

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'B' MUMBAI**

**ITA No.1069/Mum/2010  
Assessment Year: 2006-2007**

**M/s MOHAN & CO  
"LAALASIS" PLOT NO 219  
11th ROAD, CHEMBUR  
MUMBAI-71  
PAN NO:AAAFG8230C**

**Vs**

**DEPUTY COMMISSIONER OF INCOME TAX  
CENTRAL CIRCLE-31, AAYKAR BHAVAN  
M K ROAD, MUMBAI-400020**

**N V Vasudevan, JM and T R Sood, AM**

**Dated: December 22, 2010**

**Appellant Rep by: Shri Jaidev  
Respondent Rep by: Shri R S Srivastav**

**ORDER**

**Per: N V Vasudevan:**

This is an appeal by the assessee against the order dated 16/12/2009 of CIT(A) 40, Mumbai relating to assessment year 2006-07. The only ground of appeal of the assessee reads as follows:

*"The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 29,67,341/- under section 40A(2)(b) of the Income Tax Act."*

2. The assessee is a partnership firm engaged in the business of real estate, besides deriving income from leasing of properties and other sources. During the previous year the assessee completed construction of a building project by name Tulip and declared profit on sale of flats in the said project. In the very same building project the assessee and many of its sister concerns have their offices. The assessee well as the other group companies namely Tolaram & Co. and Vazirani Land Developers Pvt. Ltd. carried on the business from the very same premises. One of the group company namely Kukreja Services Pvt. Ltd. (KSPL) was carrying out maintenance of the building, namely maintaining air conditioners, lighting, gardening, security, house keeping, computers etc. This company recovered service charges from all the group companies every year. In the past the assessee as well as the sister concern were using the services of only KSPL. In the present assessment year, there were however, two other sister concerns also who also provided services to the assessee in the form of salary reimbursement, conveyance reimbursement and motor car expenses reimbursement. All these sister concerns were persons who were covered

under the provisions of Sec.40-A(2)(b) of the Income Tax Act, 1961(Act). Therefore the payments to such concerns will have to be in accordance with the provisions of Sec.40-A(2)(a) of the Act viz., they should not be unreasonable or excessive compared to the market price at which such services are available and the needs of the Assessee.

3. The assessee paid the following sums to the sister concerns during the previous year.

<b>Name of the person</b>	<b>Amount – Rs.</b>	<b>Nature of Payment</b>
M/s. Kukreja Services Pvt. Ltd.	1440000	Business Centre Charges
M/s. Kukreja Services Pvt. Ltd.	360000	Administration charges
M/s. Omprakash & Co	486230	Salary Reimbursement
M/s. Omprakash & CO	34830	Conveyance reimbursement
M/s. Kukreja Constn. Co.	752416	Motor Car Exps. Reimbursement
<b>Total</b>	<b>3073476</b>	

Since the aforesaid payments were made to persons specified in section 40A(2)(b) of the Income Tax Act, 1961(the act) the Assessing Officer was of the view that the payment in question was excessive and had to be disallowed. The assessee submitted that the payments in question was made to the sister concerns were justified and were reasonable. The assessee further pointed out that in the case of other group companies who were occupying the very same premises and who had paid similar charges to KSPL in Assessment Year 2000-01 in the case of M/s. Tolaram & Co. and for Assessment Year 1998-99 and 1999-00 in the case of Vazirani Land Developers Pvt. Ltd. were considered by the Tribunal and the same were held as reasonable and justified. The assessee also pointed out that the payments were made after deducting tax at source. The assessee, therefore, submitted that entire expenses should be allowed. The Assessing Officer however, rejected the claim of the assessee for the following reasons:

*"4.3 I have considered the aforesaid submissions of the assessee firm, but am not satisfied with the same. In this context, the glimpse of the expenses incurred in the A.Y. 2005-06 and 2006-07 will give a clear picture of the unduly high cost of expenses charged to the P&L A/c. during the current year.*

*Related expenses as per P&L A/c. for the A.Y 2005-06 vis-à-vis A.Y 2006-07*

<b>Head of Expenses</b>	<b>A.Y. 2005-06(Rs)</b>	<b>A.Y. 2006-07 (Rs.)</b>	<b>Excess expenses in current year (Rs.)</b>
<i>Business Centre Charges</i>	40000	1440000	1400000
<i>Administrative Charges/ Lighting &amp; AC Charges</i>	10000	360000	350000

