any efforts on the part of the assessee to restrict and regulate the traffic would result in chaos of traffic and public both resulting into unsolicited scenes. Moreover, the assessee being an outsider, there was always resistance in carrying on smooth business and there was hardly any cooperation coming forth from the local authorities.

All the above reasons resulted in lower collection of Toll. It was further stated that for the current year and the preceding year the total collection of Toll cannot be compared with the

expenses, the reason being that irrespective of the amount of Toll Collection, the expenses have to be incurred. The Total bid done in respect of all the three tolls based in Southern India was Rs.10,25,84,085/- whereas, the total collection in respect of the said Tolls was only Rs.58,15,18,366/- out of which Rs.56,71,14,091/- being the minimum amount payable as Toll Plaza fee was paid to NHAI, and it was only out of the balance that after meeting the expenses, the company could earn. However, this resulted in a loss of Rs.2,91,96,108/-. Had the Company not operated the Tolls so bid for, the entire amount of security would have been forfeited. Thus after incurring a loss of Rs. 2,91,96,108/- the Company was able to save its security amount of Rs.10,25,84,085/-.

6. It is observed that in the immediately preceding year the assessee was managing two Toll collection centres situated in UP, where it had its Registered and business operation. Whereas this year the assessee had three Toll Collection Centres, all of them situated in South India. The Toll Plaza Collection itself has increased from Rs. 33,85,66,892/- to Rs.58,15,18,366/- in the year under consideration.

7. On examination, I find that the AO has taken the percentage of 'Operating Cost' to total Toll Collection for the earlier year and applied the same ratio to the current year Toll Collection and disallowed the operating expenses on ad hoc basis. If the AO was not convinced of a particular expenses he could have made necessary verification before making the disallowance. The onus is on the AO to establish that expenses incurred by the assessee were excessive or unreasonable. In the case of DCIT vs. Lab India Instruments Pvt. Ltd. 93 ITD 20, it has been held that, the onus was on the AO to establish that payments made by the assessee were excessive or reasonable. No other material has been brought by the AO to prove the excessiveness of payment. Therefore, in the absence of adverse material and considering the facts of case as a whole, the orders of the CIT(A) were to be upheld.

In this connection it is relevant to refer to section 37 of the I.T. Act, to examine the allowability of any expenditure:-

"...Expenditure not being expenditure of the nature described in Section 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or professions."

8. The only requisite condition for allowability of any expenditure as per section 37 of the Act is that expenditure incurred should not be Capital in nature and not for personal purpose. The expenditure should have been incurred wholly and exclusively for the purpose of business. It is observed that the AO has not given any finding that the operating expenses have not been incurred wholly and exclusively for the purpose of business."

Regarding second addition:

"3. I have examined the facts and circumstances of the case. I have considered the findings of the AO in the assessment order and the submissions of the appellant made during the course of appellate proceedings. The AO has noted that as per the ledger account toll tax collection of Rs. 1,27,07,644/- has been shown as payable on 31-03-2014, but assessee has claimed it without any evidence that it was incurred in F.Y. 2013-14 though the actual payment is made in April 2014. Hence, the same was disallowed. The appellant has contended that total amount received as Toll Collection for the last week of week is Rs.1,10,81,005/- and the total Toll Plaza fee payable is Rs.1,27,07,644/-. The receipt has been Accounted for in this accounting year and the corresponding expenditure relating to the income has to be claimed as liability accrued and due to be paid as scheduled.

4. On perusal of the Toll collection statement submitted by the appellant, it is noted that total collection made for the month of March 2014 is Rs.5,08,34,405/-, wherein the collection of the last week of March 2014 is appearing. It is against this collection of the last week of March for the month of March, 2014, that Toll Plaza Fee is payable by the appellant, on the basis of contract entered into with NHAI dated 31-05-2013, which states that ' Toll Plaza Fee' is to be paid by the appellant every Tuesday of the coming week. It is observed

that the appellant has Toll Collection of Rs.1,10,81,005/- for the last week of March, 2014, commencing on Monday 24-03-2014 upto 31-03-2014. Against this total amount of Toll Plaza Fee payable is @15,88,455.57/- per day and for the week is Rs.1,11,19,188.99, and for Monday 31-03-2014 it is Rs.15,88,455.57, thus the total amount payable as Toll Plaza Fee by the appellant is Rs.1,27,07,644.56.

5. In this connection, it is observed that while considering deduction of expenditure for income tax purpose, it is one which is either actually paid or, if the accounts are on mercantile basis, provided for towards a liability actually existing at the time. Thus expenditure is not necessarily confined to the money, which has been actually paid out. It also covers a liability which has accrued or which has been incurred, although it may have to be discharged at a future date. A reference may be made to the decision in the case of East Coast Containers (P) Ltd. Vs. ITO 25 ITD 25 (Madras), wherein it has been held as follows:

"... In the case of the assesses following mercantile method of accounts, the provisions made of the definite obligation was in accordance with the method of accounting consistently followed by it and would be permissible deductions is computing taxable profit."

6. Considering the facts circumstances of the case, I find that the appellant is following mercantile system of accounting and the appellant has accounted for the receipts for the last week of Rs.1,10,81,005/- in this accounting year hence the corresponding expenditure relating to the income is to be allowed as a liability accrued and due to be paid as per the contract with NHAI. In view thereof the disallowance of Rs.1,27,07,644/- made by the AO is held to be unjustified and is hereby deleted."

