

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**  
I.T.A. No.5693/M/2016 (Assessment Year: **2012-2013**)

Shri Rahul P Navgire, Q-1, Prathmesh Co. Hsg. Soc. Ltd., Veer Savarkar Marg, Prabhadevi, Mumbai-400025.	बनाम/ Vs.	Income Tax Officer, Ward 8(3)(3), Mumbai.
स्थायी लेखा सं./PAN : AAAPN9859J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Dr. P. Danial
प्रत्यर्थी की ओर से/ Respondent by	:	Mrs. Beena Santosh, DR

सुनवाई की तारीख /Date of Hearing : 09.02.2017

घोषणा की तारीख /Date of Pronouncement : 03.03.2017

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 21.9.2016 is against the order of the CIT (A)-14, Mumbai dated 25.07.2016 for the assessment year 2012-13. In this appeal, assessee raised the following ground which reads as under:-

*"The Ld CIT (A) erred in law and on fact of the case in restricting depreciation on car hire charges to the extent of income & confirming the disallowance of depreciation of Rs. 3,43,827/- .  
The Income from High charges offered as income from other sources and same is accepted by AO and Ld CIT (A)."*

2. Briefly stated relevant facts of the case are that the assessee is an individual and Director in partnership firms M/s. Vinayak Transmission Products Pvt Ltd and M/s. Vinayak Electromech Pvt Ltd. Assessee filed the return of income declaring the total income of Rs. 15,68,175/-. During the assessment proceedings, AO noticed that assessee hired his own cars to the partnership firm and earned car hire charges of Rs. 2,25,000/- which is shown as 'income from other sources'. In the return of income, assessee claimed depreciation of Rs. 5,68,827/- on the cars. Before AO, assessee could not substantiate his claim that there is no personal use of cars that are given on hire to the firm. Considering the absence of any documents in support of the assessee's claim, AO reduced the claim to the extent of car hire charges (Rs.

2,25,000/-) and added the excess claim of depreciation of Rs. 3,43,827/- (ie Rs. 5,68,827 – Rs. 2,25,000). Accordingly AO completed the assessment u/s 143(3) of the Act and the assessed income was determined at Rs. 19,12,000/- which includes an addition of Rs. 3,43,827/- on account of 'depreciation'. Aggrieved, assessee carried the matter in appeal before the first appellate authority.

3. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) dismissed the appeal and confirmed the addition made by the AO. Again aggrieved with the said decision of the FAA, assessee is in further appeal before the Tribunal by raising the above mentioned solitary ground.

4. During the proceedings before the Tribunal, assessee reiterated the submissions made before the lower authorities.

5. On the other hand, Ld DR for the Revenue, heavily relied on the orders of the Revenue Authorities.

6. I have heard the Ld Representatives of both the parties and perused the orders of the Revenue Authorities as well as the relevant material placed before us. On perusal of the CIT (A)'s order in general and para 3.1 in particular, I find, the same is relevant here. Considering the significance and for the sake of completeness of this order, the said para 3.1 of the CIT (A)'s order is extracted as under:-

*"3.1. I have considered the submissions made. The depreciation is claimed u/s 57(ii) of the Act. It says that "in case of income referred to under clause (ii) & (iii) of section 56 of the Act, then deduction so far as made be is allowable u/s 32 subject to provisions of section 38. On the other hand, section 32 says that "depreciation is allowable on the building, machinery, plant or furniture etc owned wholly and partly by the assessee and used for the purpose of business or profession". In this case, the appellant has shown the income from hiring of the vehicles under 'income from other sources' and also accepted by the Ld AO as such. However, the appellant could not prove that there was no personal use of the cars also given on hire, particularly under the background of the facts that the cars have been hired to the assessee's own partnership firm and without any agreement. Looking into the entirety of the facts in my opinion, the depreciation has been rightly restricted by the AO."*

7. As per the provisions of section 32, if the assessee claims deprecation on the building, machinery, plant or furniture etc wholly or partly owned by the assessee, the onus is on the assessee to prove that there is no personal use and the said items are exclusively used for the purposes of business or profession. In the present, assessee could not substantiate his claim by furnishing the supported documents / evidences. Considering the same AO restricted the claim of depreciation to the

extent of car hire charges. In my opinion, the said issue was discussed at length by the FAA in his order while confirming the addition made by the AO. Therefore, I am of the considered opinion, the decision of the CIT (A) in confirming the addition made by the AO is fair and reasonable and it does not call for any interference. Accordingly, grounds raised by the assessee are dismissed.

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 03<sup>rd</sup> March, 2017.

Sd/-

**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 03.03.2017  
व.नि.स./ OKK, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**