

**IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, MUMBAI
BEFORE SHRI G.S. PANNU, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./ I.T.A. No. 569/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

Pan Oleo Enterprises Pvt. Ltd. 202, Quantum Towers Rambaug Lane, S. V. Road Malad (West), Mumbai-400 064	बनाम/ Vs.	The Asst. Commissioner of Income-tax 10(3)(2) C-10, Pratyakshakar Bhavan, Bandra-Kurla Complex Mumbai- 400 051
स्थायीलेखासं./जीआइआरसं./ PAN/GIR No. AA ECP9927E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Jignesh R. Shah, A.R.
प्रत्यर्थी की ओर से/ Respondent by	:	Shri V. Justin, D.R.

सुनवाई की तारीख/ Date of Hearing	:	05/07/2017
घोषणा की तारीख / Date of Pronouncement	:	25/09/2017

आदेश / ORDER

PER RAVISH SOOD, JUDICIAL MEMBER

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-17, Mumbai, dated 26.11.2015, which in itself arises from the assessment order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (in short 'Act'), dated 20.01.2015. The

assessee had assailed before us the order of the CIT(A), on the following grounds of appeal:-

“The appellant submits the following grounds of appeal which are separate/alternative and without prejudice to each other:

- 1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of depreciation claimed of Rs. 2,55,051/- on the appellant's motor car on the ground that the motor car was registered in the name of the individual Director and not the appellant-company, without appreciating in right perspective the fact that the cost of the motor car was paid by the appellant-company and the motor car was really and beneficially owned by the appellant-company and it was, as a matter of fact, used wholly and exclusively for the appellant's business, and disregarding/not appreciating the direct judicial decisions of the Supreme Court, the Bombay High Court and the Tribunal cited by the appellant. The appellant prays that since the appellant's case is squarely covered by a plethora of direct judicial decisions, the disallowance of depreciation of Rs. 2,55,051/- on motor car be deleted and depreciation be allowed to the appellant.*
- 2. On the facts and in the circumstances of the case and in law, the appellant prays Your Honours to grant such other and/or further and/or consequential reliefs as may be deemed fit and as per law.*

The appellant craves leave to add to, alter, amend or withdraw all or any of the foregoing grounds of appeal at or before the hearing of this appeal.”

2. Briefly stated, the facts of the case are that the assessee company which is a trader and commission agent in oleo chemicals had filed its return of income for AY: 2012-13 on 28.09.2012, declaring total income of Rs.1,19,78,233/-. The case of the assessee was taken up for scrutiny assessment and a notice u/s 143(2) was issued and served upon the assessee. That during the course of the assessment proceedings it was observed by the A.O that the assessee had claimed depreciation of Rs.5,10,103/- on a Mercedes benz car. That from an examination of the purchase bill of the vehicle filed by the assessee during the course of the assessment proceedings, it was gathered by the A.O that the said vehicle was registered in the name of the director of the company. That in the backdrop of the aforesaid

facts the A.O called upon the assessee to explain as to why its claim for depreciation may not be disallowed. The assessee in support of its claim for depreciation relied on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Mysore Minerals (1999) 156 CTR 1 (SC). However, the A.O not finding favour with the submissions of the assessee, disallowed the claim of depreciation of Rs.5,10,103/- raised by the assessee.

3. The assessee being aggrieved with the order of the A.O carried the matter in appeal before the CIT(A). That it was submitted before the CIT(A) that as the purchase consideration for the motor car was paid by the assessee company, therefore, the same was "really" owned by the assessee company and not by the director. That it was further submitted by the assessee that the motor car was reflected in the balance sheet of the assessee company and the day to day running expenses were also met by the latter. Thus, in the backdrop of the aforesaid facts, the assessee had tried to impress upon the CIT(A) that though the assessee was not the legal owner of the motor car, but being vested with the beneficial ownership of the same, it was duly entitled towards claim of depreciation. The CIT(A) however did not find favour with the submissions of the assessee, and concluded that the assessee not being the owner of the motor car was thus not entitled towards the claim of depreciation on the same. Alternatively, it was submitted by the assessee before the CIT(A) that as the motor car was purchased on December 30th, 2011, therefore, the same having been used for a period of less than 180 days during the year under consideration, the assessee had thus claimed 50% depreciation on the same, but however, the A.O had wrongly disallowed the depreciation for the full financial year. The CIT(A) taking cognizance of the said contention of the assessee, restricted the disallowance of depreciation

to the amount claimed by the assessee, i.e Rs.2,55,051/-. Thus, in the backdrop of the aforesaid facts, the CIT(A) partly allowed the appeal of the assessee.

4. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. That during the course of the hearing of the appeal it was submitted by the ld. Authorized Representative (for short 'A.R') for the assessee that the respective payments for the purchase of the motor car were paid by the assessee company. The ld. A.R in order to fortify his aforesaid contention took us through his 'Paper book', wherein the respective payments made from the bank account of the assessee stood reflected. That it was further submitted by the ld. A.R that as the motor car was registered in the name of the director, therefore, the A.O on the said stand alone basis had disallowed the claim of depreciation raised by the assessee, and while so doing had lost sight of the material facts which substantiated the beneficial ownership of the assessee, viz. (i). the motor car was purchased by the assessee company from its own funds; (ii). the motor car was reflected as an asset in the balance sheet of the assessee; and (iii). the day to day running expenses of the car were incurred by the assessee. Thus, in the backdrop of the aforesaid contentions, it was averred by the ld. A.R that now when the assessee company was the beneficial owner of the motor car, therefore, there was no reason for the A.O to have dislodged the claim of depreciation raised by the assessee in its return of income. The ld. A.R in order to buttress his aforesaid contention, relied on the order of the **ITAT Ahmedabad bench** in the case of **ITO Vs. Electro Ferro Alloys Ltd. (2012) 13 ITR (Trib) 594 (Ahd)**, wherein the Tribunal had held that where a car had been purchased by the company in the name of its director, but is reflected as an asset in the 'books of account' of the

assessee company and is used in the business of the company, the assessee shall be taken as the *de facto* owner of the said car and would be entitled towards the claim of depreciation, by observing as under:

22.2 In the present case it is not disputed that investment was made by the assessee in purchase of the motor car. It is shown as asset in the balance sheet of the company. If expenditure for running the vehicle was incurred by the assessee, the assessee is de facto owner of the vehicle. It is not disputed that it was used for the purpose of business of the assessee company. Hon. Rajasthan High Court in the case of CIT vs. Mohd. Bux Shokat Ali (2001) 167 CTR (Raj) 192 : (2002) 256 ITR 357 (Raj) held that where vehicle was purchased by the firm, used by it for the purpose of its business but it was registered in the name of one of the partners, then the firm would be entitled to depreciation on vehicle. Hon'ble Delhi High Court in the case of CIT vs. Basti Sugar Mills Co. Ltd. (2002) 176 CTR (Del) 294 : (2002) 257 ITR 88 (Del) held that where vehicle was owned and used by the assessee but no registration was done in its name, still then assessee would be entitled for depreciation on such vehicle. Therefore, assessee has right to claim depreciation thereon. This ground of Revenue is accordingly rejected."

The Id. A.R in order to drive home his aforesaid contention that the assessee stood duly entitled towards claim of depreciation on the motor car, also relied on the order passed by the coordinate bench of the Tribunal in the case of **Edwise Consultants Pvt. Ltd. Vs. CIT (2015) 44 ITR (Trib) 0236 (Mumbai)**, wherein the Tribunal adjudicating on the issue involving the same facts as are there before us in the present appeal, had held as under:

"23. The next issue relates to the disallowance of depreciation. The assessing officer disallowed the depreciation claim made on the cars only for the reason that the vehicles stood in the name of the directors and hence the assessee cannot be considered to be the legal owner. The Ld A.R submitted that the funds for purchase of cars were provided by the assessee company and the vehicles have been accounted as the assets of the assessee company only. He further submitted that the registration is only a formality and the same would not disentitle the assessee from claiming depreciation, even if it is registered in the name of its directors. In this regard, he placed reliance on the following case law:-

(a) *Poddar cements Ltd (226 ITR 625)*

(b) *ITO Vs. Electro Ferro Alloys Ltd (2012)(13 ITR (Tri) 594*

(c) *CIT Vs. Aravali Finlease Ltd (2012)341 ITR 282 (Guj)*

(d) *CIT Vs. Basti Sugar Mills Co. Ltd (2002)(257 ITR 88)(Delhi)*

24. *On the contrary, the Ld D.R submitted that the co-ordinate bench of Tribunal has confirmed identical disallowance made in the assessee's own case in AY 2007-08.*

