

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.538/Chny/2020**
(निर्धारण वर्ष / **Assessment Year: 2008-09**)

&

आयकर अपील सं./ **ITA No.539/Chny/2020**
(निर्धारण वर्ष / **Assessment Year: 2009-10**)

&

आयकर अपील सं./ **ITA No.540/Chny/2020**
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

LDS Rubber Tech (Chennai) Pvt. Ltd. No. 55, Bangalore High Road, Thandalam Village, Sriperumbudur Taluk Chennai – 602 105.	बनाम/ Vs.	ITO Company Ward II(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AABCL-0050-B		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sree Lakshmi Valli (Advocate) –Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri AR V Sreenivasan (Addl. CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	27-06-2022
घोषणा की तारीख / Date of Pronouncement	:	06-07-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AYs) 2008-09, 2009-10 & 2010-11 have common issues. First we take up appeal for AY 2008-09 which arises out of the order of learned Commissioner of

Income Tax (Appeals)-8, Chennai [CIT(A)] dated 31.01.2020 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 18.10.2013. In this appeal, the grievance of the assessee is two-fold i.e. (i) disallowance u/s. 40A(3); (ii) capitalization of building expenses. The same are adjudicated as under.

2. The assessee being resident corporate assessee was subjected to survey u/s. 133A on 10.08.2012. During survey, certain books and documents including computer hard disc which included accounts maintained in Tally Package, were impounded and retained. The case for the year was reopened and notice u/s. 148 of the Act was issued on 15.03.2013.

3. Disallowance u/s 40A(3)

3.1 It transpired that the assessee paid amount of Rs.3.40 Lacs to its managing director towards reimbursement of expenses. Since the reimbursement, on each occasion, exceeded threshold limit of Rs.20,000/-, Ld. AO invoked the provisions of Sec.40A(3) and added the same to the income of the assessee. The Ld. CIT(A) confirmed the same.

3.2 Upon perusal of ledger extract of Managing Director as placed on record, we find that that assessee has obtained advances from the Director in earlier years and the assessee is debiting his account for reimbursement of expenditure. The only credit to the account is salary which is being paid through banking channels. In other words, the assessee has not debited any expenditure in the profit & Loss Account during the year but the cash payment is merely reducing the advances obtained by the assessee from the director in the earlier years. This

being so, the provisions of Sec. 40A(3) has no applicability in this year. Therefore, we direct Ld. AO to delete this disallowance.

4. Capitalization of Building Maintenance Expenses

4.1 The assessee debited sum of Rs.0.73 Lacs towards building maintenance. The Ld. AO held that the same could not be allowed as revenue expenditure and the assessee would be entitled to claim the depreciation on the same. The Ld. CIT(A) confirmed the same.

4.2 Upon perusal, we find that the expenses are being incurred on building which is taken on lease. The nature of payment would reveal that the same are routine maintenance expenditure and do not result into any enduring benefit to the assessee. This being so, the same have rightly been claimed as revenue expenditure. We direct Ld. AO to allow the same in full and reverse the depreciation granted to the assessee in the assessment order. The appeal stands allowed.

Assessment Year 2009-10

5. The only grievance of the assessee is disallowance of expenditure which could be tabulated as under: -

No.	Expenditure booked under the head	Exp. Incurred as per tally	Claimed in the P&L A/c filed	Excess claim made	Disallowance made	
					For self made cash vouchers not accepted	For non production of vouchers
1	Building Maintenance	3,56,082	4,93,322	1,37,240	34,666	1,02,574
2	Clearing & Forwarding charges	74,437	1,74,437	1,00,000	10,845	33,898
3	Computer science	29,240	33,640	4,400	4,400	-
4	Internet charges	5,644	45,644	40,000	7,084	-
5	Travelling charges	56,828	3,08,057	2,51,229	-	52,771
6	Machinery Maintenance	2,61,946	5,88,449	3,26,503	14,736	1,27,279
7	Office Maintenance	44,856	2,78,526	2,33,670	-	25,845
8	Outside wages	62,58,454	88,49,408	25,90,954	12,76,811	-
	Total				13,48,542	3,42,367

The Ld. AO noted difference in expenses shown in Tally software vis-à-vis expenditure claimed by the assessee in the books of accounts. The excess expenditure of Rs.13.48 Lacs was supported by self-made vouchers whereas no vouchers could be produced to support the expenses of Rs.3.42 Lacs. The total disallowance as made by Ld. AO thus amounted to Rs.16.90 Lacs. The Ld. CIT(A) confirmed the disallowance against which the assessee is in further appeal before us.

6. So far as the disallowance of building maintenance expenses for Rs.1,37,240/- is concerned, we find that the said expenditure has separately been dealt with by Ld. AO in the assessment order. The expenditure has been treated as capital expenditure and depreciation has been allowed on the same. Therefore, the addition, to that extent could not be sustained. The remaining expenditure which is not supported by vouchers is Rs.2,39,793/- whereas remaining expenditure which is supported by self-made vouchers is Rs.13,13,876/-. Considering the nature of expenditure, we are of the opinion that full disallowance is not justified and it would meet the end of justice if 10% of remaining aggregate expenditure of Rs.15,53,669/- is treated as unsupported expenditure. In other words, the disallowance stand restricted to the extent of Rs.1,55,367/-. We order so. The Ld. AO is directed to re-compute the income of the assessee. The appeal stand partly allowed.

Assessment Year 2010-11

7. The only grievance of the assessee is disallowance of certain expenditure. The first expenditure is disallowance of diesel expenditure for Rs.1,44,796/- which has been disallowed by invoking the provisions of Sec.40A(3). Upon perusal, we find that the amount of each bill do not

exceed threshold limit of Rs.20,000/- and therefore, the same could not be disallowed u/s 40A(3). We order so.

Another disallowance of Rs.5,82,347/- has been made for various expenditure for want of supporting vouchers. Taking the same view as in AY 2009-10, we restrict the disallowance to 10% i.e., Rs.58.235/-/-. The Ld. AO is directed to re-compute the income of the assessee in terms of our above order. The appeal stand partly allowed.

Conclusion

8. The appeal for AY 2008-09 stands allowed whereas the appeals for AYs 2009-10 & 2010-11 stand partly allowed.

Order pronounced on 06th July, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 06-07-2022
JPV

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF