IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : 'H' : NEW DELHI

BEFORE SH. R.S. SYAL, AM & SH. A.T. VARKEY, JM

ITA No. 534/Del/2009
Assessment Year:2005-06

Assistant Commissioner of Income Tax, Circle-I, Faridabad.	Vs.	M/s Talbros Engineering Ltd. Plot No. 74-75, Sector-6, Faridabad. (PAN:AABCT0247L)
(Appellant)		(Respondent)

C.O. No. 25/Del/2009
[Arising out of ITA No. 534/Del/2009]
Assessment Year:2005-06

M/s Talbros Engineering Ltd. Plot No. 74-75, Sector-6, Faridabad. (PAN:AABCT0247L)	Vs.	Assistant Commissioner of Income Tax, Circle-I, Faridabad.
(Appellant)		(Respondent)

Department by: Sh. J.P. Chandrakar, Sr. DR
Assessee by : Dr. Rakesh Gupta and Mr. Ashwani Taneja, Advocates & Sh. Rajesh Talwar, M.D.

ORDER

PER R.S. SYAL, AM:

This appeal by the Revenue and Cross Objection by the assessee arise out of the order passed by learned CIT(A) on 08.12.2008 in relation to the assessment year 2005-06.

2. The first ground of the Revenue's appeal is against the deletion of addition of Rs. 1,19,93,081/- made by the Assessing Officer on account of fall in

G.P. rate from 18.52% in the preceding year to 15.71% during the year in question.

3. Briefly stated the facts of the case are that the assesses is engaged in the manufacture of automobile parts. During the course of the assessment proceedings finalized under section 144 of the Income-tax Act, 1961 (hereinafter also called "the Act"), the Assessing Officer observed that the G.P. rate of the assessee had reduced from 18.52% from the preceding year to 15.71%. On being called upon to explain the reasons for decline in the G.P. rate, the assessee stated that there was an increase in the prices of steel round bar during the year which led to the decline in the gross profit rate. The Assessing Officer observed that certain expenses forming part of the computation of the gross profit have reduced as a percentage of sales in comparison with the preceding year. He, therefore, refused to accept the assessee's explanation for the reduction in the gross profit rate. Rejecting the books of account under section 145(3) of the Act, the Assessing Officer adopted the gross profit rate of the preceding year at 18.52%. This resulted into the making of a G.P. addition of Rs. 1.19 crore. The learned CIT(A) got convinced with the assessee's submissions and ordered for the deletion of addition.

4. After considering the rival submissions and perusing the relevant material on record, it is observed that the assessee filed certain additional evidence before the learned CIT(A), who chose to seek remand report from the Assessing

Officer, a copy of which is available on pages 88 to 92 of the department paper book. Coming back to the merits of this ground, it can be seen that the Assessing Officer has assigned no reason for rejecting the books of account other than a decline in the gross profit rate. It is a matter of record that the assessee is engaged in a manufacturing activity and has maintained all the stock registers required for the purposes of the payment of excise duty. The Assessing Officer has not controverted the quantity or value of the closing and opening inventory. There is no dearth of judicial precedents unanimously holding that books of account cannot be rejected on the solitary reason of decline in the gross profit rate. Since the Assessing Officer was swayed only by the decline in the G.P. rate to reject the books of account without anything else, we are of the considered opinion that such an action of the Assessing Officer has no sanction of law. The assessee has placed on record a copy of Chart, which was also filed before the Assessing Officer to demonstrate that there has been an alarming increase in the prices of steel round bar. For example, the rate per mt. of raw material purchased from R.I.N.L. increased from Rs. 20,350/- in the preceding year to Rs. 26,900 in the current year, thereby registering an increase of 32%. In the like manner, there is increase in the rate of raw material from other parties ranging between 19% to 36%. This Chart indicates that the input costs became costly in the instant year in comparison with the rates prevailing in the preceding year which led to the reduction in the overall profitability. The AO has not contradicted the contents of such chart. When we consider this factor pushing down the gross

profit rate coupled with fact that the Assessing Officer has not pointed out any mistake in the quantitative records maintained by the assessee or the value of the closing stock, the only conclusion which in our considered opinion can be drawn is that the books of account were properly maintained. We, therefore, hold that the learned CIT(A) was justified in cancelling the action of the AO in rejecting the books and resultantly deleting the addition of Rs. 1.19 crore on this score.

