

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A. T VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.488/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2010-11

Dr. Uttam Lodh 95, GE Block, Rajdanga Main Road (East), East Kolkata Township, Kolkata – 700 107.	Vs.	DCIT, Circle-55, Kolkata 54/1, Rafi Ahmed Kidwai Road, 4 th Floor, Kol-700016.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAAPL 5107 B		
(ASSESSEE)	..	(RESPONDENT)

Assessee by : Shri A. Biswas, ARFCA
Respondent by : Shri G. H. Seema, ACIT

सुनवाईकीतारीख/ **Date of Hearing** : **29/08/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **22/11/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to assessment year 2010-11, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)–6, Kolkata in Appeal No.100/CIT(A)-6/Kol/13-14 dated,13.07.2016, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 20.03.2013.

2.The assessee has raised the following the grounds of appeal:

"1.For that on the fact and in the circumstances the Learned Commissioner of Income Tax (Appeal) was wrong in upholding the depreciation rate of 15%, in place of the depreciation rate of 50% claimed by the assessee on "new commercial vehicle", and thereby erroneously sustained the disallowance of 'depreciation of Pts.3,47,276.

2. For that the Learned Commissioner of Income tax (Appeal) wrongly and arbitrarily did not consider the definition of "Commercial vehicle" referred to in paragraph 6 of the Notes below the table of Depreciation having the meaning assigned to it in section 2 of Motor Vehicles Act 1988, detailed by the Assessee in the Statement of Facts as well as the Grounds of Appeal filed before him.

3.For that the Learned Commissioner of Income Tax (Appeal) was wrong in not consider the fact that:

(a) entry number III.(3)(via) in Depreciation Schedule covers the case of commercial vehicles acquired on or after 01.01.2009 but before 01.10.2009 and put to use in this period for the purposes of business or profession and that

(b) there is no condition in this entry that the commercial vehicle shall be used in the business of running it on hire.

4. The assessee craves leave to add to and/or alter, amend, modify or rescind the grounds hereinabove before or at the time of hearing of this appeal."

3.Although, in this appeal, the assessee has raised four grounds of appeal but at the time of hearing, the solitary grievance of the assessee has been confined to the issue that the assessee was entitled to claim the depreciation at the rate of 50% instead of 15% of new commercial vehicle whereas AO and the Id. CIT(A) allowed depreciation at the rate of 15%.

4. The brief facts qua the issue are that the assessee filed its return of income on 29.09.2010 declaring a total income of Rs.31,44,413/-. The return was processed u/s.143(1) on 29.04.2011 of the I.T. Act 1961. Subsequently, the assessee's case was selected for scrutiny and notices were issued u/s

143(2) and the AO completed the assessment by making the addition on account of depreciation at Rs.3,47,276. The assessee has claimed the depreciation of Rs.4,96,108/-. The assessee is an owner of Mahindra Scorpio Vehicle and has claimed the depreciation at the rate of 50% because the assessee was using the said vehicle for his profession purpose and as per assessee, this vehicle is commercial vehicle. However, the AO rejected the claim of the assessee stating that higher rate of depreciation is allowable only in the cases of vehicles used for hire business. The assessee having other business were only allowed higher depreciation in respect of that portion where the vehicles were given on hire. Even if a small portion of income comes from vehicles given on hire, if it is not the main business, higher depreciation is not allowable, therefore, the AO disallowed the higher depreciation, and made addition Rs.3,47,276/-.

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A), who has confirmed the disallowance made by the AO. The Id. CIT(A) held that the assessee had claimed that the he was eligible to claim depreciation in respect of his Mahindra Scorpio Vehicle @ 50% as the vehicle is a "Commercial Vehicle" but has not justified as to how the vehicle can be considered to be a commercial vehicle as defined in the Motor Vehicles Act. It has been admitted in the statement of facts that the vehicle has been registered for 'private use'. In the light of this clear fact on record, the assessee's claim that the vehicle is a commercial vehicle eligible for

depreciation @ 50% is not justified. Therefore, the Id. CIT(A) has confirmed the disallowance of Rs.3,47,276/-.

6. Not being satisfied with the order of CIT(A), the assessee is in appeal before us. The Id. Counsel for the assessee has submitted before us that the Assessee purchased one SCORPIO VLX registered under M.V. Act as OMNIBUS (PRIVATB USE) and claimed depreciation @ 50% thereon as per Sl. No.III(via) under the heading III: Machinery andPlant of the Table NEW APPENDIX I of I. T. Rules, 1962 considering the same as "Commercial Vehicle" as specified in paragraph 6 of Notes below the depreciation table. In the said note "Commercial Vehicle" as per I. T. Rules was defined and it includes "Light Motor Vehicle" having the meaning assigned to in Sec. 2 of M. V. Act, 1988.

The Learned Assessing Officer in page '2' of the Assessment Order stated that the assessee had "quoted clause III(via) of New Appendix I of I. T. Rules 1962" but the Learned Assessing Officer thereafter had discussed about sub-item (2) of Appendix-I of I. T. Rules and there is no discussion in the order about sub-item III(via) of Appendix I under which the assessee's claim of depreciation rate of 50% was based.

The Id Counsel also pointed out that the CBDT had issued Notification No. 10/2009 dated 19.01.2009 and subsequent notification No. 37/2009 dated 21.04.2009 and in the said notification there is no such condition that vehicle would qualify as "Commercial Vehicles" when licensed to be used as public transport and/or for hire or reward.

Different entries exist in the New Appendix I for different categories of motor vehicle for providing depreciation at a specified rate depending upon the period of acquisition and the purpose for which they are deployed. The words "Commercial Vehicle" is used only in Income Tax Rules 1962 and hence meaning assigned to them in I. T. Rules was relevant and only to be considered. Therefore,

nomenclature of commercial vehicle should not be so construed to deprive the assessee of higher depreciation when all the conditions specified in the Act and the Rules have been met by the assessee. The Ld. Counsel also relied on the judgment of Hon`ble ITAT, Hyderabad, in ITA No.1985/Ahd/2013, A.Y.2009-10 wherein it was held that Motor Car purchased by the assessee for the purpose of business and had claimed depreciation U/s 32 (1) of the Act @ 50% as per the notification No.37/2007 dated 21.04.2009 issued by CBDT. As per the notification issued by CBDT, if any commercial vehicle which is used between 1.4.2009 and 1.10.2009 for the purpose of business, the assessee is eligible for depreciation @ 50%. Therefore, Id Counsel for the assessee prayed the Bench that the addition of Rs3,47,276/- towards depreciation may kindly be deleted.

7.On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the AO, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

8.Having heard the rival submission, perused the materials available on record, we are of the view that CBDT had issued Notification No. 10/2009 dated 19.01.2009 and subsequent notification No. 37/2009 dated 21.04.2009 and in the said notification it is provided that if any commercial vehicle which is used between 1.4.2009 and 1.10.2009 for the purpose of business, the assessee is eligible for depreciation @ 50%. The assessee under consideration purchased vehicle in the Month of September 2009 and the same was put to use on 24.09.2009, therefore we note that assessee is eligible to claim depreciation @50%. The CBDT circulars are binding on the Income Tax Authorities who engaged in execution of Income Tax Act, as held by the Hon`ble Supreme Court in the case of Navnit Lal Javeri, 56 ITR 198 (SC) and in the case of UCO Bank, 237

ITR 889 (SC). We note that assessee purchased one Scorpio VLX registered under M.V. Act as Omnibus (Private Use) and claimed depreciation @ 50% thereon as per Sl. No.III(via) Under the heading III: Machinery and Plant of the Table New Appendix I of I. T. Rules, 1962, which reads as under:

“(via) New commercial vehicle which is acquired on or after the 1st day of January, 2009 but before the 1st day of October, 2009 and is put to use before the 1st day of October, 2009 for the purposes of business or profession [see paragraph 6 of the Notes below this table]”

We note that below the new Appendix I of table of rates of depreciation, in note No. 6 commercial vehicle has been defined and assessee`s vehicle under consideration falls in the said definition. Therefore, considering the same as "Commercial Vehicle" as specified in paragraph 6 of Notes below the depreciation table, we note that the word "Commercial Vehicle" is used only in Income Tax Rules 1962 and hence meaning assigned to them in I.T. Rules was relevant and only to be considered. Therefore, nomenclature of commercial vehicle should not be so construed to deprive the assessee of higher depreciation when all the conditions specified in the Act and the Rules have been met by the assessee. The same identical issues were considered by the Coordinate Bench ITAT, Hyderabad, therefore, respectfully following the judgment of Coordinate Bench ITAT, Hyderabad, in ITA No.1985/Ahd/2013, A.Y.2009-10 (supra), wherein it was held that Motor Car purchased by the assessee for the purpose of business and had claimed depreciation U/s 32 (1) of the Act @ 50% as per the notification No.37/2007 dated 21.04.2009 issued by CBDT, if any commercial vehicle which is

used between 1.4.2009 and 1.10.2009 for the purpose of business. Therefore, we are of the view that the addition made by the AO and confirmed by the Id. CIT(A) needs to be deleted. Accordingly, we delete the addition.

9. In the result, the appeal filed by the assessee, is allowed.

Order pronounced in the open court on this **22/11/2017**.

Sd/-

(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक

Dated **22/11/2017**

RS, SPS

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee– Dr. Uttam Lodh
2. प्रत्यर्थी/ The Respondent-DCIT, Circle-55, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

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By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.