Regarding third addition:

3. I have examined the facts and circumstances of the case. I have considered the findings of the AO in the assessment order and the submissions of the appellant made during the course of appellate proceedings. The AO had noted that the

appellant has claimed excessive salary, hence 20% of the salary paid i.e. (20% of Rs. 11,05,12,366/-) Rs. 2,21,02,473/- has been disallowed. It is observed that the appellant has furnished a comparative details of salary and wages paid during the preceding year and the current year which is given herein below:

**Premier Car Sales Limited
 Comparative Details of Salary and Wages**

Particulars	FY 2013-14	FY 2012-13
Hyundai Showroom - Shahnajaf Road	27,804,261.00	27,754,896.00
Honda Showroom - Shahnajaf Road	8,474,333.00	9,145,695.00
Hyundai Workshop - Mahanagar	11,426,751.00	11,290,020.00
Piaggio Workshop - Mahanagar	1,390,554.00	1,155,194.00
Hyundai Showqroom - Mahnagar	7,131,810.00	8,691,415.00
Piaggio Showroom - Mahanagar	872,216.00	811,873.00
Hyundai Workshop - Chinhat	17,583,770.00	16,306,915.00
Hyundai Parts Suply Centre - Dhdrsania Barabanki	12,901,206.00	11,056,435.00

Honda Workshop - Ashok Marg	7,020,116.00	6,037,348.00
Honda Showroom - Station Road	687,870.00	-
Hyundai Showroom - Gorakhpur	4,855,500.00	4,041,048.00
Hyundai Workshop - Gorakhpur	3,975,647.00	3,166,408.00
Hyundai Workshop Sultanpur	971,447.00	788,107.00
Hyundai Workshop Sitapur	724,747.00	3,805.00

Hyundai Showroom - Balrampur	9,000.00	-
Total	105,829,228.00	100,249,159.00

Toll Plaza

Particulars	FY 2013-14	FY2012-13
Toll Plaza -LALA NAGAR - Uttar Pradesh	-	8,957,049.00
Toll Plaza -Chitaura Uttar Pradesh	-	1,916,411.00
Toll Plaza -Paranur Tamilnadu	11,189,836.00	-
Toll Plaza -Salaipudur Tamilnadu	1,929,216.00	-
Toll Plaza -Tuticorin Tamilnadu	236,984.00	-
	13,356,036.00	10,873,460.00
Grand Total	119,185,264.00	111,122,619.00

4. On examining the above it is clearly evident that salary and wages on account of workshop and shops has only increased marginally from the previous year i.e. from Rs.10,02,49,159/- to Rs. 10,58,29,228/- and the salary on account of Toll Plaza for South India is Rs.1,33,56,036/-. This, amount of Rs.1,33,56,036/- has been included by the appellant in the 'Operating Expenses', debited in the P&L account. The AO has disallowed part of the 'Operating Expenses' claimed in the P&L account in para 7 of the assessment order and further disallowed 20% of the total salary and wages paid.

5. On examination, I find that the AO has not examined the facts of the case properly and merely made the disallowance on conjectures and surmises. The AO has disallowed Rs.2,21,02,473/- being 20% of the expenses incurred under the head salary and wages. I find that the AO has not brought any material on record on the basis of which it would be said that

the expenditure incurred by the appellant was excessive or not genuine, having regard to the business of the appellant. Further, it is observed that reasonableness of the expenses on account of salary and wages have to be seen from the point of view of a businessman and not from the point of view of the Revenue. The books of account of the appellant have been audited u/s 44AB of the Act and complete details of salary and wages have been submitted before the AO. The AO has not invoked section u/s 145(3) of the Act and rejected the books of account.

6. Considering the facts and circumstances of the case, adhoc disallowance of Rs.2,21,02,473/- made by the AO which is not based on any material on record is held to be unjustified and is hereby deleted."

4.2 The above findings of learned CIT(A) are quite exhaustive wherein we do not find any infirmity. As regards the arguments of Learned D. R. regarding fresh evidence accepted in violation of Rule 46A of the I.T. Rules, we find that learned CIT(A), in para 4 at page 14, has noted that on perusal of toll collection statement submitted by the assessee, in the last week in the month of March, 2014, there were total amount of toll plaza fee payable to the tune of Rs.1,11,19,188/- and he has also noted that total amount payable as toll plaza fee comes out to be Rs.1,27,07,644.56. We find that these findings are based upon a letter dated 06/12/2016, placed in paper book pages 16 & 17, and this letter was addressed to Assessing Officer during assessment proceedings. Therefore, the learned CIT(A) has not relied upon any additional evidence while giving relief to the assessee.

5. In view of the above, the appeal filed by the Revenue in I.T.A. No.249/Lkw/2018 is dismissed. The Cross Objections in this appeal are supportive only therefore, the cross objections are also dismissed.

6. Now coming to appeal in I.T.A. No.672, we find that in this appeal the Revenue has taken only two issues relating to expenses of toll plaza business and disallowance of salary & wages and which are similar to grounds of appeal taken in I.T.A. No.249. Since we have dismissed these grounds of appeal in I.T.A. No.249 therefore, following the same, we dismiss these grounds in I.T.A. No.672.

7. In the result, the appeals of the Revenue and Cross Objections of the assessee are dismissed.

(Order pronounced in the open court on 06/09/2019)

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

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

Dated:06/09/2019
*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