



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI NABIN KUMAR PRADHAN, ACCOUNTANT MEMBER

ITA no.1958/Mum./2013
(Assessment Year : 2006-07)

M/s. Rajesh Roadlines Pvt. Ltd.
399, Katha Bazar, Narshi Nath Street
Masjid Bander, Mumbai 400 009
PAN – AAACR2504F

..... Appellant

v/s

Income Tax Officer
Ward-7(2)(2), Mumbai

..... Respondent

Assessee by : Shri S.G. Dandawane
Revenue by : Shri B.S. Bist

Date of Hearing – 01.08.2016

Date of Order – 12.08.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal by the assessee is directed against the order dated 11th December 2012, passed by the learned Commissioner (Appeals)-9, Mumbai, for the assessment year 2006-07.

Grounds raised by the assessee are as follows:-

"1. The learned CIT(A) erred in rejecting the claim of depreciation of ₹ 5,63,922 on technical ground that as per rule 46A the application was not made in spite of supporting evidence.

2. The learned CIT(A) erred in rejecting the claim when depreciation is specifically shown in final accounts of company whose accounts have been audited.

2. Brief facts are, the assessee a company is engaged in the business of transportation and commission agent. In the assessment year under consideration, assessee filed its return of income on 19th November 2006, declaring total income at ₹ nil. In the course of assessment proceedings, the Assessing Officer, on verifying assessee's claim of depreciation noticed, it has claimed depreciation on 13 trucks purchased during the year out of which the assessee had produced supporting evidences in respect of 11 trucks. Whereas, no supporting evidence in respect of purchase of two trucks i.e., trucks bearing registration no.MH-04-CG-4972 and MH-04-CG-4973 claimed to have been purchased on 7th April 2005 were produced. Alleging that in spite of specifically called upon to produce documentary evidence in support of purchase of two trucks, assessee could not file the same, the Assessing Officer disallowed the claim of depreciation on the said two trucks amounting to ₹ 5,63,822. Challenging such disallowance, assessee preferred appeal before the learned Commissioner (Appeals).

3. In the course of hearing before the first appellate authority, the assessee produced photocopy of purchase invoice, R.C. book, copy of certificate from the financier to prove the purchase of two trucks. The

learned Commissioner (Appeals), however, refused to take cognizance of the documentary evidences submitted before him, stating that the assessee has not filed any application under rule 46A of the I.T. Rule, 1963. Further, he observed, the purchase of trucks were not supported with original purchase invoice, R.C. Book, road tax payment, insurance payment, etc. Accordingly, he sustained the disallowance of depreciation on the two trucks.

4. Learned Authorised Representative submitted before us, as the trucks were purchased through financing companies assessee could not produce copy of purchase invoices and other documents before the Assessing Officer since they were with the financing company. He submitted, before the first appellate authority though the assessee produced photocopy of these evidences, but he did not take note of these documentary evidences for the technical reason that assessee had not filed application for admission of additional evidences under rule 46A. As far as the allegation of the learned Commissioner (Appeals), that assessee did not produce original purchase invoice, R.C. book, etc., learned Authorised Representative submitted, since the drivers of the trucks have to carry the original R.C. book and insurance documents, the assessee could not produce them at the time of hearing before the learned Commissioner (Appeals), however, photocopies were produced. He, therefore, submitted, as the assessee

is the owner of two trucks, it is legally entitled to claim depreciation on them.

5. Learned Departmental Representative though relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals), however, he submitted that one more opportunity can be given to the assessee to produce the original purchase invoices, R.C. book, etc., before the Assessing Officer to prove its ownership over two trucks.

6. We have considered the submissions of the parties and perused the material available on record. As is evident, assessee's claim of depreciation on the two trucks mentioned herein before was disallowed by the Assessing Officer primarily for the reason that the assessee could not produce documentary evidence to prove his ownership over the two trucks. Though, before the first appellate authority, the assessee produced photocopy of the purchase invoice, R.C. book, etc., as well as certificate from the finance company through which assessee purchased the truck but the learned Commissioner (Appeals) refused to take cognizance of the documentary evidence produced by the assessee as they are not in strict compliance to the provisions of rule 46A. In our view, if the assessee had produced certain documentary evidence before the first appellate authority he should

have considered the same instead of rejecting them purely on technical reasons. If the assessee had not complied strictly to the provisions of rule 46A, learned Commissioner (Appeals) could have pointed out the same to the assessee for enabling him to submit the additional evidences complying to the provision of rule 46A. From the photocopy of the documentary evidence produced before us in the form of a paper book it appears, the purchase invoice of two trucks are in the name of assessee. Similarly, R.C. Book also bear the name of the assessee. Further, certificate issued by the financing company G.E. Capital indicates that the assessee has repaid the amount to the finance company and no dues against the assessee is outstanding. These documentary evidences prima-facie proves assessee's ownership over the two trucks. However, admittedly, these are only photocopy submitted by the assessee. Therefore, to prove the authenticity of documentary evidences submitted before the Departmental Authorities, it is essential for the assessee to produce the original purchase invoice, R.C. book, insurance document, etc., for verification to conclusively establish its ownership over the two trucks. For enabling the assessee to do so, we restore the matter back to the file of the Assessing Officer for production of the original purchase invoice, R.C. book, insurance documents, etc., which could prove assessee's ownership over the two trucks. If on verification assessee's

claim is found to be correct, the Assessing Officer must allow depreciation to the assessee for the two trucks.

7. In the result, assessee's appeal is allowed for statistical purpose.

Order pronounced in the open Court on 12.08.2016

Sd/-
NABIN KUMAR PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 12.08.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai