

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2981 & 2982/Mds/2016

निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

M/s Chakiat Agencies Pvt. Ltd.,
No.40, Rajaji Salai,
Chennai - 600 001.

v.

The Deputy Commissioner of
Income Tax / Income Tax Officer,
Corporate Circle – 1(2) / (3),
Chennai.

PAN : AABCC 6281 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.3041 & 3042/Mds/2016

निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14

The Assistant Commissioner of
Income Tax,
Corporate Circle – 1(2),
Chennai - 600 034.

v.

M/s Chakiat Agencies Pvt. Ltd.,
No.40, Rajaji Salai,
Chennai - 600 001.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.M. Veeramani, CA

राजस्व की ओर से /Revenue by : Shri Avijit Rakshit, JCIT

सुनवाई की तारीख/Date of Hearing : 29.08.2017

घोषणा की तारीख/Date of Pronouncement : 27.09.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the assessee and Revenue filed appeals against the respective orders of the Commissioner of Income Tax (Appeals)-1,

Chennai, dated 01.08.2016 and pertain to assessment years 2012-13 and 2013-14. Therefore, we heard all the four appeals together and disposing of the same by this common order.

2. Let's first take assessee's appeals. The only issue arises for consideration in both the appeals is with regard to admissibility of higher rate of depreciation.

3. Shri P.M. Veeramani, the Ld. representative for the assessee, submitted that the assessee is engaged in the business of freight forwarding. In fact, the assessee was issued a licence of Multimodal Transport Operator by Ministry of Shipping. According to the Ld. representative, the assessee claimed depreciation in respect of trailers / lorries at the rate of 30%. The Assessing Officer granted only 15% depreciation on the ground that the assessee is not in the business of running the trailers / lorries on hire. The CIT(Appeals) confirmed the order of the Assessing Officer by placing reliance on the judgment of Apex Court in CIT v. Gupta Global Exim P. Ltd. (2008) 305 ITR 132.

4. Referring to the circular of the CBDT in Circular No.652 dated 14.06.1993, the Ld. representative for the assessee

submitted that when the assessee has its trailers / lorries in its business of transport of goods, it is eligible for higher rate of depreciation. According to the Ld. representative, this Tribunal in the case of DCIT v. Sunthanthar Assumtha (2016) 51 ITR (Trib) 154, has taken a similar view after referring to the circular issued by CBDT dated 14.06.1993. Referring to the judgment of Apex Court in Gupta Global Exim P. Ltd. (supra), the Ld. representative submitted that the Apex Court found that there was no evidence to indicate that the assessee was in the business of hiring out of motor lorry for running them to earn business income. In order to find out whether trucks were used in transport business as claimed by the assessee, the matter was remitted back to the file of the Assessing Officer. In this case, according to the Ld. representative, the assessee is using trailer / lorry in the business of transportation of goods, therefore, the assessee is eligible for higher rate of depreciation.

5. On the contrary, Shri Avijit Rakshit, the Ld. Departmental Representative, submitted that the Apex Court in Gupta Global Exim P. Ltd. (supra), found that use of lorry in the business of transportation is the test for allowing higher depreciation. In the

case before us, according to the Ld. D.R., the assessee has not used the trailer / lorry in the business of transportation, therefore, the Assessing Officer by applying the judgment of Apex Court in Gupta Global Exim P. Ltd. (supra) disallowed the claim of the assessee which was rightly confirmed by the CIT(Appeals).

6. We have considered the rival submissions on either side and perused the relevant material available on record. We have also carefully gone through the depreciation schedule. Motor lorries, taxies used in the business of running on hire is eligible for higher rate of depreciation. Therefore, the Supreme Court in Gupta Global Exim P. Ltd. (supra), after extracting the depreciation schedule, found that higher rate of depreciation is admissible on motor trucks used in the business of running them on hire. In the case before Apex Court, the above tests were not examined, therefore, the Apex Court remitted back the matter to the file of the CIT(Appeals) for de novo examination. In the case before us, the assessee is admittedly engaged in multi model transportation of goods on hire. The CBDT in circular No.609 dated 29.07.1991, found that higher rate of depreciation is admissible on motor lorries used in the business of transport of goods on hire. This was further clarified in

Circular No.652 dated 14.06.1993. The circular is reported in (1993) 202 ITR (Stat) 55. For the purpose of convenience, we are reproducing the circular which reads as under:-

“Under sub-item 2(ii) of Item No.III of Appendix I to the Income-tax Rules, 1962, higher rate of depreciation is admissible on motor buses, motor lorries and motor taxis used in a business of running them on hire. A question has been raised as to whether, for deriving the benefit of higher depreciation, motor lorries must be hired out to some other person or whether the user of the same in the assessee’s business of transportation of goods on hire would suffice.