25. *We have heard the parties on this issue and perused the record. We notice that the Hon'ble Gujarat High Court has considered identical issue in the case of Aravali finlease Ltd (supra) and has taken the decision that the depreciation is allowable in the hands of the company, even if it is registered in the name of its director provided that the vehicle is used for the purpose of business of company and income derived there from was shown as income of the company. In the instant case there is no dispute with regard to the fact that the vehicles are used for the purpose of business of the assessee company. In the case of Basti Sugar Mills Co. Ltd (supra), the Hon'ble Delhi High Court approved the decision of the Tribunal in holding that, since vehicle is a movable asset, the registration as required in the case of transfer of immovable property is not a condition precedent for legal ownership. In the instant case, the funds for purchase of vehicles have been provided by the assessee company and they have been shown as assets of the assessee company. Hence, in our view, the assessee company should be considered as owner for all practical purposes and hence it is entitled for depreciation. In view of the direct decision of Hon'ble Gujarat High Court is available on this issue, we prefer to follow the same to that rendered by the Tribunal in the assessee's own case for AY 2007-08. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to allow depreciation on vehicles."*

The Id. A.R also relied on the order of the coordinate bench of the Tribunal, viz. **ITAT, 'J' bench, Mumbai** in the case of **Mehta Equities Ltd. Vs. ACIT-4(2), Mumbai (ITA No. 570/Mum/2015, dated 21.09.2016)**, wherein the Tribunal had taken a similar view.

5. We find that the Tribunal while arriving at the aforesaid view in the case of *Edwise Consultants Pvt. Ltd. (supra)* had relied on the judgment of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. Basti Sugal Mills Company Ltd. (2002) 257 ITR 88(Del)**, as well as

the judgment of the **Hon'ble High Court of Gujarat** in the case of **CIT Vs. Aravali Finlease Ltd (2012)341 ITR 282 (Guj)**. The ld. A.R in the backdrop of the aforesaid facts submitted that now when as per the settled position of law the assessee company was duly entitled towards claim of depreciation, therefore, it could safely be concluded that the lower authorities had erred in dislodging the claim of depreciation of the assessee, which was well in order. Per contra, the ld. D.R relied on the orders of the lower authorities and submitted that the assessee till date had not been able to place on record as to what had compelled it to purchase the vehicle in the name of the director, as against its own name. It was thus averred by the ld. D.R that as the director of the assessee company was not the owner of the motor car, therefore, the lower authorities had rightly held that the assessee was not entitled towards the claim of depreciation on the same.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and find that though the vehicle was registered in the name of the director of the assessee company, but however, the other material facts which were brought to the notice of the lower authorities by the assessee, viz. (i). that the payment towards the purchase consideration for the motor car was made by the assessee company from its bank accounts; (ii). the motor car was reflected as an asset in the balance sheet of the assessee; and (iii). the day to day running expenses of the motor car were incurred by the assessee, duly established that the assessee company was the *defacto* owner of the motor car. We are of the considered view that the lower authorities had failed to appreciate the said material facts which have a strong bearing on the adjudication of the issue under consideration. We are

of the considered view that in the backdrop of the aforesaid facts, it can safely be concluded that though the assessee company was not vested with the legal ownership of the vehicle, but then, it remained the beneficial owner of the same. We thus in the backdrop of the aforesaid facts, finding ourselves to be in agreement with the view taken by the coordinate benches of the Tribunal and the judgments of the Hon'ble High Court of Delhi in the case of Basti Sugar Mills Company Ltd.(supra) and the Hon'ble High Court of Gujarat in the case of Arawali Finlease Ltd.(supra), thus, find no reason to take a different view. We thus being of the considered view that the assessee was duly entitled towards the claim of depreciation on the aforesaid motor car, set aside the order of the CIT(A) and delete the disallowance of depreciation of Rs.2,55,051/- sustained by the CIT(A).

7. The appeal of the assessee is allowed.

Order pronounced in the open court on 25.09.2017

Sd/-
(G.S.PANNU)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 25.09.2017
Ps. Rohit Kumar

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

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