REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITA No. 496 of 2006

% *Date of Decision: 19th July, 2010.*

The Commissioner of Income Tax, Delhi-IV
CR Building, New Delhi . . . Appellant

through : Ms. Prem Lata Bansal with Mr. Shashi Prabhakar, Advocates

VERSUS

M/s GAUTAM MOTORS,
B-81, G.T. KARNAL ROAD,
DELHI . . .Respondent

through: Mr. Ajay Vohra with Ms. Kavita Jha, Ms. Akanksha Aggarwal and Mr. Somnath Shukla, Advocates.

CORAM :-
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.*(Oral)*

1. This appeal has been preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The respondent-assessee filed its return for the assessment year 2000-01. The Assessing Officer while making the assessment disallowed various expenditures claimed by the assessee and also made certain additions. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) which was partly allowed. Not fully satisfied with the decision of the CIT(A), the assessee approached the Income Tax Appellate Tribunal. The Department also filed cross-appeal against the order of the CIT(A) challenging the additions which were deleted

by the CIT(A). Both these appeals are decided by the Tribunal vide its impugned order dated 29th June, 2005. As mentioned above, the Department now feels aggrieved by the order of the ITAT whereby various additions made by the Assessing Officer are deleted by the ITAT. The grievance of the Department is in respect of the following deletions: -

2. **New Vehicle and Handling charges :-**

The assessee had claimed deductions on account of purported expenses incurred under the head 'new vehicle and handling charges', to the tune of Rs.67,90,438.70p. These handling charges included postage and envelope expenses, expenses incurred on petrol and spare parts, handling charges and pre-delivery inspection expenses, warranty expenses and the miscellaneous expenses. The main grievance of the Department relates to the storage charges given by the assessee to its sister concern, M/s. Gautam Auto Ltd. for parking of its auto-rickshaws. The grievance also relates to the claim of petrol expenses.

3. In so far as the storage charges are concerned, the case of the assessee was that it is dealing with auto-rickshaws manufactured by M/s. Bajaj Auto Ltd. As a dealer it was having number of autorickshaws which require parking space. This parking space was arranged by taking the area from M/s. Gautam Motors Pvt. Ltd. (GMPL) at Village Bijwasan.

4. The Assessing Officer did not accept the aforesaid claim on the ground that the Assessee could not satisfactorily prove that the area at Village Bijwasan, Delhi, was taken by the assessee to store its autorickshaws. We may mention here that the Assessing Officer accompanied by Inspector Sh. S.K Chopra and authorized

representative of the assessee had visited village Bijwasan on 27th February, 2003 to conduct on the spot enquiries about the godowns at the two places at Bijwasan, particulars whereof were furnished by the assessee. However, AO found no such godowns as on that date at any of the spots. She even conducted enquiries from the co-owners of the two co-owners of the adjacent plots, Sh. Habir Singh and Sh. Jagat Singh, who stated that the said plots were never let out to the assessee namely M/s. Gautam Motors, which is a partnership concern. However, in appeal before the CIT(A), the assessee gave satisfactory proof that the two plots were taken on lease by the sister concern of the assessee namely GMPL for the period 1st April, 1997 to 31st March, 2002. The CIT(A), thus, accepted the plea of the assessee that when the Assessing Officer visited the plot on 27th February, 2003 to conduct on the spot enquiries, there was no question of existence of these godowns as the premises were taken on rent only till 31st March, 2002 whereafter they were vacated. Otherwise, even as per CIT(A), sufficient evidence in the form of the Lease Deed as well as payment of rent through account payee cheques for the period of lease was furnished to prove that the said two plots in question were in fact taken on lease by GMPL. The assessee had also given adequate proof to show that those plots were in fact utilized by the assessee. In this behalf, CIT (A) noted that the assessee had maintained the record of storage and movement of its vehicles at Bijwasan. These were produced before the Assessing Officer. Even payments had been made to the Municipal Corporation of Delhi as license fee for carrying on its business at Bijwasan for use of water for commercial purposes.

