

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.:- 1786/Del /2014  
Assessment Year: 2009-10

DCIT, Circle 13(1), New Delhi	Vs.	M/s. Norma India Ltd. X-47, Loha Mandi, Naraina, New Delhi. PAN AAACN4323J
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by :	Shri P. Damvanunjna Sr. DR
Assessee by:	Shri Ved Jain, Adv.
Date of Hearing	07/06/2016
Date of pronouncement	16/06/2016

**ORDER**

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of Ld. CIT (A) XVI, Delhi dated 30<sup>th</sup> December 2013. In the appeal following grounds of appeal have been raised :-
  - i. *"On the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition on account of disallowance of expenses under the following heads:*
    - i) *Freight outward and cartage of Rs. 21,30,000/-,*
    - ii) *Tools and Consumables expenses of Rs. 6,28,939/- and*
    - iii) *Fuel expenses of Rs. 10,11,331/-*
  2. *On the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the above additions ignoring the fact the assessee even failed to submit any evidence regarding the expenses, which were*

*disallowed by the AO later on, which revealed that the assessee was not honest in claiming the said expenses.*

3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in accepting the additional evidence without giving opportunity to the AO to review the evidences and submit his report.*
  4. *On the facts and circumstances of the case, the Id. CIT(A) has erred by ignoring the fact that in many of the replies submitted by the assessee regarding various payments which, though have been made in March, 2009 but the material unutilized was not be taken to closing stock. "*
  5. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal. "*
2. All the grounds of appeal are against the deletion of adhoc disallowance made by the LD AO out of various expenses and therefore they are taken together.
  3. The assessee is a limited company, who filed its return of income on 30<sup>th</sup> September, 2009. It is engaged in the business of manufacturing and export of iron and steel forging as per the specification given by the buyers. During the course of assessment proceedings Ld. AO disallowed 10% of freight and cartage expenses out of amounting to Rs. 21,30,000/-, tools and consumables of Rs. 6,28,939/-and Rs. 10,11,331/- of fuel expenses. The first ground of appeal is regarding deletion of this disallowance by the Ld. CIT (A). Ground No. 2 to 4 is also supporting the ground No. 1 contesting the above disallowance under different context.
  4. Ld. AO has held that the assessee has claimed freight outward and cartage expenses of Rs. 1,73,90,711/- and Rs. 40,33,289/-. During the

course of assessment proceedings, the assessee produced the books of accounts and vouchers. However, the Ld. AO did not find them proper and further held that expenses have increased from 1.52 crores to Rs. 2.13 crores i.e. 40 % from the previous year and as supporting vouchers are handmade bills 10% of the expenses are disallowed. On appeal before the Ld. CIT (A), the same were deleted as supporting bills were produced and further the sales have been shown to increase by 100% compared to increase in such expenditure by only 40% compared to last year.

5. Ld. DR relied on the orders of the lower authorities and Ld. AR submitted that the issue is now covered in favour of the assessee by the order of coordinate bench for preceding assessment years vide order dated 4<sup>th</sup> December, 2015.
6. We have carefully considered the rival contentions. Ld. CIT(A) has deleted the addition on account of freight expenditure for the reason that sales have increased by 100% such expenses have increased only by 40% and these expenses are directly linked with turnover of sales and purchases. Furthermore, the Ld. AO did not point out any defect in the bills submitted by the appellant and disallowed arbitrarily 10% of that expenditure. In ITA No. 4562/Del/2010 in assessee's own case the disallowance by applying percentage of expenditure was made which was deleted vide order dated 4.12.2015 as under :-

