

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-1', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 847/Del/2016 : Asstt. Year : 2010-11**

M/s Shivgori Builders (P) Ltd., Flat No. 4, R. R. Apartments, 3- 4, Manglapuri, Mehrauli, New Delhi-110030	Vs	Deputy Commissioner Income Tax, Central Circle-15(Old), Central Circle-14 (New), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAKCS2489J</b>		

**Assessee by : Sh. Gautam Jain, CA**

**Revenue by : Sh. V. R. Sonbhadra, Sr. DR**

<b>Date of Hearing : 23.05.2016</b>	<b>Date of Pronouncement : 27.05.2016</b>
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**ORDER**

This is an appeal by the assessee against the order dated 04.12.2015 of Id. CIT(A)-XXVI, New Delhi.

2. Following grounds have been raised in this appeal:

*“1. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining a disallowance of Rs. 6,40,684/- out of business expenditure incurred and claimed by the appellant company.*

*1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the adhoc disallowance made of 50% of the expenditure is both factually and legally impermissible, arbitrary and therefore, untenable.*

*1.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the edifice of*

*the disallowance was that the assessee has failed to file any return of income whereas the learned Assessing Officer in the impugned order of assessment had himself accepted the returned income and therefore, the disallowance so made and confirmed was based on complete non application of mind and hence untenable.*

*It is therefore, prayed that the disallowance made and sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and appeal of the appellant company be allowed.”*

3. From the above grounds, it is gathered that the only grievance of the assessee in this appeal relates to the sustenance of disallowance of Rs.6,40,684/- made by the AO out of the business expenditure.

4. Facts of the case in brief are that the AO issued noticed u/s 142(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 21.03.2011 requiring the assessee to file the return of income. The AO also issued noticed u/s 143(2) of the Act dated 02.09.2012 issued to comply on 15.09.2012. However, on the said date nobody appeared. The assessee, later on, furnished the copy of return along with copy of audited statement of annual accounts on 12.10.2012 which the AO considered as nonest by observing that the assessee had deliberately filed its return of income beyond the due date of filing of return. The AO made the best judgment assessment u/s 144 of the Act on the basis of the

material available on the record. The AO observed that the assessee had claimed administrative and general expenses amounting to Rs.12,81,368/-. He disallowed 50% of the aforesaid expenses and made the addition of Rs.6,40,684/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that there was no basis for adopting the percentage of 50% while making the disallowance. The reliance was placed on the following case laws:

- *Lavrids Knudsen Maskinfabrik (India) Ltd. Vs Addl. CIT 102 TTJ 882 (Pune)*
- *ITO Vs Mayur Aggarwal 43 DTR 116 (TM) (Agra)*
- *Dinesh Mills Ltd. Vs CIT 254 ITR 673 (Guj)*
- *Goodyear India Ltd. Vs ITO 73 ITD 189 (Del)*
- *Hughes Escorts Communications Ltd. Vs JCIT 106 TTJ 1065 (Del)*
- *Sunder Mal Sat Pal Vs ITO 94 TTJ 423 (Asr)*
- *Trimurti Salt Company Vs ITO 12 TTJ 485 (Cal)*
- *State of Orissa Vs Maharaja Shri B.P. Singh Deo (1970) 76 ITR 690 (SC)*

6. The another submissions of the assessee has been incorporated by the Id. CIT(A) at page nos. 4 & 5 of the impugned order which is reproduced verbatim as under:

*Even otherwise it is submitted that the conclusion that expenditure are not supported by documents overlooks the nature of the expenditure as would be evident from chart tabulated hereunder:*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (In Rs.)</b>	<b>Evidence (pages of Paper Book)</b>
i)	Audit Fee	12,000	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Auditors Remuneration (38)
ii)	Bank Charges	10,248	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of bank charges (39-40) iii) Copy of bank statement (32-34) I) Copy of bank Statement (29-31)
iii)	Depreciation	8,74,657	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Depreciation (41) iii) Copy of audited financial statement (10)
iv)	General Exp.	500	i) Copy of grouping of Indirect expenses (37) ii) Copy of ledger account of General Exp (42)
v)	insurance	18,987	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Insurance Exp (43)
vi)	Interest of Car Loan	52,736	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Interest Car Loan (44) iii) Copy of ledger account of ICICI Car Loan (45) iv) Copy of Loan a/c statement of ICICI bank (46-50) v) Copy of bank Statement (29-31) vi) Copy of bank book (32-34)
vii)	Legal & Professional Charges	19,000	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Legal & Professional Charges