Thus, it was proved that the plots on rent were taken by GMPL and these were in fact, utilized by the assessee. The assessee had also paid handling charges for utilizing these plots for storage purposes. However, these amounts were paid not by GMPL but M/s. Gautam Auto Ltd. Because of this reason, the CIT(A) also disallowed the expenditure. The question before the ITAT was also whether the disallowance upheld by CIT (A) was proper because of the aforesaid reasons. The ITAT came to the conclusion that when the premises were in fact utilized by the assessee and it had parked its autorickshaws there and also made the payments, it was entitled to deductions. According to the ITAT, payment of charges to M/s. Gautam Auto Ltd. and not GMPL was an internal arrangement between the GMPL and M/s. Gautam Auto Ltd. and at best could give rise to the question that the amounts paid by the assessee should be assessed in the hands of GMPL or M/s. Gautam Auto. This aspect has been discussed further by ITAT in the following extact:

> "...Thus, as the matter stands before us, the ld. CIT(A) has upheld the disallowance on two short grounds, viz., (1) M/s. Gautam Auto Limited had no locus standi in the matter; and (2) and disallowance could be made under the provisions of section 40A(2)(b) as being excessive or unreasonable. We do not see much force in the first contention inasmuch as it is not in dispute that the assessee did utilize the plots in question for parking its auto rickshaws. The contention of the ld. Assessing Officer is that every month the number of auto rickshaws purchased and sold being more or less equal, the assessee did not require much space to park its auto rickshaws. She has herself in the assessment order admitted that the opening stock of the assessee was 288 auto rickshaws. Such a large number of auto rickshaws had to be parked somewhere or the other and must have required considerable space. Thus, the fact that the assessee did use Bijwasan plots for the purpose of its business cannot be denied. It is also not denied that the assessee made payments to M/s. Gautam Auto Limited.

> As far as the assessee was concerned, he was allowed to use the plot of land on making payment to M/s. Gautam Auto Limited. It was, therefore, not the assessee's concern as to in what manner M/s. Gautam Auto Limited was entitled to collect the payment. That aspect is a question of internal arrangement between GMPL and M/s. Gautam Auto Limited and at best give rise to a question as to whether the amounts paid by the assessee should be assessed in the hands of GMPL or M/s. Gautam Auto Limited. As far as M/s. Gautam Auto Limited is concerned, the amount paid by the assessee had been duly recorded in the books of account maintained by M/s. Gautam Auto Limited. The contention of the ld. Assessing Officer that M/s. Gautam Auto Limited did not pay any tax because it had shown heavy expenses is based on no material at all. At any rate if M/s. Gautam Auto Limited inflated its expenses, that pertains to the assessment proceedings of M/s. Gautam Auto Limited and not that of the assessee. As to the provisions of section 40A(2)(b), the same can be invoked only where it is shown that the expenditure is excessive or unreasonable having regard to the legitimate needs of the business of the assessee or the benefit derived by or accruing to the assessee. The ld. CIT (A) has relied upon the provisions of section 40A(2)(a) without meeting any of the requirements of the Act in respect of the Act in respect of that provision. The ld. Assessing Officer /CIT(A) have also not found that it was a beneficial course to assesses as a group to transfer the sum of Rs.25.25 lacs from the assessee to M/s. Gautam Auto Limited by way of hire charges of Bijwasan plot. M/s. Gautam Auto Limited was also being regularly assessed to tax. During the course of hearing before us, the ld. Authorized Representative of the assessee pointed out that M/s. Gautam Auto Limited was liable to pay taxes at the same rate as the assessee, if not higher. There is no case made out by the Department that any tax avoidance has been attempted by these arrangements. We, therefore, see no justification to uphold the addition made by the ld. Assessing Officer and sustained by the ld. CIT(A) . The same is directed to be deleted and this ground of the assessee is allowed……"

5. We are quite in agreement with the aforesaid approach of the Tribunal and are of the opinion that the Tribunal rightly directed the Assessing Officer to delete the addition and allow the expenditure claimed.

