

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-3' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-4148/Del/2014
(ASSESSMENT YEAR-2011-12)**

Ramose Infra Private Ltd., E-14, East of Kailash, New Delhi-110065. PAN-AAACR4445F (APPELLANT)	vs	ITO, Ward-15(2), New Delhi (RESPONDENT)
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Appellant by	Sh. Satyajeet Goel, CA
Respondent by	Sh. Farhat Khan, Sr.DR

Date of Hearing	20.06.2016
Date of Pronouncement	19.08.2016

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee assailing the correctness of the order dated 13.06.2014 of CIT(A)-XVIII, New Delhi pertaining to 2011-12 assessment year on the following grounds:-

1(i) "That on the facts and circumstances of the case, the CIT(A) was not justified in sustaining disallowance to the extent of 20% of claim relating to depreciation and vehicle running expenses out of disallowance of 50% made by the Assessing Officer on the alleged ground that claim is excessive.

(ii) That genuineness of the claim being not in dispute, there could be no disallowance on the alleged ground of personal use or excessive claim.

(iii) That finding of the lower authorities is merely based on presumption and surmises and in total disregard to past history of the case.

2. That the entire claim is in respect of old vehicles and nature of claim being same as in the preceding years, there is no case of any disallowance in the light of past accepted history.

3. That in any case, claim of depreciation being in conformity with income tax rules, there is no ground or basis for any disallowance.

4. *That orders passed by lower authorities are not justified on facts and same are bad in law."*

2. The Ld.AR inviting attention to the assessment order submitted that the assessee company is engaged in the business of civil contracting. The AO has made an addition in the hands of the assessee company on account of personal user holding that since the assessee did not maintain log books in respect of the Cars & JCBs used for business purposes personal user could not be ruled out. In the absence of the same, the AO has formed the belief that there was a personal user and 50% of the expenses claimed was disallowed. Before the CIT(A), it was submitted that the assessee had agitated that similar expenses on similar facts have been claimed and allowed in earlier years however holding that there is no *res judicata* in tax proceedings as each assessment year is different, the disallowance made was restricted to 20%. Relying upon **Microsoft Corporation India Pvt.Ltd. [2015] 337 ITR 290 (Trib.)**, it was his submission that no disallowance in fact could have been made in the hands of a company.

2.1. The Ld. Sr.DR placed reliance upon the impugned order. No contrary decision was cited.

3. I have heard the rival submissions and perused the material available on record. The order of the ITAT in *Microsoft Corporation India P. Ltd. vs ACIT* (cited supra) relied upon has also been taken into consideration. Considering the judicial precedent relied upon it is seen that the Co-ordinate Bench relying upon **DCIT vs Haryana Oxygen Ltd. [2011] 76 ITD 32 (Delhi)** and **Sayaji Iron & Engineering Co. v CIT [2002] 253 ITR 749 (Guj.)** has categorically held that in the case of a company there cannot

be a denial of vehicle expenses on the grounds of personal user. A company being a separate legal entity distinct from its director or employees, it has been held there could be no occasion to treat the use of vehicles as personal user by the company who is an artificial entity. I find that no doubt maintenance of a log book would have been a way of keeping check on the use of vehicles but it is not possible to presume that a company engaged in civil contracting would be using vehicles like JCB for non-business user. Considering the overall factual matrix and the legal precedent thereon, I am of the view that the disallowance sustained deserves to be deleted.

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

The order is pronounced in the open court on 19th August 2016.

**Sd/-
(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR, ITAT NEW DELHI