

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.2085/Bang/2016
Assessment year : 2010-11

The Deputy Commissioner of Income Tax, Circle 4(1)(2), Bangalore.	Vs.	M/s. Motor World Ltd., No.46, Kudlu Gate, 7 th Mile, Hosur Road, Bengaluru – 560 068. PAN: AACCM 6574A
APPELLANT		RESPONDENT

Appellant by	:	Shri M.K. Biju, Jt. CIT(DR)(ITAT)-3, Bengaluru
Respondent by	:	Shri Mohan R. Mudakavi, CA

Date of hearing	:	15.05.2017
Date of Pronouncement	:	26.05.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is by the revenue against the order of CIT(Appeals) *inter alia* on the following grounds:-

- “1. The Order of the Ld.CIT CA) is opposed to the law and facts of the case.
2. Whether the CIT CA) is right in holding the decision that the car should be treated as commercial vehicle (Fortuner Car) for the mere reasons that the vehicle was utilized for the purpose of business?
3. The assessee had registered the vehicle in the normal procedures and is claiming depreciation @ 50% as applicable to

commercial vehicle. Whether the CIT(A) is right in rendering the decision that the vehicle be treated as commercial despite the fact that the vehicle was not registered as per the procedure mandated by the RTO?

4. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

5. The appellant craves leave to add, alter, amend and/or delete any of the grounds that may be urged.”

2. During the course of hearing, the Id. counsel for the assessee pointed out that the tax effect involved in this appeal was less than Rs.10 lakhs for the impugned assessment year, therefore by virtue of Circular No.21/2015, dt.10.12.2015, tax effect is below the prescribed limit laid down for filing appeals before this Tribunal.

3. Ld. DR submitted that para 8 of the Circular was not applicable in this case. Therefore he did not object to the application of the Circular.

4. Having carefully examined the orders of lower authorities in the light of rival submissions, we find that the tax effect on the impugned issue is less than Rs.10 lakhs. Para 4 of the Circular No.21/2015 (supra) is reproduced hereunder :

“4. For this purpose, “tax effect” means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed (hereinafter referred to as “disputed issues”). However the tax will not include any interest thereon, except where chargeability of interest itself is in dispute. In case the chargeability of interest is the issue under dispute, the

amount of interest shall be the tax effect. In cases where returned loss is reduced or assessed as income, the tax effect would include notional tax on disputed additions. In case of penalty orders, the tax effect will mean quantum of penalty deleted or reduced in the order to be appealed against.”

5. The assessee had not challenged the constitutional validity of any provisions of the Act nor had it challenged the legality of the Circular. Revenue has not brought to our notice anything to show that the appeal arose on an issue emanating from any Revenue Audit Objections accepted by the Department. Addition giving rise to the appeal does not relate to any undisclosed foreign assets / bank accounts. Thus, we find that circular No.21/2015 (supra) is squarely applicable in this case. However if Revenue finds that appeal arises out of issues emanating from audit objection it will be free to file necessary petition seeking recall of this order. With the above observations appeal of the revenue is therefore dismissed.

6. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 26th day of May, 2017.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 26th May, 2017.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.