5. The second ground is against the deletion of addition of Rs. 45,94,710/- made by the Assessing Officer under Section 68 of the Act. Briefly stated the facts of this ground are that the assessee received fixed deposits from nine persons for a total sum of Rs. 54.75 lac. The Assessing Officer called upon the assessee to prove the genuineness of the transactions of receipt of FDRs from these persons with necessary evidence. The assessee filed some details and also produced one of such depositors. In the absence of the assessee producing the other creditors, the Assessing Officer held that the deposits amounting to Rs. 44.00 lac received from the following six persons were bogus:

S. No.	**Name of the persons**	**Amount in Rs.**
1.	Rajesh Talwar	1,50,000/-
2.	Geeta Talwar	10,00,000/-
3.	Rajesh Talwar HUF	1,50,000/-
4.	Raghav Gupta	10,00,000/-
5.	Sameer Gupta	12,00,000/-
6.	Meera Gupta	9,00,000/-
7.	Tushar K. Chopra	10,00,000/-
8.	Tarun Talwar	35,000/-
9.	Sameena Talwar	40,000/-
	Total	**54,75,000/-**

6. The assessee had also claimed deduction in respect of interest paid on such FDRs to its depositors. The Assessing Officer made a further addition of Rs. 1,94,710/-, being the amount of interest paid in respect of about the six credits. This led to the making of a total addition of Rs. 45.94 lacs. The learned CIT(A), after considering the remand report from the Assessing Officer, got convinced with the assessee's submissions and ordered for the deletion of addition.

7. After considering the rival submissions and perusing the relevant material on record, it is observed that the Assessing Officer made addition under section 68 of the Act in respect of the above six depositors by treating them as bogus mainly due to the failure of the assessee in producing these depositors. At the outset, we emphasise on the duty of the assessee to comply with the requirements of the Assessing Officer in the course of assessment proceedings. If the Assessing Officer directs the assessee to produce the creditors, it becomes the duty of the assessee to produce the creditors so as to establish the genuineness of the credits to the satisfaction of the AO. This rule is not infallible. If the assessee, pursuant to the direction of the Assessing Officer for producing certain creditors, expresses its inability to produce the persons, but places on record sufficient evidence to prove the genuineness of the deposits, then the addition cannot be made under section 68 of the Act without the AO discharging his duty to summon the creditors. Presently, we are dealing with a situation in which the assessee intimated the AO to call these creditors at his

own, which he did not and chose to make addition without rebutting the evidence filed by the assessee. We will deal with all the six creditors one by one.

8. The first creditor is Sh. Rajesh Talwar, who deposited a sum of Rs. 1.50 lac with the assessee company. Page no. 401 of the paper book is his confirmation for having deposited the said sum through a cheque drawn on Standard Chartered Bank giving cheque number and date. This confirmation also gives Permanent Account Number of the depositor. Not only has this depositor filed his return of income including the interest earned from the assessee company on the above FDRs, the assessee also furnished a copy of the bank account of this depositor. From the pass book of this depositor, a copy of which is available at page 34 of the paper book, it can be seen that there is a withdrawal for a sum of Rs. 1.50 lac with the narration given in the bank statement mentioning the name of the assessee against the amount of withdrawal. From this pass book, it can be seen that most of the entries of deposits and withdrawals are transactions through cheques. There is nothing of the sort like deposit of an equal or round about sum in cash in the bank account of the depositor before the issuance of cheque to the assessee company for the amount of loan. Copy of return of this depositor for the year under consideration is also available on page 435 of the paper book. The depositor also filed his Trial balance along with the return of income which divulges the amount of FDR made with the bank. It is not the case of the Revenue that such deposit has been

held as not genuine in his assessment. In view of the above overwhelming evidence, supporting the genuineness of transaction along with the identity and capacity of the depositor, we are of the considered opinion that the learned CIT(A) was right in deleting this addition.