6. In so far as the expenses incurred on account of petrol is concerned, the Assessing Officer has observed that the assessee incurred heavy petrol expenses. It is also observed by the Assessing Officer that normally the initial petrol which is put into any vehicle is also charged from the buyer and further that the payments for petrol has been made to sister concern as per the audit report. Apart from this, it is not at all stated as to whether the claim of the assessee was otherwise bogus. Before the CIT (A), the assessee had submitted that it is filling petrol in the tank of the vehicles before delivery to the customers as per the assessee's sale policy. This practice was prevalent in the line of the business of the assessee firm. In the competitive business, the assessee had to adopt various practices so as to increase its sales. Besides, petrol was being consumed in the process of cleaning of the vehicles before delivery to the customers. This explanation has found favour with the ITAT. It is a pure finding of fact and no substantial question of law arises.

7. **Interest free advances to relatives of the partners : -**

The assessee had also claimed a sum of Rs.14,21,099/- on account of bank charges and interest. These charges and interest were paid by the assessee on certain loans and advances taken from the bank. The Assessing Officer rejected these deductions on the ground that the assessee had given loans and advances to various parties which included relatives of the partners. The Assessing Officer, thus, was of the opinion that when the assessee had sufficient monies with itself, which were even given to the relatives of the partners by way of interest-free loan, there was no

reason to take the loans from the bank and pay charges thereupon.

8. In this behalf we may highlight that it has been established on record that the loans which were taken by the assessee from the bank were not diverted to the relatives of the partners in the form of interest-free loans. On the contrary, specific finding of fact which has been arrived at is that the loans and monies which the assessee had taken from the bank were in fact utilized by the assessee for its own business purposes. No doubt, the assessee had certain surplus funds which were otherwise advanced by the assessee to certain other persons on interest-free basis. The question that would arise for consideration, in this circumstance, is as to whether the assessee would be disentitled to claim deductions on account of bank charges and interest paid to the bank against the monies borrowed by it mainly because it had its own sufficient funds. The answer to that has to be in the negative in view of the catena of judgments deciding this issue. The Apex Court, way back in the year 1979 had put at rest this controversy in the case of ***Madhav Prasad Jatia vs. CIT* *[1979] 118 ITR 200***. In that case the Court was concerned with Section 10(2) of the Income Tax Act, 1922 which is *pare materia* to Section 36 (1) (iii) of the Income Tax Act, 1961. The court was of the view that three conditions are required to be satisfied in order to enable the assessee to claim deductions in respect of the borrowed capital, namely, (a) that money (capital) must have been borrowed by the assessee, (b) that it must have been borrowed ***for the purposes of business***, and (c) that the assessee must have paid interest on the said amount and claimed it as a deduction. Indubitably, all

the three conditions stand satisfied in the present case. Merely because the assessee had its own ample resources at its disposal cannot negate the deduction in respect of the interest paid on borrowed funds. It has been held by the Bombay High Court in ***Commissioner of Income-Tax, Bombay City II vs. Bombay Samachar Ltd., Bombay [1969] 74 ITR 723*** that the fact that an assessee had ample resources at its disposal and need not have borrowed is not a relevant matter for consideration. The relevant observations from the said judgment may be reproduced:

> "The view that if the assessee had collected the outstandings which were due to from others, it would have been able to reduce its indebtedness and thus save a part of the interest which it had to pay on its own borrowings, that the assessee would not be justified in allowing its outstandings to remain without charging any interest thereon while it was paying interest on the amounts borrowed by it, and that to the extent to which it would have been in a position to collect interest on the outstandings due to it from others, it could not be permitted to claim as an allowance interest paid by it, is not correct."

9. It would be pertinent to point out that this judgment has been taken note of by the Supreme Court in the case of ***Madhav Prasad Jatia (supra)*** and the aforesaid principle tacitly stood approved. Even this court has followed the aforesaid principle laid down by the Bombay High Court in ***Regal Theatre vs. Commissioner of Income-Tax [1997] 225 ITR 205***. Taking note of the Supreme Court judgment in the case of ***Madhav Prasad Jatia (supra)***, this Court reiterated the principle that the conditions for getting deduction under section 36 (1) (iii) of the Income Tax Act would be those three conditions as mentioned by the Supreme Court. The fact that the assessee had surplus funds and therefore, it should not have borrowed the funds, is of no

consequence and that is an irrelevant consideration. We may quote, herein, the relevant portion from this judgment: -

> " The above principles of law do not, in our opinion, go against the principle that the net profit must be calculated after giving allowance to the depreciation. Nor do they contradict the view that interest can be disallowed if the borrowed funds are used for non-business purposes.
>
> Learned counsel for the respondent has contended that the High Court cannot go against the opinion of the Tribunal, nor go behind the facts mentioned by the Tribunal, nor disturb any findings of fact arrived at by the Tribunal. We are of the view that the question is one purely of law as to the conditions required by section 36(1)(iii) of the Income-tax Act and has been referred to us for a decision by the Tribunal. While dealing with the question, we have not disturbed any findings of fact arrived at by the Tribunal. The contention that the Tribunal had given a finding of fact that a part of the borrowings had been diverted by the assessee to its non-business purposes is in our opinion not a finding of fact, but was an inference drawn by the Tribunal on the basis that the interest paid on the capital borrowed was not in law an allowable deduction from the profit, in case the profit minus depreciation was in excess of the withdrawals made by the partners and in such a case, the withdrawals should be deemed to be in part from the capital account and would mean that the original borrowing was utilized for other purposes and not for business purposes. The finding of the Tribunal in this behalf is purely an inference in law. It ignores the law laid down by the Supreme Court in **Madhav Prasad Jatia v. CIT [1979] 118 ITR 200** and in the Bombay High Court case **CIT v. Bombay Samachar Ltd. [1969] 74 ITR 723**, that once the three conditions laid down there are satisfied, the deduction under section 36(1)(iii) must be given. Again, the contention that the correct amount of debit balance to the account of the partners should be taken as Rs.1,73,643 instead of Rs.1,93,049 as calculated by the Income-tax Officer is again a figure arrived at as a matter of law."

10. Once the three conditions pointed out by the Supreme Court in the aforesaid judgment are satisfied, the assessee would be entitled to deductions in respect of the interest and charges paid on those loans. The matter would be different only in a case where after borrowing the funds from the bank, the assessee utilizes those very funds by giving interest free loans to others. In those circumstances, namely, where interest on money borrowed

from bank is lent to a sister concern without charging interest, in order to decide as to whether it is "for the purposes of the business", the assessee has to prove the business expediency and has to establish a nexus between the expenditure and the purposes of the business. This is so held by the Supreme Court in the case of ***S.A. Builders Ltd. vs. Commissioner of Income-Tax (Appeals) and Anr. [2007] 288 ITR 1 (SC)*** in the following manner: -

> "The assessee preferred an appeal to the Commissioner of Income-tax (Appeals), Chandigarh (for short hereinafter referred to as the CIT(A)), who vide his order dated April 15, 1993, partially accepted the claim of the assessee. According to the Commissioner of Income-tax (Appeals), out of the total amount of Rs.82 lakhs advanced by the assessee in the relevant assessment year to M/s. SAB Credit Limited, only a sum of Rs.18 lakhs had a clear nexus with the borrowed funds, as the balance amount had been paid out of the receipts from other parties to whom no interest had been paid. Accordingly, the Commissioner of Income-tax (Appeals) directed the Assessing Officer to calculate disallowance of interest only relating to the sum of Rs.18 lakhs, and the disallowance was reduced accordingly."

11. Even this Court in the case of ***Elmer Havell Electrics and Ors. vs. Commissioner of Income-Tax and Anr. [2005] 277 ITR 549 (Delhi)*** has held that the nexus between the borrowed funds and the interest free advances made by the assessee to its sister concern is to be established. However, it is stated at the cost of repetition that such a question would arise only when borrowed funds are diverted by giving interest free loan to the sister concern. It is only in such an eventuality that the question would arise as to whether those funds can be treated to have been utilized for the purposes of business. In contradistinction, in cases like the instant one, where the finding of fact is arrived at that the money which was borrowed from the bank is utilized by the

assessee for its own business purposes and that the money has not been given to the relatives of the partners, this condition stands satisfied and in such an eventuality the question of establishing the nexus or the business expediency does not arise at all.