Salary	745378	1180775	435397
Conveyance	94916	116568	21652
Motor car expenses	1463	761755	760292
<b>Total</b>	<b>891757</b>	<b>3859098</b>	<b>2967341</b>

From the above chart, it can be clearly seen that there has been a quantum leap in the corresponding amount of expenses incurred during the year vis-à-vis the assessment year 2005-06. In the A.Y. 2005-06, as per Form 3 CD, the assessee has made payments to parties covered u/s. 40A(2)(b) as under: -

<b>Name of the person</b>	<b>Amount – Rs.</b>	<b>Nature of payment</b>
M/s. Kukreja Services Pvt. Ltd.	40000	Business Centre Charges
M/s. Kukreja Services Pvt. Ltd.	10000	Administration Charges
<b>Total</b>	<b>50000</b>	

The above tables makes it clear that the expenses incurred in the A.Y 2005-06 in respect of related parties is only Rs.50,000/- when all the factors for conducting the business in this year also existed without any noteworthy change in the A.Y 2005-06. It is difficult to comprehend that the exorbitant payments to the related persons in the current year as stipulated in the Tax Audit Report at Rs. 30,73,476/- could have been incurred. There is a phenomenal rise in the expenses which remains unjustified. The assessee in its submissions have simply stated that the premises at "Laalasis" Plot No.219, 11 th Road, Chembur, Mumbai – 400 071, is taken by M/s. Kukreja Services Pvt. Ltd. on rent and maintained by them and that all the group concerns are carrying on their business activities from the said building and in view of that, all the business concerns are making payment to M/s. Kukreja Services Pvt. Ltd. under the above said four heads. It is also stated that M/s. Kukreja Services Pvt. Ltd. in turn incur all the expenses relating to the building i.e. payment rent, electricity charges, security expenses, gardening expenses, computer expenses, accountant and all the other maintenance expenses and that the business centre charges is on account of office premises with all facilities provided by M/s. Kukreja Services Pvt. Ltd. the assessee other than stating that Balance Sheet and Profit and Loss Account of M/s. Kukreja Services Pvt. Ltd. for the year ended 31/3/2006 have been filed, has not provided any material by way of bills raised, correspondence, etc. to enable me to verify whether any services were rendered by Kukreja Services Pvt. Ltd. to warrant the payments. In fact only the Profit & Loss account and Balance Sheet of M/s.Kukreja Services Pvt. Ltd. has been filed but no details of what services were rendered and how M/s. Kukreja Services Pvt. Ltd. has allocated the expenses to its sister concern / related parties have been filed. There is no consistency in the allocation of expenses by the said M/s. Kukreja Services Pvt. Ltd. As pointed out in the earlier part of this order, only payment of Rs. 40,000/- on account of Business Service Charges and Rs. 10,000/- on account of Lighting & AC Charges have been made in the Assessment Year 2005-06 as per the Profit & Loss a/c. of that year. This total payment of Rs. 50,000/- (40,000 + 10,000) was made despite work in progress of the value of Rs.65,98,168/- was carried out in the Tulip Project in the A.Y 2005-06, whereas in the A.Y 2006-07 the work carried out and expenses incurred were only Rs. 11,54,617/- which includes Professional Fess of Rs. 5,00,000/- and BMC Charges of Rs. 1,47,432/-. This clearly indicate that the payments made u/s.

40A(2)(b) were not only excessive but also unreasonable. Moreover, the expenses of Rs. 14,40,000/- in respect of Business Centre Charges and Rs. 3,60,000/- on account of Administration Charges have been debited at the fag end of the year. If services were provided by M/s. KSPL right through the year, then business prudence would require monthly debit notes for services rendered all through the year. However, this is not so in this case. In view of the same the payments made to M/s. Kukreja Services Pvt. Ltd. at Rs. 14,40,000/- in respect of Business /center Charges and Rs. 3,60,000/- on account of Administrative Charges were not at all required to be made. The ITAT's decision relied upon by the assessee have not been accepted by the Department. Even otherwise each assessment is a separate assessment and the facts in the case at hand are not identical to the cases relied upon in lieu of the discussions made above. In view of the same the aforesaid expenses are disallowed and he same will be added back. Addition on this account would be Rs. 18,00,000/- (Rs. 14,40,000 + 3,60,000).