9. Next depositor is Mrs. Gita Talwar, who deposited a sum of Rs. 10 lac with the assessee company. A copy of her confirmation is available on page 397 of the paper book which indicates that she deposited this sum of Rs. 10 lac in two phases, namely, Rs. 7 lac vide cheque dated 06.04.2014 and Rs. 3 lac again vide cheque dated 14.07.2014. Her bank statement is available on pages 454 and 457 of the paper book, from which it can been seen that there are withdrawals for the equal amounts favouring the assessee company. Here again, we find that the deposits in her bank accounts are mostly through cheques and there is no cash deposit in her banks accounts immediately before or close to the deposit with the assessee company. She has also filed her return of income for the year under consideration, a copy of which is available on page 455 of the paper book, indicating the amount of FDR with the assessee company. Her income also includes interest income earned from the assessee in respect of various deposits kept by her with the assessee company from time to time. Payment vouchers towards interest are available on pages 458 to 466 of the paper book, which evidence the payment of interest after due deduction of tax and source. In the light of the above evidence which were also available before the Assessing Officer, we are satisfied that the assessee has proved the genuineness of this

credit. The impugned order deleting this addition is, therefore, upheld on this score.

10. The third creditor is Rajesh Talwar, HUF, who invested a sum of Rs. 1.50 lac in the assessee's FDRs. His confirmation is available on page 400 of the paper book, which gives details of such deposits made through cheque on 14.07.2004. The Permanent Account Number of this depositor along with details of Range where it is assessed, is also given. This amount was paid through cheque of Standard Chartered Bank. A copy of pass book evidencing withdrawal of Rs. 1.50 lac is also available on page 445 of the paper book. Here again, we find that most of the transactions in this bank account are through cheques and there is no cash deposit immediately before or close to the date of issuance of cheque in favour of the assessee. This depositor has also filed its return of income indicating the amount invested with the assessee company, whose copy is available on page 446 of the paper book. In view of the above evidence, it is crystal clear that the above deposit of Rs. 1.50 lac made with the assessee company is genuine. We, therefore, uphold the deletion of this addition by the learned CIT(A).

11. The next depositor is Sh. Raghav Gupta, who deposited a sum of Rs. 10 lac with the assessee company. His confirmation is available on page 405 of the paper book from which it can be seen that he deposited the sum vide a cheque dated 13.12.2004 drawn on Citi Bank. A perusal of the bank statement of this

depositor again shows that most of the transactions are through cheques and there is no cash deposit in his bank account near the issuance of the cheque. This depositor is also assessed to tax inasmuch as a copy of his return is available on page 404 of the paper book. In view of the above evidence, we are satisfied that the genuineness of the transaction of this deposit along with the identity and capacity of the depositor, stand proved. We, therefore, uphold the impugned order deleting this addition.

12. The next depositor is Sh. Sameer Gupta, whose confirmation is available on page 402 of the paper book. This deposit of Rs. 12 lac was made by him through cheque dated 13.12.2004. A copy of his pass book is available on page 403 of the paper book, from which it can be seen that a cheque for Rs. 12 lac was issued in favour of the assessee. Again most of the transactions in his bank account are made through cheques and there is no cash deposit in his bank account before making of the deposit with the assessee company. These facts prove the genuineness of the transactions. He is also assessed to tax having filed his return of income for the year in question indicating the amount of deposit with the assessee company. In our considered opinion, learned CIT(A) was right in deleting the addition on this count.

13. The last depositor is Mrs. Meera Gupta, who deposited a sum of Rs. 9 lac with the assessee company. Her confirmation is available on page 408 of the paper book which indicates that the deposit of Rs. 9 lac was made by her vide

cheque dated 10.01.2005 drawn at Standard Chartered Bank. A copy of her pass book indicates withdrawal of the same. Again we find that most of the transactions in her bank account are made through cheques and there is no cash deposit in her pass book before the transaction of making deposit with the assessee company. A copy of her return along with TDS certificate towards interest earned from the assessee company are also available in the paper book. The fact of investment made with the assessee-company has been disclosed in the documents accompany her return of income. There is nothing to indicate that such deposit has been questioned in her assessment. In view of the above facts, we are satisfied that the assessee has proved the genuineness of this deposit.