12. To the same effect is the judgment of the Supreme Court in the case of ***Motor General Finance Ltd. vs. Commissioner of Income-Tax [2004] 267 ITR 381***.

13. In view of the aforesaid provisions of law, no substantial question of law arises.

14. The Department has also grievance in respect of certain 'receipts not declared by the assessee'. The Assessing Officer had observed that the assessee firm's account was credited by way of incentive credit notes aggregating to Rs.42,66,200/-, vehicle charges of Rs.12,31,740/- and warranty claim amounting to Rs.11,69,422/- by M/s. Bajaj Auto Ltd. These amounts were not declared as income by the assessee. He, therefore, added these amounts to the income of the assessee for the year in question.

15. Before the CIT(A), the assessee submitted that these amounts were either credited to the P&L account or reduced from the purchases and the relevant documents were filed in support of this contention. The CIT(A) referred the matter to the Assessing Officer to verify the correctness of the reconciliation statements and other papers with reference to the books of accounts. The AO conducted inquiries under Section 250(4) of the Act and submitted his report dated 25.09.2003. In his remand order, the AO allowed relief of Rs.41,600 and Rs.12.42 lacs in the following manner:

> "It is observed that a sum of rS.12,42,000/- which was initially credited to the assessee's account by "BAL" by way of incentive credit note No.60203, was reversed by "BAL" on 31.01.2000, and by assessee on 31.03.2000, which is evidenced by copy of account of assessee in the books of "BAL" received in response to the notice u/s 133(6) sent to that party. Thus the CIT(A) may consider giving benefit of Rs.41,600.00 (credited by the assessee in its books) and Rs.12,42,000.00 (entry reversed by BAL) out of Rs.42,66,200 to the assessee."

16. Before the CIT(A), departmental representative pleaded that the remaining addition of Rs.29,82,400/- [(Rs.42,66,200) – (12,42,000 + 41,6000/-] be retained. The representative of the assessee pleaded for deletion of this amount as well. The CIT(A) verified the account books from where he found that entries made therein of the above credit notes received from M/s. Bajaj Auto Ltd./Maharashtra Scooters Ltd. had been entered. There was no omission. The CIT(A) also perused the accounts statement received from M/s Bajaj Auto Ltd. and Maharashtra Scooters Ltd. As per CIT(A), the assessee had credited Rs.20,80,150/- received from BAL and MSL under the "Direct Factory Incentive Scheme" to a separate 'commission account' and in the same account of the assessee, it had debited payments aggregating Rs.20,80,800/- made to M/s. Gautam Motors (P.) Ltd. and M/s. Shiv Shakti Cement Industries. The CIT(A) was not satisfied with the nature of entries made in this account. Therefore, he asked the assessee to explain the nature of above debit and also justify as to how these two payments could be related to have been incurred by the appellant firm for its business. The explanation of the assessee was that it had paid commission to 'Gautam Motors (P) Ltd.' and 'Shiv Shakti Cement Industries' for assistance rendered by them in sale of vehicles of M/s Bajaj Auto Ltd. and Maharashtra Scooters Ltd. and these payments were made by account payee cheque.

The CIT(A), however, rejected the explanation and confirmed the additions to the extent of Rs.20,80,800/- and deleted the balance additions made by the AO.

17. The Revenue accepted the order of the CIT(A) in respect of these entries. However, the assessee challenged the order of the CIT(A) whereby addition to the extent of Rs.20,80,800/- was sustained. The Tribunal also deleted that addition as well thereby allowing the appeal of the assessee in respect of this item giving the following justification:

> "...Thus in effect, we are left with the only objection of the Assessing Officer and the ld. CIT(A) that the payments made by the assessee to M/s. Gautam Motors (P.) Limited and Sheo (sic. Shiv) Shakti Cement Industries Limited did not have direct nexus with the incentive credits received by the assessee from M/s. Bajaj Auto Limited, M/s. Maharashtra Scooters Limited. That in our opinion is besides the point. The fact of the matter is that incentive credits received by the assessee were duly account for in the books of account of the assessee the basis of which annual income statement has been prepared. An income chargeable to tax cannot be generated for the reason only that in the opinion of the assessing authorities, certain entries should have been found place in the books of account under another head. When the assessee duly explained during the course of proceedings before the ld. CIT(A) every credit note received from M/s Bajaj Auto Limited, Maharashtra Scooters Ltd. and that was examined by the ld. CIT(A), no defect or discrepancy worth the name was found by the ld. CIT(A) as well as ld. Assessing Officer. On these facts, we do not see any justification to uphold the addition of Rs.20,80,000/- sustained by the ld. CIT(A). The same is directed to the deleted."

18. We are in agreement with the reasoning of the Tribunal and are of the opinion that no question of law arises on this aspect.

19. Another question of law which is sought to be raised by the department in this appeal relates to disallowance of Rs.24,39,800/- on account of discount and commission expenses. The assessee, in its income-tax return had claimed the aforesaid

expenses stating that these were the discounts given by the assessee and, therefore, they be treated as expenditure.

We are of the opinion that following questions of law arises in this behalf:-

(i) Whether Income-tax Appellate Tribunal was right in permitting the assessee to take into consideration details of discounts purportedly allowed to various customers by the assessee, when this evidence was not produced before the A.O. and the CIT (Appeals) also rejected the admission of this evidence?

(ii) Whether the Income-tax Appellate Tribunal was right in holding that the assessee had paid the aforesaid discounts to its customers and, therefore, was entitled to the deduction thereof?

20. With the consent of the learned counsel for the parties, we have heard the arguments on these issues finally at this stage itself.

The details of the aforesaid discounts and commissions as claimed by the assessee are as under:-

Month	**Vehicles sold**	**Discount & Commission (Rs.)**
April’99	934	16,700
May’99	953	21,750
June’99	722	45,074
July’99	1025	32,144
Aug’99	1228	37,346

Sep’99	763	29,039
Oct’99	1032	18,784
Nov’99	1004	27,065
Dec’99	861	18,010
Jan’2000	1228	19,715
Feb’00	887	35,000
Mar’00	1038	17,83,161
Total:	**11675**	**20,83,758**

21. It is manifest that while the discounts and commissions claimed for the period of eleven months, i.e., April, 1999 to February, 2000 ranges between Rs.16,000/- to Rs.35,000/-, in the last month of the financial year, i.e., March, 2000, the discount and commission claimed was abnormally high, i.e., to the tune of Rs.17,83,161/-. The assessing officer, after examining the issue, observed that there was no link between the number of vehicles sold by the assessee and the expenditure on discount and commission claimed by it. She also observed that the assessee had subsequently filed another set of information, i.e., on 13.01.2003, as per which total of Rs.13,67,743/- had been paid to commission agents by the assessee. On this basis, she observed that assessee had filed contradictory sets of information on different dates, inasmuch as initially the claim made was on the premise that the aforesaid discounts and commissions were given to the customers, namely, those who had purchased the vehicles,

whereas, afterwards, it was sought to contend that the amount was paid to commission agents. There was no documentary evidence furnished by the assessee in respect of services rendered by the alleged commission agents. Taking note of these facts, the assessing officer rejected the contention of the assessee with the following observations:-

> *"18. The above table would make it evident that there is no link between the number of vehicles sold by the assessee and the expenditure on discount & commission claimed by it. Subsequently another set of information was filed by the assessee on 13/1/03 as per which a total of Rs.13,67,743/- have been paid to commission agents by the assessee. Thus the assessee has filed contradictory sets of information on different dates. In the absence of documentary evidence of the services rendered by the alleged commission agents, the agreements of the assessee with them, their assessment particular and confirmations, the claim of commission is being held to be purely fictitious and bogus. The very fact that the assessee has filed two sets of explanation for this expenditure goes to prove that it is cooked up intentionally to defraud the revenue. At this stage, it will be pertinent to point out that so far as sales of the vehicles are concerned, the assessee has had no difficulty as is evident and crystal clear from the perusal of the sundry creditors as on 31.3.2000 taken to the balance sheet. Out of the total sundry creditors as on 31.3.00 which were Rs.1,44,97,411.92, the creditors on account of advances for scooters are 79,36,564.69. This itself reflects the demand of scooters of Bajaj Auto Ltd. and the falsity of the assessee's claim for having paid commission or discount to promote the same."*