4.4 Coming to the expenses covered u/s. 40A(2)(b) under the head Salary, Conveyance and Motor Car Expenses, it is seen that the expenses debited to the P&L A/c. of A.Y. 2005-06 and 2006-07 are as under: -

<b>Head of Expenses</b>	<b>A.Y. 2005-06 (Rs.)</b>	<b>A.Y. 2006-07 (Rs.)</b>	<b>Excess expenses in current year (Rs.)</b>
Salary	745378	1180775	435397
Conveyance	94916	116568	21652
Motor car expenses	1463	761755	760292
<b>Total</b>	<b>841757</b>	<b>2059098</b>	<b>1217341</b>

During the current year out of the expenses charged to the P&L A/c. as tabulated above, it is seen that payments by way of reimbursement have been made to the following related parties / sister concerns which are covered u/s. 40A(2)(b).

<b>Name of the person</b>	<b>Amount – Rs.</b>	<b>Nature of payment</b>
M/s. Omprakash & Co.	486230	Salary reimbursement
M/s. Omprakash & Co.	34830	Conveyance remimbursement
M/s. Kukreja Constn. Co.	752416	Motor car expenses reimbursement
<b>Total</b>	<b>1273476</b>	

Perusal of the Tax Audit Report in Form 3CD for the A.Y. 2005-06 do not indicate any arms length payments made in respect of the aforesaid heads of expense. The assessee has not tendered any submissions / justification for making the stated payments to M/s. Omprakash & Company and M/s. Kukreja Construction Company. It is not known what are the services or facilities provided to the assessee by the concerned parties. No details of what services were rendered, no any correspondence or debit notes for services rendered were produced to make a meaningful enquiry on the issue. The assessee has not proved that there was a

*legitimate business need for the assessee to avail any services / facilities and what benefit has been derived by the assessee on account of reimbursement of the aforesaid three heads of expense. In fact it appears that the aforesaid payments have been made only to reduce the taxable profit during the year. In the A.Y. 2005-06 no such payments were debited to the assessee's account since the return income was a loss. In view of the same the aforesaid payments made under the heads Salary Reimbursement – Rs. 4,86,230/-, Conveyance Reimbursement – Rs.34,830/- and Motor Car Exps. Reimbursement – Rs.7,52,416/- to parties covered u/s. 40A(2)(b) are hereby disallowed. Addition on this account will be Rs. 12,73,476/- (4,86,230 + 34,830 + 7,52,416)."*

4. On appeal by the assessee the CIT(A) confirmed the order of the Assessing Officer giving rise to the present appeal by the assessee before the Tribunal. The CIT(A) restricted the disallowance made by the Assessing Officer of Rs.30,73,476/- to Rs. 29,67,341/- based on the chart given by the AO in para 4.3 of his order. Still aggrieved the assessee is in appeal before the Tribunal.

5. We have heard the rival submission. The Id. Counsel for the assessee submitted that the disallowance sustained by the Id. CIT(A) has to be bifurcated into two groups. The first group will consist of service charges and maintenance charges paid to KSPL. The Second group will consist of Salary Reimbursement – Rs.86,230/- paid to Omprakash & Co., Conveyance Reimbursement – Rs.34,830/- paid to Omprakash & Co. and Motor Car Exps. Reimbursement – Rs.7,52,416/- paid to M/S.Kureja Construction Co.

6. With regard to the Second group, the learned counsel for the Assessee pointed out that the payment made to related parties were Salary Reimbursement – Rs.86,230/- paid to Omprakash & Co., Conveyance Reimbursement – Rs.34,830/- paid to Omprakash & Co. and Motor Car Exps. Reimbursement – Rs.7,52,416/- paid to M/S.Kureja Construction Co. He pointed out that the AO while making disallowance of Rs. 12,73,476/- considered the entire payment under the head Salary Reimbursement, Conveyance reimbursement and Motor Car expenses reimbursement of Rs.11,80,775 under the head salary reimbursement, Rs.1,16,568 under the head Conveyance reimbursement and Rs.7,61,755 under the head Motor Car reimbursement. He submitted that the difference between the amount considered for disallowance by the AO and the actual payment made to persons covered under Sec.40-A(2)(a) should be straight away deleted because to that extent those provisions were not applicable at all. In this regard it was also pointed out that the expenditure under this head incurred in the earlier year was not paid to persons specified in Sec.40-A(2)(b) of the Act and therefore there is no question of comparing the earlier year figure of expenses under this head with the current year figures.

7. We have considered the submission and we find that the contention of the learned counsel for the Assessee in this regard is correct. The chart drawn by the AO in this regard is as follows:

Head of Expenses	A.Y. 2005-06 (Rs.)	A.Y. 2006-07 (Rs.)	Excess expenses in current year (Rs.)
Salary	745378	1180775	435397

Conveyance	94916	116568	21652
Motor car expenses	1463	761755	760292
<b>Total</b>	<b>841757</b>	<b>2059098</b>	<b>1217341</b>

The correct chart should have been:

Payments made to persons related in AY 06-07:

<b>Head of Expenses</b>	<b>(Rs.)</b>
Salary	486,230
Conveyance	34,830
Motor car expenses	7,52,416
<b>Total</b>	<b>12,73,476</b>

Thus only Rs.12,73,476/- is payment made to persons specified in Sec.40-A(2)(b) of the Act and to this extent the AO should have considered the disallowance.

8. In coming to the conclusion that the aforesaid payment has to be disallowed in full the AO has given the following reasons. The assessee has not tendered any submissions / justification for making the stated payments to M/s. Omprakash & Company and M/s. Kukreja Construction Company. It is not known what are the services or facilities provided to the assessee by the concerned parties. No details of what services were rendered, nor any correspondence or debit notes for services rendered were produced to make a meaningful enquiry on the issue. The assessee has not proved that there was a legitimate business need for the assessee to avail any services / facilities and what benefit has been derived by the assessee on account of reimbursement of the aforesaid three heads of expense. In fact it appears that the aforesaid payments have been made only to reduce the taxable profit during the year.

9. On the disallowance of payment made to M/S.Omprakash & Co. and M/S.Kukreja Construction Co., the learned counsel for the Assessee has submitted that the CIT(A) had discussed the payments made to KSPL and has applied the reasons given for making disallowance of payments made by Assessee to KSPL in sustaining the disallowance under this head. In this regard the learned counsel has pointed out that in the discussion made by the CIT(A) in para 2.4 the CIT(A) has wrongly presumed that the entire payment of expenses was made to the sister concern M/s. Kukreja Services Pvt. Ltd., whereas in fact only part of the payment out of the total expenditure debited to profit and loss account in respect of salary reimbursement, conveyance reimbursement and motor car expenses reimbursement were made to M/s. Omprakash & Co. and M/s. Kukreja Construction Co. It was argued that the impugned disallowance has been sustained by the CIT(A) without any proper application of mind after appreciating correct facts. It was submitted that no reason at all having been given by the CIT(A) for confirming the disallowance u/s. 40A(2)(b) of the Act to the extent of Rs. 12,73,476/- the same is required to be deleted.

10. We have considered his submission. We find that the AO has applied the provisions of Sec.40-A(2)(b) in making the impugned disallowance. Therefore it has to be presumed that the AO was satisfied with the fact that the expenditure in question is one having incurred wholly and exclusively for the purpose of business. The failure of the Assessee according to the AO is only in not furnishing the details of what services were rendered, any correspondence or debit notes for services rendered being produced to make a meaningful enquiry on the issue, that the assessee has not proved that there was a legitimate business need for the assessee to avail any services / facilities and what benefit has been derived by the assessee on account of reimbursement of the aforesaid three heads of expense. In the given circumstances, the AO could not have made disallowance of the entire expenditure and the disallowance has to be restricted to only to the extent the expenditure is excessive or unreasonable. The details of salary reimbursement and reimbursement of traveling expenses have been furnished by the Assessee and they are available at page-55 of the paper book. M/S.Omrakash & Co. have a raised a debit note containing details of the persons to whom salary and conveyance expenses were paid. The AO has not made any enquiry and has made the addition without any basis. Addition to this extent therefore deserves to be deleted. As far as reimbursement of motor car expenses are concerned, there are no details available and there has been admittedly failure on the part of the Assessee to furnish the necessary details even before us, we feel that an estimation of expenses to be disallowed u/s.40-A(2)(b) would be the best course. We therefore sustain a disallowance 25% of the sum of Rs. 7,52,416/-. In other words the addition of Rs. Rs. 12,73,476/- made on account of this head is directed to be restricted to 25% of Rs.7,52,416/-.

11. With regard to the first group of expenditure disallowed by the AO of Rs. 17.50 lakhs made/confirmed in respect of payments made to M/s. Kukreja Services Pvt. Ltd., it was submitted that all the companies and firms of Kukreja Group were carrying on business from one building which was maintained by M/s. KSPL and M/s. KSPL incurred all the expenses on the building i.e. Air Conditioning, lighting, gardening, security, house keeping, computer services etc. The said company recovered these charges from the group companies every year and the basis of the charge is the quantum of the activities carried on by each concern during the year. It was further explained that since all the group companies were engaged in the business of construction and development, the stages of work done in each year vary from firm to firm and year to year. In some firms, in one year there was more work because of completion of the project or starting of a new project while in other firms, there may not be any work or may be less work because of non availability of the projects, etc. In view of the above, it was submitted that the CIT(A)'s observation that no reasonable answer is given by the assessee for steep increase in the expenses is without any basis.