14. Once the receipt of deposits amounting to Rs. 44 lac from the above six depositors is held to be genuine, the consequent disallowance of interest amounting to Rs. 1,94,710/- made by the Assessing Officer would automatically stand deleted. We, therefore, uphold the impugned order in deleting the addition of Rs. 45.94 lacs.

15. Ground no. 3 of the Revenue's appeal is against the deletion of addition of Rs. 21,68,938/- on account of capital subsidy on sales tax. The facts apropos this ground are that the assessee received a subsidy of sales tax amounting to Rs. 21,68,938/-, which was claimed as a capital receipt not chargeable to tax. On being called upon to explain as to why this subsidy be not treated as a revenue receipt, the assessee stated that it was given as per the scheme of the State

Government for encouraging the industries to set up their units in rural areas and for compensating for the hardship in setting up such industries in remote rural areas. The assessee explained that this sales tax subsidy was capital in nature and hence not taxable. Rejecting the assessee's contention, the Assessing Officer treated this amount as a revenue by relying on the judgment of the Hon'ble Supreme Court in the case of Sahney Steel and Press Works Ltd. Vs. CIT, 228 ITR 253. The ld. CIT(A) ordered for the deletion of this addition.

16. We have heard the rival submissions and perused the relevant material on record. The relevant factor for decision as to whether subsidy is a capital or a revenue receipt, is its nature and object. If some subsidy is given for encouraging the industries for setting up units in the remote or rural areas etc., then such subsidy assumes the character of a capital receipt. On the other hand, if subsidy is given for enabling an assessee to run its business more profitably, then it would amount to an operational subsidy chargeable to tax. It is clear from the assessee's submissions reproduced in the assessment order that the subsidy was given to the assessee as a compensation for setting up its unit in remote rural areas. The nature of such subsidy has not been disputed by the AO. As the nature of subsidy in the present facts and circumstances is undisputed, being towards the setting up of unit in remote and rural areas, the natural conclusion which therefore follows is that this subsidy is a capital receipt and not chargeable to tax. The ld. DR contended that the nature of subsidy has undergone change because of the assessee itself stating that it opted for the half

of the amount of the deferred sales tax by making payment for the remaining half of the amount of the deferred tax upfront. In our considered opinion, the exercise of option by the assessee in paying half of the amount of deferred tax upfront thereby retaining the remaining half as subsidy, cannot convert the otherwise capital subsidy into an item of revenue. The Special Bench of the Tribunal in *Sulzer India Ltd. Vs. DCIT, (2010) 134 TTJ (Mum.) (SB) 385* has held that the payment of net present value against a deferred sales tax liability cannot be considered as income under section 41(1) of the Act. This view of the Special Bench has been recently upheld by the Hon'ble Bombay High Court vide its judgment dated 5.12.2014, a copy of which has been made available by the ld. AR. In view of the above forgoing discussions, we are of the considered opinion that the learned CIT(A) was justified in treating sales tax subsidy as a capital receipt.

17. Ground no. 4 of the appeal is against the deletion of addition of Rs. 1062270/-. Facts of this ground are that the assessee valued its stock at cost prise. On perusal of such valuation made by the assessee, it was noticed by the Assessing Officer that while apportioning the expenses, the assessee has taken 72% of the power and electricity expenses as pertaining to the factory and included the same in the direct cost of production while remaining 28% was apportioned to the administrative block, thereby excluding the same from direct expenses. The Assessing Officer held that 95% of electricity expenses were to be considered as attributable to factory. He, therefore, added a sum of Rs.

6,12,270/- to the value of closing stock on account of this apportionment of electricity expenses. Apart from that, he also held that 50% of Directors' remuneration was also to be considered as part of wages for the purpose of inclusion in the value of closing stock. As against the total remuneration paid to the Directors during the year at Rs. 9 lac, the A.O. further attributed a sum of Rs. 4.5 lac to the manufacturing expenses. This resulted into an addition of Rs.10,62,270/-. The learned CIT(A) ordered for the deletion of this addition.

18. After considering the rival submission and perusing the relevant material on record, it is observed that the assessee was consistently apportioning electricity expenses between factory premises and office building in the ratio of number of employees in the works and in administration office. This practice adopted by the assessee, has not been disturbed by the Revenue in the past. Once a particular accounting practice is consistently followed, then there is no rationale in disturbing the same. The finding of the learned CIT(A) in this regard, has remained controverted by the ld. DR. The Directors' remuneration is an item of administrative expenses and cannot be considered as a part of trading account so as to qualify as a direct expense for the production of expenses. It is but natural that only the expenses in the trading account, which are otherwise direct in nature, can be considered in valuing the closing stock. No expense of the administration nature, which falls in the Profit and loss account can be considered for valuing the closing stock. In our considered opinion, there is no infirmity in the impugned order deleting this addition. Even if we go with the

viewpoint of Revenue that the apportionment of the electricity expenses should be made in the ratio of 95:5 and 50% of Director's remuneration be considered towards valuation of closing stock then the opening stock would also call for revaluation on the same pattern. Not only this, even the profitability of the succeeding year would also be affected because the valuation of the closing stock for this year would become the valuation of opening stock for the succeeding year. Be that as it may, since the assessee has consistently followed this manner of apportionment of expense for the purposes of valuing the closing stock in the past, which has not been disputed by the AO, we see no reason to interfere with the impugned order in sustaining the consistent practice. This ground is not allowed.

19. Ground No.5 of the Revenue's appeal is against the deletion of addition of Rs.1,42,141/- made by the AO on account of Voluntary Retirement Scheme (VRS) expenses. The assessee in its cross objection is aggrieved against the sustenance of disallowance of Rs.1,06,210/- out of VRS expenses. The facts apropos this issue are that the assessee claimed deduction for a sum of Rs.7,66,108/- on account of VRS expenses. This comprised of ¼ of Rs.4,24,838/- pertaining to the year 2000-01 and 1/5 of Rs.30,22,473/- and Rs.2,77,019/- pertaining to the years 2001-02 and 2002-03. The AO observed that the deduction for the year 2000-01 was not available since section 35DDA was inserted w.e.f. 1.4.2001. As regards the remaining amounts, the AO principally granting deduction at 1/5th , did not find the amount of VR expense

matching. He, therefore, made addition for a sum of Rs.2,48,351/- comprising Rs.1,06,210/- for the year 2000-01 and a sum of Rs.1,42,141/- for the years 2001-02 and 2002-03 because of difference in the amount of VR expenses. The ld. CIT(A) concurred with the AO as regards the non-availability of deduction for the VR expenses incurred for the year 2000-01 against which the assessee has come up in appeal before us. As regards the remaining amount, the ld. CIT(A) observed that the amount of VR was improperly taken by the AO which should have been as claimed by the assessee. He, therefore, deleted the addition of Rs.1,42,141/-, against which the Revenue has come up in appeal.

20. After considering the rival submissions and perusing the relevant material on record, we find from the remand report that the AO has not disputed the amount of VR expenses for the two years in respect of which the ld.CIT(A) granted the relief. The AO simply stood by the action taken by him in the assessment order. To view of the ld. CIT(A) in allowing the relief is, therefore, upheld. As regards the other amount, we find that section 35DDA came to be inserted by the Finance Act, 2001 w.e.f. 1.4.2001 providing deduction under VRS @ 1/5 of the amount so paid in five equal installments. The claim of the assessee for making deduction for a sum of Rs.1,06,210/- in respect of the year 2000-01 is clearly impermissible in view of section 35DDA coming into force later on. Such expenditure assuming the character of prior period expenses for the year in question for which the liability got crystalised and stood discharged in the earlier year cannot be allowed as deduction in the current year. We,

therefore, uphold the impugned order on this score. Both the cross grounds are dismissed.

21. Ground No.6 of the Revenue's appeal is against the deletion of addition of Rs.2,36,150/- on account of unascertained liability in the form of warranty claimed. The assessee claimed deduction for a sum of Rs.2,36,150/- as 'provision for warranty claim.' In the absence of any documentary evidence filed before the AO, the said amount was disallowed. The ld.CIT(A) deleted this addition by observing in para 35 of the impugned order that it was not a provision for warranty, but, the warranty expenses actually incurred as per the vouchers and books of account.