			(51)
viii)	Printing & Stationery	955	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Printing & Stationery (52)
ix)	Professional Fees	1,29,300	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Professional Fees (53)
x)	Salary	1,55,000	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Salary (54)
x)	Vehicle Running & Maintenance	7,985	i) Copy of grouping of indirect expenses (37) ii) Copy of ledger account of Vehicle Repair & Maintenance (55)
	<b>Total</b>	<b>12,81,368</b>	

*It will be apparent from the above chart that out of expenditure of Rs.12,81,368/- sum of Rs.8,74,657/- represent statutory deduction of depreciation on fixed assets including car (page 10 of Paper Book). It is submitted that out of the remaining expenditure of Rs.4,06,711/- expenditure of Rs.52,736/ represents interest on car loan, bank charges of Rs. 10,248 and insurance on car of Rs.18,987/- genuineness and necessity of which cannot be denied and disputed. Further audit fees of Rs.12,000/- is statutory expenditure.*

*Moreover expenditure incurred on miscellaneous heads in the course of business (general expenditure Rs.500/-, printing and stationery Rs.955/- legal*

*professional charges Rs.90,000/- is highly reasonable).*

*It is next submitted that salary paid is to one employee Navneet Bansal at Rs.15,000/- per month of Rs.1,55,000/- per month.”*

7. The Id. CIT(A) after considering the submissions of the assessee observed that the AO had good reason to frame the assessment u/s 144 of the Act in view of express evidences of non-compliance by the assessee to the notices issued. He further observed that the assessee had the onus to substantiate the claim of various expenses having been incurred wholly and exclusively for the purposes of business and the said onus had not been discharged as mere filing the details of expenses did not suffice. He accordingly confirmed the disallowance made by the AO.

8. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the expenses were incurred by the assessee for the business purposes which the AO disallowed without any basis. It was further submitted that the AO wrongly considered the expenses of Rs.12,81,368/- when the assessee in its computation of income claimed expenses of Rs.9,73,621/- only. It was clarified that the assessee claimed

depreciation of Rs.5,66,910/- in the computation of income instead of Rs.8,74,627/- claimed in the profit and loss account, however, the depreciation claimed on the written down value of the assets and allowed in earlier years also was wrongly disallowed by the assessee. The reliance was placed on the following case laws:

- *DIT(International Taxation) Vs HSBC Asset Management India Pvt. Ltd. 228 Taxman 365 (Bom) (Mag)*
- *Packwell Printers Vs ACIT 59 ITD 340 (Jab)*
- *DCIT Vs Finolex Cables Ltd. 114 TTJ 785 (Pune)*
- *M/s Fitjee Ltd. Vs DCIT in ITA No. 4627/Del/2012 & 2840/Del/2013*
- *Inductotherm (India) Vs CIT 73 ITD 329 (Ahd.)*
- *Mitsui Prime Advance Composites India Pvt. Ltd. in ITA No. 4597/Del/2013*
- *Waterfall Estates Pvt. Ltd. Vs CIT 131 ITR 223 (Mad)*

9. The Id. Counsel for the assessee further submitted that bank charges of Rs.10,248/- and audit fees of Rs.12,000/- are statutory/contractual expenditure and genuineness of the same cannot be disputed. It was also submitted that the assessee was having a total sales of Rs.1,06,34,000/-. Therefore, the expenses incurred for salary, legal and professional charges amounting to Rs.1,55,000/- and Rs.1,29,300/- respectively were highly reasonable. The Id. Counsel for the assessee also furnished a chart in respect of the expenses claimed and disallowance made by the AO as per following details:

<i>Sr. No.</i>	<i>Nature of Expenditure</i>	<i>Claimed as per computation of income</i>	<i>Claimed as per profit and loss account</i>	<i>Disallowance by the learned Assessing Officer (50% of amount as per profit and loss account)</i>
<i>i)</i>	<i>Audit Fee</i>	<i>12,000</i>	<i>12,000</i>	<i>6,000</i>
<i>ii)</i>	<i>Bank Charges</i>	<i>10,248</i>	<i>10,248</i>	<i>5,124</i>
<i>iii)</i>	<i>Depreciation</i>	<i>5,66,910</i>	<i>8,74,657</i>	<i>4,37,328</i>
<i>iv)</i>	<i>General Expenses</i>	<i>500</i>	<i>500</i>	<i>250</i>
<i>v)</i>	<i>Insurance</i>	<i>18,987</i>	<i>18,987</i>	<i>9,493</i>
<i>vi)</i>	<i>Interest of car loan</i>	<i>52,736</i>	<i>52,736</i>	<i>26,368</i>
<i>vii)</i>	<i>Legal and Professional charges</i>	<i>19,000</i>	<i>19,000</i>	<i>9,500</i>
<i>viii)</i>	<i>Printing and Stationery</i>	<i>955</i>	<i>955</i>	<i>478</i>
<i>ix)</i>	<i>Professional Fee</i>	<i>1,29,300</i>	<i>1,29,300</i>	<i>64,650</i>
<i>x)</i>	<i>Salary</i>	<i>1,55,000</i>	<i>1,55,000</i>	<i>77,500</i>
<i>xi)</i>	<i>Vehicle Running and Maintenance</i>	<i>7,985</i>	<i>7,985</i>	<i>3,993</i>
	<b><i>Total</i></b>	<b><i>9,73,621</i></b>	<b><i>12,81,368</i></b>	<b><i>6,40,684</i></b>

It was accordingly submitted that the disallowance made by the AO and sustained by the Id. CIT(A) was not justified.

10. In his rival submissions the Id. DR strongly supported the orders of the authorities below.

11. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO disallowed 50% of the expenses amounting to Rs.12,81,368/- claimed in the profit and loss account by the assessee (copy of which is placed at page nos. 7 & 11 of the assessee's paper book). It is also noticed that the assessee claimed depreciation of Rs.8,74,657/- in its profit and loss account, however, in the

computation of income (copy of which is placed at page no. 2 of the assessee's paper book), the actual depreciation claimed was of Rs.5,66,910/- which was claimed on the written down value of the assets. In our opinion, when the AO had accepted the written down value of the block of assets and it is not brought on record that the assets were not used for the business purpose then the adhoc disallowance made @ 50% of the depreciation was not justified. On a similar issue the Honøble Bombay High Court in the case of DIT(International Taxation)-II Vs HSBC Asset Management (I) (P) Ltd. (supra) has held as under:

*“The Tribunal then, proceeds to hold that when the Assessing Officer had to allow depreciation on the written down value of the block of assets, then, it cannot in the present assessment year dispute the opening written down value of the block of assets nor can he examine the correctness or otherwise of the opening written down value brought forward from the earlier year. The order under Section 143(3) for the assessment year 2003-04 continues to operate and no proceedings under the Act were initiated to disturb the same.”*

12. In the present case also it is not brought on record to substantiate that the assessee wrongly claimed the depreciation on the written down value of the assets on which the depreciation has already been accepted by the department in

the preceding year. It is also not the case of the AO that the assets were not used for the business purpose. Therefore, the disallowance made by the AO @ 50% of depreciation was not justified. As regards to the disallowance made by the AO @ 50% on the other expenses is concerned, it is noticed that the AO did not bring any material on record to substantiate that the expenses were not incurred for the business purposes or those were excessive, even the AO had not given the basis while making the disallowance @ 50% of the expenses. In our opinion, the disallowance was made by the AO on the basis of surmises and conjuncture which is not tenable in the eyes of law. We, therefore, are of the view that the disallowance made by the AO and sustained by the Id. CIT(A) was not justified. Accordingly, the same is deleted.

13. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 27/05/2016)

Sd/-

**(N. K. Saini)**

**ACCOUNTANT MEMBER**

**Dated: 27/05/2016**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**