22. In the appeal preferred by the assessee before the CIT (Appeals), the assessee filed the statement of details of discount allowed on sale of vehicles to various customers. The assessee wanted this evidence to be taken on record. The CIT (Appeals) treated it to be fresh evidence and in view of provisions of Rule 46, Chapter A of the Income-tax Rules held that this evidence could not be admitted at this stage because the assessee was not prevented by sufficient cause to submit details during assessment

proceedings for verification. The CIT (Appeals) was also of the opinion that the claim of huge amount of advances against future supply of scooters outstanding as on 31.03.2001 proved that vehicles were in great demand and there was no need to give any discount/commission to boost the sales. Moreover, the payment of discounts were made in cash separately, which could have been reduced from bills or paid by cheques. On the basis of this reasoning, CIT (Appeals) upheld the order of the assessing officer. The Tribunal, in further appeal by the assessee, has, however, allowed this deduction. In the opinion of the Tribunal, the CIT (Appeals) erred in refusing to entertain fresh evidence sought to be furnished by the assessee in accordance with provisions of Rule 46A. It is, *inter alia*, stated that the assessing officer sought for voluminous information, i.e., complete names and addresses of more than 4,000 buyers without allowing the assessee adequate opportunity. Since the assessee had furnished invoice numbers and amount of discount allowed in every case and thus the basic details were available with the assessing officer, for the purpose of verification she could have picked up certain invoices. She, however, insisted all the addresses to be furnished to her and the compilation of this information required substantial time, which was not allowed to the assessee by the assessing officer, the CIT (Appeals) should have accepted the additional evidence furnished by assessee. Thereafter, the Income-tax Appellate Tribunal straightaway allowed the appeal and deleted the disallowance as made by the assessing officer.

23. We are not in agreement with the aforesaid approach of the Tribunal. Even if it is accepted that the CIT (Appeals) should have

permitted the assessee to lead an additional evidence and taken on record the statement showing the details of discount allowed by the assessee to various customers, the matter involved some other important and material aspects which are totally lost over by the Tribunal. In the first place, after holding that CIT (Appeals) should have permitted the additional documents filed by the assessee, the Tribunal treated the said evidence to be correct, without any verification or directing the CIT (Appeals)/Assessing Officer to verify the veracity of the statement showing the details. Secondary, in any case, such an exercise is not necessary. As pointed out by the assessing officer, the assessee had made claims for the aforesaid discounts and commissions of marginally low amounts for the period of 11 months, i.e., April, 1999 to February, 2000. It is only in March, 2000 that a whopping claim is made. No explanation is coming forward as to why such a claim of huge amount was made in the month of March, 2000. In March, 2000, only 10% of the sales were effected. If the discounts were given to the customers every month when the sales were made, there was no reason not to show those discounts in those months. That apart, most important aspect which cannot be ignored is the contradictory explanation given by the assessee which falsifies the genuineness of this claim. The claim made is to the tune of Rs.20,83,758/-. Before the CIT (Appeals), for the first time it was tried to state that the entire claim was on account of discounts given to the purchasers of the vehicles. As against this, before the assessing officer, the assessee had filed set of information on 13.01.2003 showing a total of Rs.13,67,743/- having paid to commission agents by the assessee. The assessee could not

support this claim of commission to the commission agents by any cogent evidence. The assessing officer categorically recorded that there was no documentary evidence produced by the assessee of the services rendered by the so-called commission agents. Knowing that the assessee was on a weak wicket, it turned turtle before the CIT (Appeals) and came out with the plea that entire amount paid was to the customers as cash discounts.

24. We are, therefore, of the opinion that the findings of the Tribunal are totally perverse and without any reasonable basis. We answer the questions formulated above in favour of the Revenue and against the assessee and allow the appeal to this extent only.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

JULY 19, 2010.
sk/km/pmc