22. After considering the rival submissions and perusing the relevant material on record, we find that page 254 of the assessee's paper book is a copy of warranty claim account. From this account, it is apparent that the last item is a debit for a sum of Rs.2,36,150/- and, in the narration column, it has been mentioned 'being the provision'. In view of this factual scenario, it becomes abundantly clear that the ld. CIT(A) erred in deleting this addition by considering the amount of Rs.2.36 lac as warranty expenses actually incurred and not as a provision. The view taken by the ld. CIT(A) is, therefore, not sustainable.

23. It is relevant to mention that the Hon'ble Supreme Court in the case of *Rotork Controls India (P) Ltd. Vs. CIT (2009) 314 ITR 62 (SC),* has held that

the provision for warranty claims is deductible if such provision is made on a scientific basis. There is no material available on record to demonstrate as to how this provision of Rs.2.36 lac was created. Under such circumstances, we set aside the impugned order and remit the matter to the file of AO for giving an opportunity to the assessee for placing on record the basis on which this amount of provision for warranty claims was created. If such amount of provision is found to be based on a scientific way, then, the deduction should be allowed. In the otherwise case, the excess amount over the appropriate amount of provision, should be disallowed.

24. Ground No.7 is against the deletion of addition of Rs.3,70,335/-. The assessee claimed deduction for a sum of Rs.4,93,777/- under the head 'Insurance expenses.' On perusal of details of insurance expenses, it was noticed that the assessee paid a sum of Rs.4.93 lac to Bajaj Alliance and General Insurance Company Ltd., for the period 1.1.05 to 31.12.05. By treating the amount relatable to the year in question for the first three months at Rs.1,23,442/-, the AO disallowed the remaining amount of Rs.3.70 lac. The ld. CIT(A) accepted the assessee's claim that a sum of Rs.4.93 lac was not claimed as deduction by the assessee. He, therefore, deleted the addition in entirety.

25. After considering the rival submissions and perusing the relevant material on record, it is observed from the assessment order that the assessee did make a claim for deduction of insurance expenses. Not only that, the assessee also

submitted before the AO, vide its reply dated 23.2.07 that the amount was paid to Bajaj Allianz and General Insurance Company Ltd., for a Standard Fire Policy for the calendar year 2005. When the facts are crystal clear that the assessee did make a claim for deduction of Rs.4.93 lac, the view point of the ld. CIT(A) cannot be accepted unless the assessee shows that no deduction was claimed for the amount disallowed. Since necessary details were not instantly available with the ld.AR, we are of the considered opinion that it would be in the fitness of things if the impugned order on this issue is set aside and the matter is restored to the file of AO for a fresh determination. If it is found that the assessee claimed deduction for the disallowed portion of insurance expenses then the same representing pre-paid expenses cannot be allowed as deduction in the instant year.

26. Ground No.8 of the Revenue's appeal is against the deletion of addition of Rs.30,09,023/- u/s 40(a)(ia) of the Act. On going through the details of freight and forwarding expenses, the AO found that no deduction of tax at source was made in respect of the payments made to the following parties:-

M/s B&R Transport Corporation	62710
M/s BGFC Movers (I) P. Ltd.	250214
M/s Golden Cargo Movers	49100
M/s Kerala Transport Co.	170578
M/s New India Roadways	85552
M/s Panal Pina World Transport	28700
M/s Parmoni Goods Carrier	33920

M/s Saajan Transport Co.	37261
M/s Sachdeva Roadlines Pvt. Ltd.	1270580
M/s Southern Eastern Roadways	72790
M/s Southern Carrying Corporation	616335
M/s Western Roadlines P. Ltd.	75277
	2753023

27. Apart from that, it was also noticed that the assessee paid a sum of Rs.2.56 lac to M/s Millennium Offset Works for printing of various items. It was opined that the tax was required to be deducted from this amount as it was a printing contract. The ld. CIT(A) deleted the addition.

28. Having heard both the sides and perused the relevant material on record along with the remand report of the AO, it can be seen from pages 490 onwards of the paper book that the assessee deducted tax at source from all the payments made by it to the above parties on account of freight and forwarding. Item-wise detail of the parties to whom freight was paid along with the amount paid, date on which the amount was paid/credited, section and rate at which the amount of tax was deducted and the dates on which such TDS was deposited in the exchequer, are available. These item-wise details run from page 492 upto 552 of the paper book. Page 554 is a certificate issued by the assessee in Form No.16A to M/s BGFC Movers India Pvt. Ltd., for deduction of tax at source on the freight payments made to it. Page 556 is a certificate in Form No.16A issued to M/s Parnami Goods Carriers Pvt. Ltd. Page 558 is a copy of certificate in Form No.16A issued to M/s New India Roadways. In the like manner, TDS

certificates have been issued in respect of the parties for which the AO has made out a case that no deduction of tax at source was made. When all these details were forwarded to the AO in remand proceedings, he conspicuously remained silent. In view of the fact that the assessee did deduct tax at source on the freight payments made to the above parties and such tax was duly deposited in the exchequer, we are of the considered opinion that the provisions of section 40(a)(ia) are not triggered.

29. As regards non-deduction of tax at source on the amount of printing and stationery, we find that the details of such expenses are available on pages 376 onwards of the paper book. From such details, it can be seen that these are for purchase of printing and stationery and there is nothing like any works contract having been carried out by the supplier. These are small amounts comprising of purchase of papers for balance sheet, material dispatch register, tags, excise challans and envelopes, etc. The definition of 'works' under section 194C does not include such printing and stationery expenses. We, therefore, hold that the ld. CIT(A) was justified in deleting this addition.

30. Ground No.9 is against the deletion of addition of Rs.23,889/- on account of cessation of liability u/s 41 of the Act. The assessee had shown sundry creditors amounting to Rs.3.99 crore. On perusal of details of such creditors, the AO observed that the amounts payable to seven parties totaling to Rs.23,889/- were more than three years old. Invoking the provisions of section 41, the AO

considered this amount as cessation of liability and made the addition. The ld. CIT(A) ordered for the deletion of this addition.

31. After considering the rival submissions and perusing the relevant material on record, it is noticed from the details of such amounts that some of them have been actually written back by the assessee in the succeeding year and the other amounts were existing liabilities not having ceased to exist. Merely because the creditor gets more than three years old, does not *ipso facto* obliterate the liability in itself. So long as the liability is payable, it cannot be considered as income. Taking into consideration the entirety of facts and circumstances of this issue, we are satisfied that the ld. CIT(A) was right in deleting the addition.

32. Ground No.10 is against the deletion of addition of Rs.15,36,144/- on account of foreign travel expenses. On perusal of total travelling expenses incurred by the assessee, the AO observed that a sum of Rs.15.36 lac pertained to the foreign travelling expenses incurred by the directors. Out of this total, a sum of Rs.3.22 lac represented air tickets and Rs.12.13 lac payment of hotel bills and boarding and lodging expenses. In the absence of sufficient details provided by the assessee, the AO made addition of Rs.15.36 lac. The ld. CIT(A) deleted such addition.

33. After considering the rival submissions and perusing the relevant material on record, it is observed that the foreign travelling expenses were incurred by the directors of the company who visited several countries where the company

was making exports for last couple of years. In support of the deduction for expenses, the assessee also furnished copies of e-mails exchanged with the customers abroad. The AO in the remand report chose not to adversely comment on this evidence. In view of these facts, it is clear that such foreign travelling expenses were incurred for the purpose of the assessee's business and there is no warrant for making any disallowance. The impugned order is upheld on this score.

34. The next ground of the Revenue's appeal is against the deletion of addition of Rs.2,84,193/- out of vehicle running and maintenance expenses @ 20% for non-business purpose. The ld.CIT(A) ordered for the deletion of the addition.