"7. We have carefully considered the rival contention as well as the orders of lower authorities. It is a fact that there is increase in various expenses of compared to previous year. Further, there is also higher percentile increase than the increase in sales of the company. Ld AO has rightly made the queries on this front and obtained the explanation of the assessee. However after obtaining the explanation of the assessee, AO has nowhere given any reason that why the explanation submitted by the assessee is not acceptable to him. Had this explanation was not acceptable to him, he should have made a detailed inquiry, but AO adopted the easy way out. For increase in expenses assessee has submitted the copies of the accounts, however Ld AO has also not verified that whether increase in sales is on account of increase in exports sales. The statement is made by AO himself in assessment order that there is increase in sales of the company from 32.45 crore to 41 .83 crores showing a jump of almost 29 % compared to previous year. For freight assessee submitted before. AO detailed copy of account showing that assessee engaged M/ Swift freight movers as freight forwarders for export shipment and all payments were made. by cheques and further Tax deduction at source was also made by appellant. Therefore in our opinion the above facts read together gives complete picture of the freight expenses and to whom it is paid and whether he is assessed to tax and whether such expenses are in relation to export sales. This would have open floodgates of information for the AO to determine whether expenditure incurred by assessee are wholly and exclusively for the business or not. But no such efforts were made. Therefore statement of AO that there is no documentary evidence is produced by assessee before him is a hollow statement. Further the assessment proceedings started with the first notice u/s 143(2) on 18.09.2008 and assessment continued and concluded on 18.12.2009 i.e. almost 14 months, this time period shows that AO has ample time to exercise all the power vested up on him by, the Act and gather ,adequate evidence to make concrete disallowance, if at all any. The powers bestowed up on assessing officer are very wide and most effective which were used very sparsely in this case. Therefore there is no basis, except statistics, for making contested disallowance in the hands of assessee. In our view this is not sufficient to uphold disallowances. In this back drop, ad hoc disallowance made by AO cannot be sustained and CIT (A) has rightly deleted the same. Therefore we confirm the order of CIT (A) and dismiss the appeal of revenue.

8. The appeal of revenue is dismissed."

7. As the disallowance not specific and Ld. AO has not pointed out a single instances of the expenditure, which are not, supported by the vouchers and bills. Further, the estimated amount of disallowance by

applying the percentage is also not proper. Therefore, we confirm the order of the Ld. CIT(A) in deleting the disallowance on account of freight and cartage expenses.

8. Regarding the disallowance of Rs. 6,28,939/- out of tools and consumables expenses the AO has held that out of the total expenditure of Rs. 94.72 lacs has increased to Rs. 11.28 lacs has been increased in the month of March. He further held that out of this material worth Rs. 5 lacs would have been used and therefore there has to be a closing stock balance of Rs. 6,28,939/-. Similarly, in case of fuel expenses assessee has claimed expenditure of Rs. 2.10. crores against previous year expenditure of Rs. 1.23 crores and therefore there is a 70% increase in expenditure. During the course of assessment proceedings assessee submitted justification that out of increase in rates and increase in turnover the resultant increases in expenditure has occurred. However AO has held that material purchased in the month of March amounting to Rs. 5,11,331/- could not have been utilised by 31<sup>st</sup> March, 2009 and further Rs. 5 lacs was disallowed on adhoc basis for fuel purchased in cash which are not properly verifiable. Therefore he disallowed Rs. 10,11,331/- out of fuel expenses.
9. We have carefully considered the rival contentions . Ld. CIT(A) has deleted this disallowance as under :-

*“4.4.1 Tools and consumables : The assessee has shown expenses of Rs. 94,72,664/- under the head tools and consumables. AO observed that major purchases of tools and consumables have been made in the*

month of March 2009 only. The assessee has not been able to prove/justify that all the tools and consumables purchased in month of March 2009 have been utilized fully. The unutilized tools and consumables should have been reflected in the closing stock as on 31.03.2009. The closing stock does not include the tools and consumable purchase in the month of March 2009. Therefore, it is certain that all the tools and consumable purchased in the month

of March 2009 must not have been used in month itself. Taking conservative figure that the tools and consumables purchased in the month March 2009 have been used to the extent of Rs. 5 lacs in the March 2009 itself. The balance tools and consumables of an amount of Rs. 6,28,939/- which should have been shown in the closing stock is being added back by the AO to the total income of the assessee.

4.4.2 It is seen that the above adhoc and arbitrary addition is made by the AO on surmises and conjectures. Appellant submitted that tools and consumables are procured at the time of requirement and issued the same for production. The appellant company is following this practice for last several years no such disallowance was made in assessment completed for earlier years. Appellant company is having a manufacturing facility in Ghaziabad. Appellant also submitted that it is not feasible for appellant company to maintain separate store for Tools and consumables. Therefore, it is procuring the material at the time of need as the major markets for procurement of material are nearby. It was also submitted that the material purchased for tools and consumables are standard products and are easily available in the market. It is a fact that creating closing stock for one year by reducing expenses does affect interest of the revenue as the same is claimable as an expense for the next year. In view of the above, the adhoc and arbitrary addition made by the AO on surmises and conjectures cannot be sustained. As such the same is deleted.