12. Further, it was submitted that the steep increase in expenses paid to M/s. KSPL in the year under consideration is because of the following facts are relevant:

(i) The construction in respect of project Tulip commenced in the A.Y 2002-03 which continued upto the A.Y 2006-07. Upto A.Y 2004-05, the assessee had not claimed any expenses which were covered u/s. 40A(2)(b) of the Act and only work in progress was shown in respect of the said project.

(ii) During the previous year relevant to A.Y 2005-06, the project was about to be completed and the Assessee had taken the services of M/s. KSPL to complete the formalities for completion of the project and incurred expenses towards Business Centre charges (Rs. 40,000) and Administrative Charges / Lighting and A.C. charges (Rs. 10,000) which were allowed by the Revenue.

(iii) The project "Tulip" got completed in the year under consideration and business activities relating to sale of flats started immediately with full force and hence, the expenses were bound to be much more. The volume of the business can be judged from the fact that he assessee had shown the profit of Rs. 2.32 crores from this project in the year under consideration.

(iv) The premises of M/s. KSPL was situated in the prime location of Chembur being nearer to the railway station, bus stand, Diamond Garden and Ambedkar Garden . Had the assessee taken such business premises from any person other than he assessee's sister concern M/s. KSPL, it would have cost much more to the assessee and other expenses for services would have also been heavier.

(v) No material has been brought on record by the department to show that the debit notes raised by M/s. KSPL were inflated or unreasonable.

13. We have considered his submission. The reasons given by the AO for making the disallowance was that there was a phenomenal increase in the expenses under this head compared to A.Y 2005-06 which was only Rs.50,000/- as against Rs.18,00,000 in the present A.Y., when all the factors for conducting the business in the present Assessment year also existed without any noteworthy change. It was the claim of the Assessee that M/s. Kukreja Services Pvt. Ltd. incurred all the expenses relating to the building i.e. payment rent, electricity charges, security expenses, gardening expenses, computer expenses, accountant and all the other maintenance expenses and that the business centre charges was on account of office premises with all facilities provided by M/s. Kukreja Services Pvt. Ltd. The assessee did not provide any material by way of bills raised, correspondence, etc. to enable AO to verify whether any services were rendered by Kukreja Services Pvt. Ltd. to warrant the payments. In fact only the Profit & Loss account and Balance Sheet of M/s.Kukreja Services Pvt. Ltd. was been filed but no details of what services were rendered and how M/s. Kukreja Services Pvt. Ltd. has allocated the expenses to its sister concern / related parties have been filed. There is no consistency in the allocation of expenses by the said M/s. Kukreja Services Pvt. Ltd. The payment of Rs. 50,000/- (40,000 + 10,000) was made in AY 05-06, despite work in progress of the value of Rs.65,98,168/- was carried out in the Tulip Project in the A.Y 2005-06, whereas in the A.Y 2006-07 the work carried out and expenses incurred were only Rs. 11,54,617/- which includes Professional Fess of Rs. 5,00,000/- and BMC Charges of Rs. 1,47,432/-. This according to the AO clearly indicated that the payments made u/s. 40A(2)(b) were not only excessive but also unreasonable. Even before the tribunal, the Assessee has not produced any evidence to substantiate the increase in payment of charges in this A.Y. compared to the earlier year. The submissions made before us are very general without any supporting evidence. In these circumstances, we could have resorted to making an estimate of the disallowance to be made. Considering all facts, we feel it would be appropriate to set aside the order of CIT(A) on this issue and remit the issue to the AO for fresh consideration and affording the Assessee an opportunity of letting in evidence to substantiate the submissions made before us. The Assessee will furnish necessary evidence to justify the payment to its

sister concern, the nature of services rendered and as to how the same are within the parameters laid down in Sec.40-A(2)(a) of the Act. In our view it is not possible to make any disallowance u/s.40-A(2)(b) without proper details in this regard. If the Assessee fails to give the necessary evidence in the proceedings before the AO on remand, then the AO will be at liberty to make disallowance of such sums as he considers reasonable.

14. In the result, appeal of the Assessee is partly allowed.

(Order pronounced in the open court on the 22.12.2010)