35. After considering the rival submissions and perusing the relevant material on record, we find that the Delhi Bench of the Tribunal in *DCIT vs. Haryana Oxygen Ltd. (2001) 76 ITD 32 (Del)*, has held that the company is a separate legal entity distinct from its directors and the use of vehicles by the directors cannot be characterized as user for non-business purpose and, hence, no addition can be made. The Hon'ble Gujarat High Court in *Sayaji Iron and Engineering Company vs. CIT (2002) 253 ITR 749 (Guj),* has held that there cannot be any non-business user in so far as a company assessee is concerned. In view of the above discussion, we find that the ld. CIT(A) has taken an unimpeachable view in deleting disallowance of 20% of vehicle running and maintenance expenses for non-business purpose. This ground is not allowed.

36. Ground No.12 is against the deletion of addition of Rs.1,29,319/- made on account of telephone expenses. The AO disallowed 20% of telephone expenses by treating it as for non-business purpose. The ld. CIT(A) deleted the addition. In view of the discussion made in respect of the immediately preceding ground, we are satisfied that no infirmity can be found in the ld. CIT(A)'s order in deleting this addition. Following the precedents noted above, we uphold the impugned order on this score.

37. Ground No.13 is against the deletion of addition made by the AO at the rate of 20% of entertainment expenses. The AO made this addition by noticing that the total entertainment expenses were incurred for meals in hotels and it was not shown that there was any business purpose in incurring such expenses. The ld. CIT(A) deleted this addition.

38. After considering the rival submissions and perusing the relevant material on record, we find that page Nos. 350-351 contain the detail of entertainment expenses. All the payments have been made through cheques and the assessee has mentioned the name and designation of the customer who was taken for meals, etc. In our considered opinion, there can be no reason for sustaining this disallowance. This ground is not allowed.

39. Ground No.14 is against the deletion of addition of Rs.65,734/- on account of demurrage charges. During the course of assessment proceedings, it was noticed that the assessee debited this sum as demurrage charges. By

treating this amount as penal in nature, the AO made disallowance for the same. The ld. CIT(A) deleted the disallowance.

40. After considering the rival submissions and perusing the relevant material on record, we find that this amount represents excess freight charged by a customer M/s Mid West Truck Auto Parts, which was in turn, recovered by bank. Complete evidence and explanation in this regard was filed before the AO as well, who did not offer any adverse comment on the same. As this amount is nothing, but, excess freight charges, it cannot be treated as penal in nature warranting any disallowance in terms of Explanation 1 to section 37(1) of the Act. This ground fails.

41. The last ground of this appeal is against the deletion of addition of Rs.1,29,300/- on account of sales and business promotion expenses. The AO noticed that the sales and promotion expenses included a sum of Rs.1.95 lac towards Sale promotions, Rs.8,855/- towards Business promotion and Rs.82,227/- towards Gifts and articles. On perusal of the details filed by the assessee in this regard, the AO noticed that the first and second items were in the nature of gifts, lunch, dinner and entertainment incurred mostly in cash. One-fourth of such expenses was disallowed. As regards the third item, he took it as representing donations/kanyadans to the tune of Rs.32,654/- and, a further sum of Rs.45,450/- towards gift of gold set. These two amounts totaling to

Rs.78,104/- were also added. This resulted into a total addition of Rs.1,29,300/-. The ld. CIT(A) deleted this addition.

42. Having heard the rival submissions and perused the relevant material on record, we find from pages 353A onwards of the paper book that the assessee furnished details of such expenses before the AO vide its letter dated 22.11.07. Gold items were distributed on the occasion of Diwali festival to its customers and complete details about the name and designation of the persons to whom such gifts were given, has been provided in the paper book. Invoices for the purchase of such gold items are also available on record. In so far as shaguns are concerned, the assessee is in the practice of giving shaguns on the occasion of girl marriage in the family of its employees. On random basis, a receipt from the recipient along with the copy of the wedding card has also been made available. In view of these details filed before the authorities below, we are of the considered opinion that the ld. CIT(A) was justified in deleting the addition.

43. In the result, the appeal of the Revenue is partly allowed for statistical purposes and CO of the assessee is dismissed.

The order pronounced in the open court on 19.01.2015.

Sd/-	Sd/-
[A.T. VARKEY]	[R.S. SYAL]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated, 19th January, 2015.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.