4.5.1 Disallowance of fuel expenses : The assessee has claimed fuel expenses of Rs. 2,10,83,266/-. AO observed that assessee has made purchases of fuel in cash and the fuel purchased on 25.03.2009 and 30.03.2009 of Rs. 2,54,900/- and Rs. 2,56,4311- respectively have not been disclosed in closing stock. The assessee has not been able to prove/justify that all the fuel purchased in month of March 2009 have been utilized fully. The unutilized fuel should have been reflected in the closing stock as on 31.03.2009. Taking conservative figure that the fuel purchased on 25.03.2009 and 30.03.2009 of Rs. 2,54,900/- and Rs. 2,56,4311- totalling to Rs. 5,11,331/- must not have been utilized by 31.03.2009. Therefore, fuel of Rs. 5,11,331/- which should have been shown in the closing stock is being added back by the AO to the total income of the assessee. Further the fuel purchased in cash is also not properly verifiable. Therefore, keeping in view the increase in fuel

expenses and unsupported voucher of cash, ad hoc disallowance of Rs. 5 lacs is being further made by the AO.

4.5.2 Appellant submitted that it procured fuel at the time of requirement as and when necessary and issued the same for production and follows the same practice for last several years. It was submitted that appellant purchased fuel for various purposes i.e. furnace oil for heat treatment, Diesel for uninterrupted power supply to its machine shop and machine oil/lubricants for smoothening of machines parts. Appellant company is having a manufacturing facility in Ghaziabad and it is not feasible for appellant company to maintain separate store for Fuel. Therefore, it is procuring the material at the time of need. The Fuel is standard products and are easily available in the market.

4.5.3 It is seen that sales has increased by 100% over the last financial year. Therefore, the observation of the AO that the fuel expenses has increased by 70% is without considering the fact that the sales has increased by 100% from last financial year. AO also ignored the fact that by creating closing stock for one year by reducing expenses does affect interest of the revenue as the same is claimable as an expense for the next year. The appellant is procuring fuel at the time of requirement as and when necessary and issuing the same for production. Appellant is accounting for the same following the principle of consistency. Fuel is a standard product and readily available in the market. The fuel purchased on 25.03.2009 and 30.03.2009 are duly accounted for as per bills and vouchers produced. There is no dispute that fuel expenses are directly related to production. In view of the above, the addition made by the AO on the ground that the assessee has short disclosed its closing stock of fuel by Rs. 5,11,331/- is not justified. Therefore, the same is deleted. With regard to the addition of Rs. 5 lacs made by the AO on the ground that fuel expenses made in cash are not properly vouched, it is seen that the AO has made the above disallowance arbitrarily on adhoc basis without pointing out any single instance of expense not vouched or not properly vouched. In this context, the appellant was directed to produce the ledger account with supporting bills and vouchers for the month of June, 2008 and March, 2009 which were produced by the AR of the appellant. The above bills and vouchers were test checked by me at random and found to be in order. In view of the above, the adhoc and arbitrary disallowance of Rs. 5,0,000/- made by the AO cannot be sustained. As such the same is deleted."

10. Ld. DR could not controvert how the order of Ld CIT (A) is erroneous. You cannot be stock of the material when it was purchased on need basis. Further in previous year also there is no opening stock therefore it cannot be said that explanation of the assessee is not proper. In any way the closing stock of this year becomes opening stock of next year and therefore at the most there would be shifting of profit from one year to another year and tax rates being same for both the years the issue would be tax neutral. Furthermore reading purchases of fuel it was not the case of Ld AO that the bills of the material are not available or material has not been procured. Stating that purchases have been made in cash cannot be the basis for making disallowance. For cash purchases exceeding specified monetary limit is disallowable u/s 40 A (3) of the act. No such disallowance has been made by the Ld AO. In view of this, We do not find any infirmity in the order of the Ld. CIT(A) hence, we confirm the order of Ld. CIT(A) in deleting the disallowance on account of expenses of tools and fuel expenses.

11. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 16/06/2016.

-Sd/-

**(I.C. SUDHIR)**  
**JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 16/06/2016

Copy forwarded to

1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi