

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCHES 'SMC' CHANDIGARH**

BEFORE SHRI GEORGE GEORGE K. JUDICIAL MEMBER

**ITA No.593 /Chd/2016**  
(Assessment Year: 2007-08)

Moonlight Tools (P) Ltd.,  
Village Jaspalon, G.T. Road,  
Doraha, Distt. Ludhiana.

Vs.

The D.C.I.T.,  
CC-II,  
Ludhiana.

PAN No. AADCM4974D  
(Appellant)

(Respondent)

Appellant by : Shri S.C. Jain

Respondent by : Shri S.K. Mittal, DR

Date of hearing : 30.06.2016

Date of Pronouncement : 01.07.2016

**ORDER**

This appeal at the instance of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Ludhiana dated 18.3.2016 relating to assessment year 2007-08, passed under section 250(6) of the Income Tax Act, 1961 (in short 'the Act').

2. The solitary issue for my consideration is, *whether the CIT (Appeals) is justified in confirming the disallowance of expenses amounting to Rs.1,07,940/- made by the Assessing Officer.*

3. Briefly stated, the facts of the case are as follows :

The assessee is a company engaged in the business of manufacturing of auto parts. For the assessment year 2007-08, the return of income was filed on 30.10.2007 declaring "nil" income. The assessment under section 143(3) of the Act was completed by making an addition of Rs.1,21,541/-. Among other additions, the Assessing Officer made an addition of Rs.1,07,940/- by disallowing the expenditure claimed by the assessee. This expenditure claimed by the assessee was a payment made to Punjab State Electricity Board (PSEB) being usage of excess load during the peak hours. The Assessing Officer was of the view that the payment is in the nature of penalty and the same cannot be allowed as a business expenditure.

4. Aggrieved by the order of the Assessing Officer, the assessee preferred appeal to the First Appellate Authority. The CIT (Appeals) confirmed the action of the Assessing Officer on two counts, namely that the said expenses were incurred for infraction of law by using unauthorized load and, therefore, is not an allowable expenditure. Secondly, the CIT (Appeals) was of the view that the charges are not directly related to the units consumed and, therefore, it is a capital expenditure in nature and not a revenue expenditure.

5. Aggrieved by the order of the CIT (Appeals), the assessee is in appeal before the Tribunal. The learned counsel for the assessee reiterated the submissions made

before the lower authorities. The learned D.R. was duly heard.

6. I have heard the rival submissions and perused the material available on record. The assessee had produced in the Paper Book, a photocopy of the certificate issued by the SDO, PSEB, wherein it is clearly stated that the sum has been paid for excess load charges. The assessee has used 300.68 excess load as on the date of inspection. The amount paid is for usage of load in excess sanctioned to the assessee. The assessee has also furnished photocopy of the receipt of payment of Rs.1,07,940/-. The payment is for the electricity consumed for the manufacturing activities of the assessee. Therefore, it cannot be stated that the payment is for any infraction of law. On the contrary, it has a direct nexus in the manufacturing activities of the assessee.

7. On identical facts, the I.T.A.T., Chandigarh Bench in the case of DCIT Vs. M/s Oswal Woollen Mills Ltd. In ITA No.1134/Chd/2011 had decided the issue in paras 15 and 16 of the order and the same read as follows :

*“15. In view of the ratio laid down by the Hon'ble Punjab & Haryana High Court and the Tribunal in assessee's own case, we hold that the excess peak load charges levied by the PSEB paid by the assessee during the year under consideration were allowable expenditure in the hands of the assessee as being relatable to carrying on the business of the assessee company. The total expenditure paid by the assessee during the year under consideration was Rs.2.04 crores. The Hon'ble Supreme Court in civil appeal filed by the assessee against PSEB & Others (supra) vide judgment dated*

*28.4.2006 had reduced charges to Rs.31,47,310/- and the assessee was entitled to refund of Rs.1,72,96,036/-, which has been shown as income by the assessee in the subsequent year i.e. assessment year 2006-07. The assessee had already declared the income to the extent of Rs.1.73 crores in the succeeding year, which has been taxed in the hands of the assessee. The said expenditure is duly allowable in the hands of the assessee and the balance expenditure of Rs.31,47,310/- is also directed to be allowed by the Assessing Officer in view of our finding in the paras hereinabove. In view thereof, ground of appeal No.4 raised by the assessee on the merits is allowed and the grounds of appeal Nos.1 and 2 raised by the Revenue are dismissed. In view of our allowing the issue on merits of appeal, we are not adjudicating the issue of reopening of assessment under section 147/148 of the Act.*

*16. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed”.*

8. The Hon'ble Coordinate Bench of Tribunal in the case of DCIT Vs. M/s Oswal Woollen Mills Ltd. (supra) had followed the judgment of Hon'ble Jurisdictional High Court in the case of CIT Vs. Hero Cycles Ltd., wherein identical payment made by the assessee in that case was allowed as a deduction holding the same is not a penalty. The relevant finding of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Hero Cycles Ltd. (supra) reads as under :

*“12. We have given our careful consideration to the rival contentions. In our considered view, there is no distinction between the nature of the payment made by the assessee to the PSEB in the case of Industrial Cables 9 India) Ltd. ( supra) and in the case of the assessee. Since the claim of the assessee in the case of Industrial Cables ( India ) Ltd. (supra) has been held not to be in the nature of penalty, we respectfully following the order of the Hon'ble Punjab*

*and Haryana High Court in the case of Industrial Cables ( India) Ltd. ( supra) hold that the assessee is entitled, to deduction on account of extra charges paid to the PSEB for drawing extra load in peak hours. The addition of Rs.11,83,050 is accordingly deleted.”*

9. In view of the above-said reasoning and the judicial pronouncement cited supra, I hold that the amount paid to PSEB amounting to Rs.1,07,940/- is to be allowed as business expenditure. It is ordered accordingly.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 1<sup>st</sup> day of July, 2016

Sd/-  
**(GEORGE GEORGE K.)**  
**JUDICIAL MEMBER**

Dated : 1<sup>st</sup> July, 2016

\*Rati\*

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,  
ITAT, Chandigarh