IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1682/PUN/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Faurecia Emission Control Technologies India Private Limited, (Formerly Yutaka Autoparts Pune Private Limited), Salisbury Park, 65-80, Shankar Rao Lohane Marg, P&T Colony, Gultekdi, Pune – 411037	**Vs.**	DCIT, Circle-7, Pune

PAN : AAACA8450A

(Appellant) (Respondent)

Appellant by	Shri R.D. Onkar
Respondent by	Shri Rajesh Gawali
Date of hearing	03-12-2018
Date of pronouncement	04-12-2018

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-5, Pune on 24-04-2017 in relation to the assessment year 2009-10.

2. The only issue projected in various grounds is against the confirmation of disallowance of Rs.32.69 lakhs paid by the assessee to Tata Autocomp Systems Limited (TACO) for

management and administrative support u/s. 40A(2)(b) of the Income-tax Act, 1961 (hereinafter also called as 'the Act').

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of manufacture and sale of exhaust system component viz., silencers, fabricated manifold, mufflers etc. It started its business operations during the previous year relevant to assessment year 2002-03. Initially, it was a joint venture between Yutaka Giken Company Ltd., Japan and TACO, each having 50% of equity shares of the assessee company. The assessee entered into an Administrative Support Agreement (ASA) with TACO for services in the start up and operating phase. Under the said Agreement, it availed support in the business areas of Human Resources including Pay Roll and benefit administration and training; Marketing and Sales; Finance; Vendor Development efforts; Maintaining Industrial relations; Information Technology and communication infrastructure; Governance in terms of Code of conduct, Audit and Administration etc. The assessee company continued to receive services from TACO even after the later leaving the joint venture. For the said services, the assessee paid a sum of Rs.32.69 lakhs during the

year to TACO, which the Assessing Officer (AO) disallowed by opining that no services were availed from TACO, being a person covered u/s. 40A(2)(b) of the Act. The ld. CIT(A) countenanced the disallowance made by the AO, against which the assessee has come up in appeal before the Tribunal.

4. I have heard both the sides and gone through the relevant material on record. It is an undisputed fact that TACO, prior to its leaving the joint venture, was rendering similar services to the assessee company in terms of Administrative Service Agreement dated 05-10-2002, a copy of which is available on page 3 onwards of the paper book. Due to TACO moving out of the joint venture, an amendment was carried on 25-08-2006 to the earlier Agreement. As per the said amendment deed, a copy of which is available on page 1 of the paper book, the assessee continued to receive the services for a period of three years on the same terms and conditions which were prevailing in the original agreement. Under the Agreement, the assessee received support from TACO for Land acquisition and development; Pay roll and benefit administration; Liaison with banks and financial institutions; Legal and taxation services; Human resource planning and training facilities;

Communication infrastructure and advisory services; Manpower requirement; Maintaining industrial relations; Marketing and distribution network; Liaison with Government authorities and Vendor Development efforts. When the assessee was paying a certain amount to TACO under the original ASA from 2002 onwards, the AO accepted the genuineness of the payment and allowed deduction for the same. The reason which weighed with the AO in not allowing deduction for the sum under consideration is that the assessee could not furnish primary evidence in support of the services. On a closer examination of the nature of the services, it emerges that the same are in the nature of a mixture of royalty for use of the initial input given by the TACO and rendition of services on a regular basis. In my considered opinion, the reasons adduced by the AO and the ld. CIT(A) are unwarranted because the assessee was availing such services under the original ASA for which a deduction was being allowed. The only difference that has taken place is that the TACO moved out of the joint venture company but continued to render the services at an arm's length now, as was being done earlier. Under such circumstances, I do not find any reason for not allowing the deduction for the same which was being allowed in the past.

5. It is further relevant to note that the AO has made disallowance under the provisions of section 40A(2)(a) of the Act. The ld. AR contended that after moving out of the Joint Venture, TACO is no more a person covered u/s.40A(2)(b) of the Act. The ld. DR could not controvert this factual position. It is thus evident that the provisions of section 40A(2)(a) are not attracted to the facts and circumstances of the instant case.

6. In view of the foregoing discussion, I am of the considered opinion that the authorities below erred in not allowing deduction for Rs.32.69 lakhs incurred by the assessee to TACO. The impugned order is overturned to this extent.

7. In the result, the appeal is allowed.

Order pronounced in the Open Court on 04th December, 2018.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 04th December, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
   The CIT (Appeals)-5, Pune
4. आयकर आयुक्त / The Pr. CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
   पुणे "**SMC**" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy // Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	03-12-18	Sr.PS
2.	Draft placed before author	03-12-18	
3.	Draft proposed & placed before the second member		
4.	Draft discussed/approved by Second Member.		
5.	Approved Draft comes to the Sr.PS/PS		
6.	Kept for pronouncement on		
7.	File sent to the Bench Clerk		
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

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