2. In Board’s Circular No.609, dated 29th July, 1991, it was clarified that where a tour operator or travel agent uses motor buses or motor taxis owned by him in providing transportation services to tourists, higher rate of depreciation would be allowed on such vehicles. It is further clarified that higher depreciation will also be admissible on motor lorries used in the assessee’s business of transportation of goods on hire. The higher rate of depreciation, however, will not apply if the motor buses, motor lorries, etc., are used in some other non-hiring business of the assessee.”

7. In view of the clarification of CBDT, when the motor lorries or trucks are used in the assessee’s business of transportation of goods on hire, then the assessee is eligible for higher rate of depreciation. In this case, the assessee is already engaged in the business of transporting goods on hire. When the assessee is using truck / lorry in the business of transportation of goods on hire, then it is eligible for higher rate of depreciation.

8. We have also carefully gone through the judgment of Apex Court in Gupta Global Exim P. Ltd. (supra). In the case before Apex Court, even though the Commissioner of Income Tax (Appeals) assumed that the assessee has reported transportation income of ₹12,50,639/- by way of running the vehicle on hire, it was only an assumption and inference drawn by the Commissioner of Income Tax (Appeals) only on the footing that the Assessing Officer treated ₹12,59,639/- as part of total business income. The Apex Court found that there is no determinative factor for deciding whether trucks were used in the transport business as claimed by the assessee in the course of running the business. In the present case, the assessee is engaged in the business of transportation of goods on hire. It is not in dispute that truck or lorry was used in the business of transportation on hire, hence the assessee is eligible for higher rate of depreciation. In view of the above, we are unable to uphold the orders of both the authorities below. Accordingly, the orders of both the authorities below are set aside and the Assessing Officer is directed to allow depreciation at higher rate.

9. Now coming to Revenue's appeals, the first issue arises for consideration is disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act').

10. We have heard the Ld. Departmental Representative and the Ld. representative for the assessee. It is not in dispute that the investment was made by the assessee in subsidiary companies. The CIT(Appeals) by following the decision of this Bench of the Tribunal in EIH Associated Hotels Ltd. and Shriram Capital Ltd. allowed the claim of the assessee. Since admittedly the investment was made in subsidiary companies and it is a strategic investment, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. The next issue arises for consideration is depreciation on printers.

12. Shri Avijit Rakshit, the Ld. Departmental Representative, submitted that the printer is an independent machinery. It can be used without linking with computer. Placing reliance on the judgment of Madras High Court in Dinamalar v. ITO (2016) 74 taxmann.com 14, the Ld. D.R. submitted that printer cannot fall

under the definition of “computer”, therefore, it is not entitled for higher rate of depreciation.

13. We have heard the Ld. representative for the assessee also. The assessee is engaged in the business of multimodel transportation of goods on hire. The assessee claims that printer is a part of computer, therefore, eligible for depreciation at the rate applicable for computers. In the case before Madras High Court in *Dinamalar* (supra), the assessee was engaged in the business of printing and publication of newspaper. The assessee claimed depreciation in respect of scanner, computerized counting and stacking machines, CTP machine, modem, etc. It was explained before the High Court that the CTP means “Computer to Printer”. The assessee explained before the High Court that CTP is a latest machine wherein draft of the layout of the newspaper is made on the computer which is then transmitted to the printing press. Therefore, CTP is the mode of transmitting data to the printing press. In the case before us, the assessee is claiming depreciation on the computer printer. The judgment of Madras High Court in *Dinamalar* (supra) was not brought to the notice of the both the authorities below. Therefore, this Tribunal is of the considered

opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the entire issue of depreciation on computer printer is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh after considering the judgment of Madras High Court in Dinamalar (supra) and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

14. In the result, the appeals filed by the assessee are allowed and appeals filed by the Revenue are partly allowed for statistical purposes.

Order pronounced on 27th September, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 27th September, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-1, Chennai-34
4. Principal CIT, Chennai-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.